

## **Rasmussen v. Denmark (Application No. 8777/79)**

**From DADEL**

### **1) Reference Details**

Jurisdiction: European Court of Human Rights

Date of decision: 28 November 1984

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695440&portal=hbk&source=externalbydocnumber&table=1132746FF1FE2A468ACCBCD1763D4D8149>

### **2) Facts**

The Applicant, a Danish citizen, claimed that the limitation in the 1960 Act on the Legal Status of Children to his right of access to court to challenge his paternity was discrimination based on sex in violation of Article 14 of the Convention, taken in conjunction with Article 6 and Article 8. This case was referred to the Court by the Commission.

The Applicant sought leave to institute paternity proceedings. His application was refused for the reason that he had not brought the action contesting paternity within the time limits provided for in section 5(2) of the 1960 Act on the Legal Status of Children and that there was no cause to grant him any exemption. The 1960 Act did not impose any restriction on the mother's right to institute paternity proceedings.

### **3) Admissibility**

No objection to admissibility was noted.

### **4) Merits**

Article 14 of the Convention complements other substantive provisions of the Convention and the Protocols. An action contesting paternity is a matter of family law and thus civil in character, so Article 6 para. 1 is applicable. The Court also noted that Article 8 protects not only family but also private life. The determination of the Applicant's legal relations with the child undoubtedly concerned his private life and therefore this case also fell within the ambit of Article 8.

The Court found that there was a difference of treatment between the Applicant and his former wife with regards to the possibility of instituting proceedings to contest the Applicant's paternity for the purposes of Article 14. The Court said that there was no call to determine on what ground this difference was based since the list of grounds appearing in Article 14 was not exhaustive. Article 14 safeguards individuals who are placed in analogous situations. The Court did not resolve whether the Applicant and his former

wife were in analogous situations; it proceeded on the assumption that the difference in this case was made between persons placed in analogous situations.

For there to be a violation of Article 14, a difference of treatment is discriminatory if it "has no objective and reasonable justification," that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realized." Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law. The scope of the margin of appreciation varies according to the circumstances, the subject matter, and its background. The Court noted that there is no common ground regarding paternity proceedings in the Contracting States' legislations and that in most of them the position of the mother and that of the father were regulated in different ways.

The Court pointed out that the legislation complained of was based on recommendations made after a careful study of the problem and that the legislature were entitled to think that the introduction of time limits for the institution of paternity proceedings was justified by the desire to ensure legal certainty and to protect the interests of the child. The difference of treatment between husbands and wives was based on the notion that such time limits were less necessary for wives than for husbands since the mother's interests usually coincided with those of the child. The rules were modified by the Danish Parliament in 1982 [those 1982 rules were not at issue in this case] because it considered the thinking underlying the 1960 Act no longer consistent with the developments in society, but it cannot be inferred from this that the manner in which it had evaluated the situation 22 years earlier was not tenable.

## **5) Decision**

The Court held unanimously that there was no violation of Article 14 taken in conjunction with Article 6 or with Article 8.

The concurring decision found Article 8 inapplicable to this case, on the basis that the majority's reasoning was based on a much broader interpretation of Article 8 than that previously adopted by the Court.