COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

CASE OF JÄGGI v. SWITZERLAND

(Application no. 58757/00)

JUDGMENT

STRASBOURG

13 July 2006

FINAL

13/10/2006

In the case of Jäggi v. Switzerland,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Boštjan M. Zupančič, *President*,
John Hedigan,
Luzius Wildhaber,
Lucius Caflisch,
Vladimiro Zagrebelsky,
Alvina Gyulumyan,
Egbert Myjer, *judges*,
and Vincent Berger, *Section Registrar*,

Having deliberated in private on 22 June 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 58757/00) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Swiss national, Mr Andreas Jäggi ("the applicant"), on 27 June 2000.

2. The applicant, who had been granted legal aid, was represented by Mr B. Mégevand, a lawyer practising in Geneva. The Swiss Government ("the Government") were represented by their Agent, Mr P. Boillat, former Deputy Director of the Federal Office of Justice in charge of the Human Rights and Council of Europe Section.

3. On 26 October 2004 the President of the Third Section decided to communicate to the Government the complaints concerning the right to respect for private life. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1939 and lives in Geneva.

5. On 14 July 1939, before the applicant's birth, the State-appointed guardian brought an action against A.H., the applicant's putative biological father, seeking a declaration of paternity and payment of a contribution towards his maintenance. A.H. admitted that he had had sexual relations with the applicant's mother but denied paternity.

6. On 26 July 1939, after the applicant's birth, his mother declared on registering the birth that the father was A.H., with whom she had had sexual relations during the period of conception.

7. On 30 January 1948 the Geneva Court of First Instance dismissed the action for a declaration of paternity. In the absence of an appeal, the judgment became final.

8. In 1958 the applicant, who had been placed with a foster family, met his mother, who informed him that his father was A.H. According to the applicant, he had regular contact with his father and received presents from him and a monthly payment of 10 Swiss francs ((CHF) – 6.40 euros (EUR)) until he reached the age of majority. A.H. and his family denied those allegations. Only A.H.'s legitimate son admitted that he had received a telephone call from the applicant after A.H.'s death.

9. Furthermore, A.H. always refused to undergo tests to establish his paternity. In 1976, shortly after his death, a blood-type analysis carried out at the applicant's request did not rule out his being the latter's father.

10. In 1997 the applicant contacted the Geneva University Institute of Forensic Medicine to have a private paternity test carried out, but his request was refused.

11. On 3 December 1997 the applicant successfully applied to renew the lease for A.H.'s tomb until 2016 for the sum of CHF 2,600 (EUR 1,657).

12. On 6 May 1999 the applicant applied to the Canton of Geneva Court of First Instance for revision of the judgment of 30 January 1948. In the course of the proceedings he also requested a DNA test on the mortal remains of A.H.

13. On 25 June 1999 the Court of First Instance refused the request for a DNA test.

14. On 2 September 1999 the Canton of Geneva Court of Justice rejected the applicant's application on the ground that it was impossible to obtain a declaration of paternity without also amending the register of births, deaths and marriages.

15. The Court of Justice argued that the applicant was not entitled to such an amendment of the register as a result of the 1976 revision of the Civil Code abolishing the *exceptio plurium constupratorum*, a defence which the putative biological father could use in a paternity suit. However, in his application to the Court of First Instance the applicant had sought revision of the 1948 judgment, in which the *exceptio plurium* had been relied on to the benefit of A.H.

16. The Court of Justice noted that before 1978 (when the revised Civil Code had come into force), an illegitimate child who was under ten years of age on 1 January 1978 had had the option of converting a maintenance claim into a civil action (paternity suit) where the *exceptio plurium* had been raised. However, this was no longer permitted under the revised Civil Code.

17. The Court of Justice accordingly held that, even supposing that the applicant had been awarded maintenance in 1948, he was no longer entitled to have the register of births, deaths and marriages amended, firstly because the law had changed, and secondly because he had been born more than ten years before the end of the transition period between the old and new laws.

