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Advocate General's Opinion in Case C-196/24 | [Aucrinde] ¹

Advocate General Tamara Čapeta: the Charter does not prohibit proving paternity through *post-mortem* genetic sampling

Under the principle of mutual recognition, a French court cannot reject a request for the taking of evidence sent by an Italian court, even if its domestic law prohibits, as a matter of public policy, the taking of genetic samples from a dead body in order to prove paternity if the person concerned did not give his or her express consent while alive

The applicant in the present case brought proceedings before an Italian court seeking to establish that a person, who is deceased and buried in France, is his biological father. That court sent to a French court a request for the exhumation and genetic sampling of the body of the putative father, pursuant to Regulation 2020/1783 establishing judicial cooperation in civil and commercial matters in relation to the taking of evidence. ² However, under the French Civil Code, a judge cannot order the exhumation of a body for the purpose of obtaining a genetic sample with a view to establishing parentage, unless the deceased person had given his or her express consent during his or her lifetime. This is considered a matter of public policy in the French legal order.

In order to decide whether it should reject the request for the taking of evidence, the requested French court referred two questions to the Court of Justice.

In her Opinion, Advocate General Tamara Čapeta found that Regulation 2020/1783 **does not allow** the requested French court to refuse to execute the request for the taking of evidence, since none of the grounds for refusing such a request, which are expressly enumerated in that regulation, are applicable in the case at hand. **That is so even if, under French law, the national rule at issue is regarded as a matter of public policy.**

The referring court further asked whether the execution of the request from the Italian court would be in contravention of the Charter of Fundamental Rights of the European Union. That raised the additional question of how the right to dignity of the human body after death, on the one hand, and the right to know one's origins, on the other, are balanced under the Charter.

Advocate General Čapeta considers that **the right to know one's origins is protected as part of the right to private life under Article 7 of the Charter**. At the same time, a comparison of national legal systems lead to the conclusion that **the right to respect for the human body after death should also be considered a general principle of EU law**. Pointing to the dual nature of human dignity, as a right and a principle, she concludes that the right to respect for the human body can be understood as an expression of human dignity. Such a right should therefore be taken into consideration when deciding whether to allow the exhumation of a body for the purpose of genetic sampling. However, the right to respect for the human body **is not an absolute right**, at least not in the same sense as the right to human dignity under Article 1 of the Charter, **but must be balanced against other fundamental rights**, such as the right to know one's origin.

As **the EU legislature have not (yet) chosen the balance to be given to these two rights** by harmonising the taking of evidence in paternity cases, **the Italian and French solutions may differ** and may be applied **as long as the chosen balance between these two rights does not infringe the essence of one of the rights involved**. Therefore, AG Ćapeta concludes that the Charter does not prohibit a court of a Member State from requesting, under Regulation 2020/1783, the taking of evidence by *post-mortem* genetic sampling even if the deceased person has not given his or her consent to such sampling during his or her lifetime.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

² [Regulation \(EU\) 2020/1783](#) of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence).