

# EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

## JUDGMENT IN THE CASE OF MIKULIĆ v. CROATIA

The European Court of Human Rights has today notified in writing a judgment in the case of *Mikulić v. Croatia* (no. 53176/99); the judgment is not final<sup>1</sup>.

The Court held, unanimously, that there had been a:

- **violation of Article 6 § 1** (right to a determination of civil rights within a reasonable time) of the European Convention on Human Rights;
- **violation of Article 8** (right to respect for private life) of the Convention;
- **violation of Article 13** (right to an effective remedy) in respect of the complaint raised under Article 6 § 1.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 7,000 Euros for non-pecuniary damage. (The judgment is only available in English.)

### 1. Principal facts

Montana Mikulić is a Croatian national born out of wedlock in 1996. On 30 January 1997, she and her mother filed a paternity suit against H.P. before Zagreb Municipal Court. A number of hearings scheduled by the court were adjourned because H.P. failed to appear. H.P. also failed to abide by court orders to attend appointments to undergo DNA tests to establish paternity, which were scheduled six times. After three-and-a-half years, the court concluded that H.P. was the applicant's father. It based its conclusion on the testimony of the applicant's mother and on the fact that H.P. had been avoiding DNA tests.

H.P. appealed to Zagreb County Court, which quashed the first-instance judgment, finding that H.P.'s paternity could not be established primarily on the basis of his avoidance of DNA tests. The case was sent back to the municipal court which was ordered to hear witnesses who, H.P. alleged, had had intimate relations with the applicant's mother during the relevant period. On 19 November the municipal court established H.P.'s paternity and granted the applicant maintenance. H.P. appealed. The proceedings still appear to be pending before the county court.

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1. Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

## 2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 9 October 1999 and declared partly admissible on 7 December 2000.

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

Christos **Rozakis** (Greek), *President*,  
Françoise **Tulkens** (Belgian),  
Peer **Lorenzen** (Danish),  
Nina **Vajić** (Croatian),  
Egils **Levits** (Latvian),  
Anatoly **Kovler** (Russian),  
Vladimiro **Zagrebelsky** (Italian) *judges*,

and also Erik **Fribergh**, *Section Registrar*.

## 3. Summary of the judgment<sup>1</sup>

### Complaints

The applicant complained, under Article 8, that the failure of the domestic courts to reach a decision in her case had left her uncertain about her personal identity. She also complained, under Article 6 § 1, about the length of the proceedings and, under Article 13, that she had no means of speeding up the proceedings and that Croatian law does not oblige defendants in paternity suits to comply with a court order to undergo a DNA test.

### Decision of the Court

#### Article 6 § 1

The Court noted that the municipal court scheduled 15 hearings, six of which had been adjourned because H.P. had failed to appear, while none had been adjourned owing to the applicant's absence. Having regard to the circumstances of the case, the Court considered that the length of the proceedings to be taken into account<sup>2</sup> failed to satisfy the reasonable-time requirement. There had, therefore, been a violation of Article 6 § 1.

#### Article 8

The Court noted that no measures existed under Croatian law to compel H.P. to comply with the court order for DNA tests to be carried out. Nor was there any direct provision governing the consequences of such non-compliance. It was true, however, that the courts in civil proceedings were free to reach conclusions taking into consideration the fact that a party had been obstructing the establishment of certain facts. However, that was not in itself a sufficient and adequate means for establishing paternity in cases where the putative father was avoiding a court order to undergo DNA tests. In addition, the first-instance court had failed to resolve the question of paternity through the assessment of other relevant evidence.

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<sup>1</sup> This summary by the Registry does not bind the Court.

<sup>2</sup> From 6 November 1997, when the European Convention on Human Rights entered into force in Croatia.

The Court considered that people in the applicant's situation had a vital interest, protected by the Convention, in receiving the information necessary to uncover the truth about an important aspect of their personal identity. On the other hand, it had to be borne in mind that the protection of third persons might preclude their being compelled to make themselves available for medical tests of any kind, including DNA tests.

A system like the Croatian one, which had no means of compelling the alleged father to comply a court order to undergo DNA tests, could in principle be considered to be compatible with Article 8. The Court considered, however, that under such a system the interests of the individual seeking the establishment of paternity must be secured when paternity could not be established by means of DNA testing. The lack of any procedural measure to compel the alleged father to comply with the court order was only in conformity with the principle of proportionality if it provided alternative means enabling an independent authority to determine the paternity claim speedily. No such procedure was available to the applicant in the present case.

Furthermore, in determining an application to have paternity established, the courts were required to have regard to the basic principle of the child's interests. The Court found that the procedure available did not strike a fair balance between the right of the applicant to have her uncertainty as to her personal identity eliminated without unnecessary delay and that of her supposed father not to undergo DNA tests. Accordingly, the inefficiency of the courts had left the applicant in a state of prolonged uncertainty as to her personal identity. There had, consequently, been a violation of Article 8.

#### Article 13

The Court found that the applicant had no effective remedy in respect of the length of the proceedings and that there had, therefore, been violation of Article 13 read in conjunction with Article 6 § 1.

Concerning her complaint that no measures existed under domestic law to ensure the presence of the defendant before the court in paternity proceedings, the Court concluded that it had already taken this aspect into account in its considerations under Article 8 and that it was, therefore, unnecessary to examine the same issue under Article 13.

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The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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*The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.*