



Father deprived of legal capacity left in legal void as concerned his paternity rights

In today's Chamber judgment in the case [Krušković v. Croatia](#) (application no. 46185/08), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

This is the first case concerning recognition of paternity of a father who had lost legal capacity.

Principal facts

The applicant, Branko Krušković, is a Croatian national who was born in 1966 and lives in Jurdani (Croatia).

In February 2003 Mr Krušković, suffering from personality disorders following long-term drug abuse, was deprived of legal capacity on the recommendation of a psychiatrist. His mother was first appointed his legal guardian, then in September 2006 his father and, after that, an employee of the Opatija Social Welfare Centre.

In August 2007 he made a statement at the Rijeka birth registry that he was the father of a baby girl, born in June the same year. He did this with the mother's consent. He was subsequently registered as the child's father on her birth certificate.

Informed that Mr Krušković no longer had legal capacity, the registry brought proceedings to annul the registration. In October 2007 the domestic courts ordered that the child's birth certificate be amended as a person who no longer had legal capacity did not have the right to recognise a child before the law.

Proceedings brought by the welfare centre to establish paternity are currently still pending before the domestic courts.

Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private and family life) of the Convention, Mr Krušković complained about being denied the right to be registered as the father of his biological child, born out of wedlock.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

The application was lodged with the European Court of Human Rights on 1 September 2008.

Judgment was given by a Chamber of seven, composed as follows:

Anatoly **Kovler** (Russia), *President*,
 Nina **Vajić** (Croatia),
 Peer **Lorenzen** (Denmark),
 Elisabeth **Steiner** (Austria),
 Khanlar **Hajiyev** (Azerbaijan),
 George **Nicolaou** (Cyprus),
 Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"), *Judges*,

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 8 (right to private and family life)

It was impossible for Mr Krušković to have his paternity recognised under domestic law – either via a statement to the registry or via proceedings before the national courts – as he had lost legal capacity. The relevant authorities could have invited his legal guardian at the time to consent to the recognition of paternity. This was not, however, done. Nor did the welfare centre, on whom Mr Krušković was entirely dependent, take any steps to assist him in his attempts to have his paternity recognised.

The only possibility for Mr Krušković to have paternity established was through civil proceedings which had to be brought by the welfare centre and in which he only had the status of defendant, even though it was actually him who wanted his paternity recognised. Indeed, there was no legal obligation under national law for the social services to bring such proceedings at all and no time-limit fixed.

In the two and a half years between the moment when Mr Krušković had made his statement to the registry and the launching of the proceedings before the national courts to establish paternity, he had therefore been left in a legal void; his claim was ignored for no apparent reason. The Court could not accept that this was in the best interests of either the father, who had a vital interest in establishing the biological truth about an important aspect of his private life, or of the child to be informed about her personal identity. The Court therefore held that there had been a violation of Article 8.

Article 41 (just satisfaction)

The Court held that Croatia was to pay Mr Krušković 1,800 euros (EUR) in respect of non-pecuniary damage and EUR 100 for costs and expenses.

The judgment is available only in English.

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Emma Hellyer (tel: + 33 3 90 21 42 15)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Frédéric Dolt (tel: + 33 3 90 21 53 39)

Nina Salomon (tel: + 33 3 90 21 49 79)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.