



Confidentiality of information concerning a child's origins: the Italian system does not take account of the child's interests

In today's Chamber judgment in the case of **Godelli v. Italy** (application no. 33783/09), 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.

The case concerned the confidentiality of information concerning a child's birth and the inability of a person abandoned by her mother to find out about her origins.

The Court considered, among other things, that a fair balance had not been struck between the interests at stake since the legislation, in cases where the mother had opted not to disclose her identity, did not allow a child who had not been formally recognised at birth and was subsequently adopted to request either non-identifying information about his or her origins or the disclosure of the birth mother's identity with the latter's consent.

Principal facts

The applicant, Anita Godelli, is an Italian national who was born in 1943 and lives in Trieste (Italy). She was abandoned at birth by her mother, who did not agree to be identified. After being placed in an orphanage she was adopted by the Godelli family (simple adoption).

At the age of ten, after learning that she had been adopted, the applicant asked her adoptive parents to provide her with details of her origins, without success. She alleged that her childhood had been very difficult because she had not known about her roots.

When she was 63 the applicant again took steps to discover her origins. Her request was refused as Italian law guarantees the right to keep a child's origins secret and the mother's right to have her wishes respected².

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Ms Godelli complained of her inability to obtain non-identifying information about her birth family. She maintained that she had suffered severe damage as a result of not knowing her personal history,

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

² Law no. 184/1983 guarantees the right to keep a child's origins secret in the absence of express authorisation by the judicial authority.

having been unable to trace any of her roots while ensuring the protection of third-party interests.

The application was lodged with the European Court of Human Rights on 16 June 2009.

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

Françoise **Tulkens** (Belgium), *President*,
 Dragoljub **Popović** (Serbia),
 Isabelle **Berro-Lefèvre** (Monaco),
 András **Sajó** (Hungary),
 Guido **Raimondi** (Italy),
 Paulo **Pinto de Albuquerque** (Portugal),
 Helen **Keller** (Switzerland),

and also Françoise **Elens-Passos**, *Deputy Section Registrar*.

Decision of the Court

Article 8

The Court pointed out that Article 8 protected a right to identity and personal development; establishing the truth concerning one's personal identity, including the identity of one's parents, was a contributory factor in that development. The circumstances in which a child was born formed part of the child's, and subsequently the adult's, private life guaranteed by Article 8.

The Court reiterated³ that the issue of access to information about one's origins and the identity of one's natural parents was not of the same nature as that of access to a case record concerning a child in care or to evidence of alleged paternity. Ms Godelli had sought to trace her birth mother, who had abandoned her at birth and had expressly requested that her identity be kept secret. The interests at stake were the mother's interest in preserving her anonymity, that of the child in learning about her origins and the general interest in preventing illegal abortions and the abandonment of children other than under the proper procedure.

The Court stressed that an individual's interest in discovering his or her parentage did not disappear with age, quite the reverse. Although by the age of 69 Ms Godelli's personality was already formed, she had nevertheless shown a genuine interest in ascertaining her mother's identity; such conduct implied mental and psychological suffering.

In contrast to the French system examined in *Odièvre*, the Italian system, which provided no mechanism for balancing the competing interests at stake, inevitably gave blind preference to the sole interests of the birth mother, preventing Ms Godelli from requesting, as was possible under French law, the disclosure of her mother's identity with the latter's consent. A proposal to amend the relevant legislation had been before the Italian Parliament since 2008.

In principle, the choice of the means calculated to secure compliance with Article 8 in the sphere of the relations of individuals between themselves was a matter falling within States' discretion (margin of appreciation). However, in so far as the Italian legislation did not allow a child who had not been formally recognised at birth and who was subsequently adopted to request either access to non-identifying information concerning his or her origins or the disclosure of the mother's identity, the Court considered that the

3 See the Grand Chamber judgment in [Odièvre v. France](#), 13 February 2003.

Italian authorities had failed to strike a fair balance between the interests at stake and had overstepped their margin of appreciation. There had therefore been a violation of Article 8.

Just satisfaction (Article 41)

The Court held that Italy was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,000 in respect of costs and expenses.

Separate opinion

Judge Sajó expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in French.

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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.