18. His request for evidence to be taken by means of a DNA test was therefore refused.

19. On 22 December 1999 the Federal Court adopted a judgment, served on 18 May 2000, in which it rejected the applicant's application on the following grounds:

> "The right to know one's parentage cannot be absolute in scope but must be weighed against the interests relating to protection of the personal freedom of others – in the instant case, the right of the deceased, deriving from human dignity, to protect his remains from interferences contrary to morality and custom, and the right of the close relatives to respect for the deceased and the inviolability of his corpse. ...
>
> The right to know one's parents is generally linked to the right to be raised by them. The applicant, who is 60 years old, has been able to develop his personality and pursue a large portion of his existence without suffering any medically attested damage to his physical or mental health as a result of his uncertainty as to his parentage, despite the vicissitudes of his childhood and adolescence. On the other hand, while the reasons of family devotion opposing the exhumation of the mortal remains of the late [A.H.] are understandable, the respondents have not advanced any religious or philosophical grounds in support of their position; in particular, they have not argued that they would have renewed the lease on their relative's tomb had the applicant not done so.
>
> However, in weighing up the conflicting interests, the refusal of the application for an expert examination may be upheld since, in the absence of any consequences of a civil-law nature, the applicant has not established that he has suffered sufficiently serious damage to his psychological well-being, as protected by the right to personal freedom, to justify the evidentiary measure requested. The measure appears excessive in view of the principle of proportionality, having regard to the applicant's particular circumstances, from which it cannot be concluded that his personality or mental stability might be seriously threatened by the uncertainty that may still persist as regards his parentage, in spite of all the information in his possession suggesting that [A.H.] very probably is his father. The Court of Justice was therefore entitled to restrict the applicant's personal freedom by taking into consideration that of the respondents, in view of the lack of public interest in having this parental tie established and the disproportionate nature of the steps required to establish it."

20. Lastly, the Federal Court observed that there were no consequences of a civil-law nature that could justify implementing the measure sought.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

21. The applicant complained that he had been unable to have a DNA test carried out on a deceased person in order to ascertain whether the person was his biological father. He alleged that he had suffered a violation of his rights under Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

22. Relying on the Court's position in *Haas v. the Netherlands* (no. 36983/97, § 43, ECHR 2004-I), the Government submitted, as their main argument, that Article 8 was not applicable in the instant case, seeing that the case related solely to obtaining evidence.

23. The applicant relied on the judgments in *Van Kück v. Germany* (no. 35968/97, § 69, ECHR 2003-VII), *Pretty v. the United Kingdom* (no. 2346/02, § 61, ECHR 2002-III), *Mikulić v. Croatia* (no. 53176/99, § 54, ECHR 2002-I), and *Bensaid v. the United Kingdom* (no. 44599/98, § 47, ECHR 2001-I). He submitted that the right to know one's parentage lay at the heart of the right to respect for private life.

24. The Court must determine whether the right asserted by the applicant falls within the scope of the concept of "respect" for "private and family life" set forth in Article 8.

25. The Court has held on numerous occasions that paternity proceedings fall within the scope of Article 8 (see *Mikulić*, cited above, § 51). In the instant case the Court is not called upon to determine whether the proceedings to establish parental ties between the applicant and his putative father concern "family life" within the meaning of Article 8, since in any event the right to know one's ascendants falls within the scope of the concept of "private life", which encompasses important aspects of one's personal identity, such as the identity of one's parents (see *Odièvre v. France* [GC], no. 42326/98, § 29, ECHR 2003-III, and *Mikulić*, cited above, § 53). There appears, furthermore, to be no reason of principle why the notion of "private life" should be taken to exclude the determination of a

legal or biological relationship between a child born out of wedlock and his natural father (see, *mutatis mutandis, Mikulić*, ibid.).

26. In the instant case the applicant is a child born out of wedlock who is seeking, through the courts, to ascertain the identity of his natural father. Contrary to the circumstances in *Haas*, cited above, the proceedings brought by the applicant were intended solely to establish the biological ties between him and his putative father and did not in any way concern his inheritance rights. Consequently, there is a direct link between the establishment of paternity and the applicant's private life.

The facts of the case accordingly fall within the ambit of Article 8 of the Convention.

27. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

28. The applicant submitted that the refusal of his request for an expert opinion in order to establish his biological ties with his putative father amounted to a violation of his right under Article 8. Now that scientific progress allowed positive proof of paternity to be provided by DNA tests (whereas at the time of the 1948 judgment, blood analyses had merely afforded the possibility of ruling out paternity), the State should have authorised him to have such a test carried out. The applicant considered that his interest in ascertaining the identity of his biological father prevailed over that of the deceased's legitimate family in opposing the taking of DNA samples.

29. The Government pointed out that the applicant had had the opportunity to exercise his right to establish his parentage by means of the proceedings that had ended on 30 January 1948.

30. The Government further submitted that there had been no interference, since Article 8 did not impose any absolute positive obligations on the State. In the instant case, contesting a judicial decision that had become final in 1948 would be contrary to legal certainty and would undermine the legitimate confidence placed by the public in the courts.

31. As to whether any interference that might have occurred had pursued a legitimate aim and been necessary, the applicant's interest in obtaining information about his ascendants carried less weight, in the Government's submission, than either the deceased's interest in ensuring that his clearly expressed wish was respected, or his right to respect for his private life, which included both the inviolability of his body and the interest in protecting his remains from interferences that were contrary to morality and

custom. The Government also referred to the interest of the deceased's close relatives in securing respect for their own family life and the general interest of the community in ensuring legal certainty. They emphasised that, as an adult, the applicant had fully developed his personality, that, contrary to the position in *Gaskin v. the United Kingdom* (7 July 1989, Series A no. 160), he had already been in possession of information about his father and, lastly, that he had not shown that he had particularly suffered as a result of the persisting uncertainty as to the identity of his father.

32. The Government submitted in conclusion that, when called upon to settle a dispute between various competing interests, the domestic authorities had not overstepped the margin of appreciation inherent in Article 8.

33. The Court reiterates that while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In determining whether or not such an obligation exists, regard must be had to the fair balance which has to be struck between the general interest and the interests of the individual; and in both contexts the State enjoys a certain margin of appreciation (see *Mikulić*, cited above, §§ 57-58, and *Odièvre*, cited above, § 40).

34. The Court observes that in the instant case the Swiss authorities refused to sanction a DNA test which would have allowed the applicant to know for certain that A.H., his putative father, was indeed his biological father. That refusal affected the applicant's private life.

35. The Government justified the refusal to allow the DNA test by citing the need to preserve both legal certainty and the interests of others.

36. The Court reiterates that the choice of the means calculated to secure compliance with Article 8 of the Convention in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation. In this connection, there are different ways of ensuring respect for private life, and the nature of the State's obligation will depend on the particular aspect of private life that is in issue (see *Odièvre*, cited above, § 46).

37. The extent of the State's margin of appreciation depends not only on the right or rights concerned but also, as regards each right, on the very nature of the interest concerned. The Court considers that the right to an identity, which includes the right to know one's parentage, is an integral

part of the notion of private life. In such cases, particularly rigorous scrutiny is called for when weighing up the competing interests.

38. The Court considers that persons seeking to establish the identity of their ascendants have a vital interest, protected by the Convention, in receiving the information necessary to uncover the truth about an important aspect of their personal identity. At the same time, it must be borne in mind that the protection of third persons may preclude their being compelled to make themselves available for medical testing of any kind, including DNA testing (see *Mikulić*, cited above, § 64). The Court must examine whether a fair balance was struck between the competing interests in this case.

39. In weighing up the different interests at stake, consideration should be given, on the one hand, to the applicant's right to establish his parentage and, on the other hand, to the right of third parties to the inviolability of the deceased's body, the right to respect for the dead, and the public interest in preserving legal certainty.

40. Although it is true that, as the Federal Court observed in its judgment, the applicant, now aged 67, has been able to develop his personality even in the absence of certainty as to the identity of his biological father, it must be admitted that an individual's interest in discovering his parentage does not disappear with age, quite the reverse. Moreover, the applicant has shown a genuine interest in ascertaining his father's identity, since he has tried throughout his life to obtain conclusive information on the subject. Such conduct implies mental and psychological suffering, even if this has not been medically attested.

41. The Court notes that the Federal Court observed that the deceased's family had not cited any religious or philosophical grounds for opposing the taking of a DNA sample, a measure which is, moreover, relatively unintrusive. It should also be noted that it was thanks to the applicant that the lease on the deceased's tomb was renewed in 1997. Otherwise, the peace enjoyed by the deceased and the inviolability of his mortal remains would already have been disturbed at that time. In any event, the deceased's body will be exhumed when the current lease expires in 2016. The right to rest in peace therefore enjoys only temporary protection.

42. With regard to the deceased's own right to respect for his private life, the Court would refer to its position in *Estate of Kresten Filtenborg Mortensen v. Denmark* ((dec.), no. 1338/03, ECHR 2006-V), in which it found that the private life of a deceased person from whom a DNA sample was to be taken could not be adversely affected by a request to that effect made after his death.

43. The Court notes that the preservation of legal certainty cannot suffice in itself as a ground for depriving the applicant of the right to ascertain his parentage, seeing that the granting of a paternity suit constitutes an exception to a transitional law dating from the 1970s which would affect him alone. Indeed, the Government themselves asserted that

recognition of biological paternity would have no effect on the register of births, deaths and marriages.

44. It follows that, having regard to the circumstances of the case and the overriding interest at stake for the applicant, the Swiss authorities did not secure to him the respect for his private life to which he is entitled under the Convention.

There has therefore been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

45. The applicant submitted that he had had no effective remedy by which he could have asserted his right to respect for his private life. He alleged a violation of Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

46. The Court reiterates that the effect of Article 13 is to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief (see *Chahal v. the United Kingdom*, 15 November 1996, § 145, *Reports of Judgments and Decisions* 1996-V).

47. The Court observes that the applicant was able to raise his complaints before three judicial bodies, which addressed his submissions in duly reasoned judgments. Accordingly, the complaint under Article 13 of the Convention must be declared inadmissible as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

48. Relying on Article 14 of the Convention taken in conjunction with Article 8, the applicant complained that he had been subjected to discrimination that had not been based on objective grounds in that the Federal Court had taken into account his state of health and advanced age as reasons for justifying the refusal to perform a DNA test.

49. Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

50. The Court observes that this complaint is closely linked to the complaint under Article 8. It should therefore be declared admissible.

B. Merits

51. In view of its reasoning under Article 8 of the Convention, the Court does not consider it necessary to examine this complaint separately.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

53. The applicant claimed 100,000 Swiss francs ((CHF) – 64,842.40 euros (EUR)) in respect of non-pecuniary damage.

54. The Government noted that the applicant had not submitted any claim in respect of pecuniary damage. As to non-pecuniary damage, they contended that the finding of a violation of Article 8 of the Convention would in itself constitute just satisfaction.

55. The Court considers that the finding of a violation of Article 8 of the Convention constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

B. Costs and expenses

56. The applicant also claimed CHF 46,370.80 (EUR 30,068) for the costs and expenses incurred before the domestic courts and CHF 23,778.10 (EUR 15,418.30) for the proceedings before the Court.

57. The Government submitted that the sum of CHF 3,000 (EUR 1,939.86) would cover all the costs and expenses relating to the proceedings at domestic level and before the Court.

58. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and were reasonable as to quantum. In the instant case, and having regard to the fact that the applicant was granted legal aid for the proceedings before it, the Court considers it reasonable to

award him the sum of EUR 5,000 in respect of all his costs, less the sum of EUR 701 which the applicant has already received in legal aid.

C. Other measures sought by the applicant

59. The applicant asked the Court to find that he was entitled to apply to reopen the proceedings in the relevant Swiss courts in order to secure respect for his right to establish his parentage.

60. The Court observes that, subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Sejdovic v. Italy* [GC], no. 56581/00, § 119, ECHR 2006-II).

D. Default interest

61. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaints under Articles 8 and 14 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* by five votes to two that there has been a violation of Article 8 of the Convention;

3. *Holds* unanimously that no separate issue arises as to whether there has been a violation of Article 14 of the Convention taken in conjunction with Article 8;

4. *Holds* by five votes to two
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,299 (four thousand two hundred and ninety-nine euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into Swiss francs at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 13 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent Berger
Registrar

Boštjan M. Zupančič
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Hedigan joined by Judge Gyulumyan is annexed to this judgment.

B.M.Z.
V.B.

DISSENTING OPINION OF JUDGE HEDIGAN JOINED BY JUDGE GYULUMYAN

Whilst I agree with the decision of the majority in respect of the complaints made under Articles 13 and 14, I regret I am unable to agree in respect of Article 8.

I would agree with the majority that age does not reduce the need to know the details of one's parentage. The desire and need to know such matters are too well known to be ignored and demand great respect and support. Nonetheless, there will clearly always be different levels of need depending on the individuals involved and it may fall to judges to determine those different levels.

Whilst I accept that the family of the deceased did not rely on any religious or philosophical objection to the proposed exhumation and the taking of a DNA sample, they did nonetheless oppose it. I note that persons of no particular religion or philosophy may very genuinely oppose such an action on the simple ground of violating the intimacy of the family, not to mention the integrity of their father's mortal remains. It is true that it was the applicant who extended the lease on the tomb at his own expense until 2016. It is also true that at the end of that time, the body of the deceased will likely be exhumed. These are relevant matters that ought to be and were considered and given due weight.

I note the reference to *Estate of Kresten Filtenborg Mortensen v. Denmark* ((dec.), no. 1338/03, ECHR 2006-V), dealt with by the Fifth Section, in which the estate of Kresten Filtenborg Mortensen complained that the exhumation of his corpse for the purpose of taking DNA samples constituted a breach of Article 8 of the Convention as it was not "in accordance with the law" as required by Article 8 § 2. The Fifth Section found in its decision on admissibility:

> "However, it would stretch the reasoning developed in this case-law too far to hold in a case like the present one that DNA testing on a corpse constituted interference with the Article 8 rights of the deceased's estate."

It was further noted:

> "In the present case the individual in question, namely KFM, was deceased when the alleged violation took place and hence when his estate, on his behalf, lodged the complaint with the Court alleging an interference with his right, or rather his corpse's right, to respect for private life. In such circumstances, the Court is not prepared to conclude that there was interference with KFM's right to respect for private life within the meaning of Article 8 § 1 of the Convention."

I note that in the present case it was the rights of the family as well as that of the deceased that were considered by the Swiss Federal Court. In *Estate of Kresten Filtenborg Mortensen*, it was only the right of the deceased under Article 8 that was considered. The rights, if any, of the family had never been brought before the domestic courts and were

therefore ruled out on non-exhaustion grounds and, if it had been necessary, on the ground of the six-month rule. I would therefore doubt the relevance of *Estate of Kresten Filtenborg Mortensen* to the present case. Moreover, I would also doubt the finding in that judgment that the dead have no Article 8 right to rest in peace. Whilst normally a complaint in respect of such an alleged violation would be brought at the suit of the deceased's relatives, I wonder: does the right to rest in peace disappear where there are no relatives to vindicate it? Does this right only attach to the relatives? I would think that these are issues that have yet to be fully resolved by the Court. I would have thought that there is a European consensus on the right of the dead to rest in peace and thereby a right under Article 8.

In whomever this right inheres, I would take the view that there may well be circumstances where it can be obliged to suffer interference for good and weighty reasons. I could even concede that were I the judge in the domestic tribunal I might have come to a different conclusion to that of the domestic judges. However, and this is the crux of my disagreement with the majority, I do not feel that as judges of this Court we have good grounds to find that the Swiss Federal Court got the balance so clearly wrong when they weighed the conflicting interests as to justify a finding of a violation.

The deference we owe to the domestic courts on the basis of the doctrine of subsidiarity is crucial to the whole relationship between us. This relationship may be greatly strained when this Court, however tempted it may be in a distressing case, trespasses into areas which are properly the territory of the domestic courts. In cases of this nature which involve complex nuances of tradition, belief and family values, the decisions made frequently rely heavily on the ability to hear the witnesses or otherwise assess evidence.

This Section (Third), in its inadmissibility decision in *Werner Petersen v. Germany* ((dec.), nos. 38282/97 and 68891/01, 12 January 2006), set out the well-established case-law of this Court in determining the margin of appreciation in family-law cases, notably child custody. I consider that cases involving the exhumation of a body and the taking of a DNA sample are of a similar nature in their sensitivity, involving frequently delicate and complex interpersonal issues.

> "The Court notes that in determining whether the refusal to grant access was 'necessary in a democratic society' it has to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient for the purposes of paragraph 2 of Article 8. Undoubtedly, consideration of what lies in the best interest of the child is of crucial importance in every case of this kind. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody and access issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their margin of appreciation (see, *inter alia*, *Hokkanen v. Finland*, 23 September 1994, § 55, Series A

no. 299-A; *Elsholz v. Germany* [GC], no. 25735/94, § 48, ECHR 2000-VIII; and *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII)."

Although, as noted above, I might as a domestic judge have come to a different conclusion, I consider that the Swiss Federal Court made a careful and well-reasoned analysis of the conflicting interests at stake in this case, relied upon relevant and sufficient reasons and came to a reasonable conclusion. I can discern no flaw in their approach which should lead this Court to find a violation. I consider, for the reasons outlined above, that this is a classic case in which the Court should be slow to intervene and consequently must regretfully disagree with the decision of the majority.