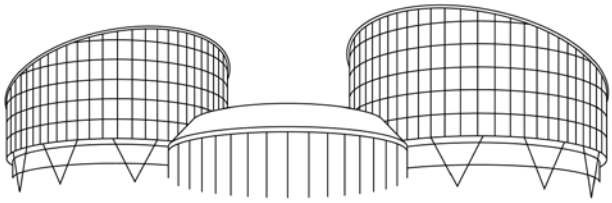

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF GODELLI v. ITALY

(Application no. 33783/09)

JUDGMENT

[Extracts]

STRASBOURG

25 September 2012
FINAL

18/03/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case ofGodelli v. Italy,

The European Court of Human Rights (Second Section), sitting as a Chambercomposed of:

FrançoiseTulkens, *President,*
DragoljubPopović,
IsabelleBerro-Lefèvre,
AndrásSajó,
GuidoRaimondi,
PauloPinto de Albuquerque,
HelenKeller, *judges,*

and Françoise Elens-Passos, *DeputySectionRegistrar,*

Having deliberated in private on 28 August 2012,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 33783/09) against the ItalianRepublic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Ms Anita Godelli ("the applicant"), on 16 June 2009.

2. The applicant was represented by Mr C. Pullano, a lawyer practising in Trieste. The Italian Government ("the Government") were represented by their Agent, Mrs E. Spatafora.

3. The applicant alleged that the fact that her birth had been kept secret with the result that it was impossible for her to find out her origins amounted to a violation of her right to respect for her private and family life guaranteed by Article 8 of the Convention.

4. On 9 November 2010 notice of the application was given to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, who was born on 28 March 1943 in Trieste, was abandoned by her motherat birth.

6. Her birth certificate records the following information:

"Today, 28 March 1943, at 7.30 a.m., a woman, who did not consent to beingnamed, gave birth to a baby girl."

7. The applicant was placedfirst in an orphanage and subsequently with the Godelli family. When she was six years old she was adopted by Mr and Mrs Godelli under the simple adoption (*affiliazione*) procedure, by a decision of the Trieste GuardianshipJudge of 10 October 1949.

8. At the age of ten, after learning that she had been adopted,the applicantasked her adoptive parentsto tell her who her birth parents were, but did not receive an answer. On an unspecified date she discovered that a young girl living in her village, who had been born on the sameday as her, had been abandoned and subsequently adopted by another family under the simple adoption procedure. The applicant suspected that she was her twin sister.The adoptive parents of the two girls prohibited any contact between them.

9. The applicantstated that she had had a very difficult childhood because she had been unable to find out her origins.

10. In 2006 the applicant requestedinformation about her originsfrom theTrieste Register Office, in accordance with section 28 of Law no. 184 of 4 May 1983 (Adoption Act: "Law no. 184/1993"), the regulations governing simple adoption having been repealed by that Law. The RegisterOffice gave the applicant her birth certificate, on which her birth mother's name did not appearbecause she had not agreed to have her identity disclosed.

11. On 19 March 2007 the applicant lodged an application withthe Trieste City Court, under Article 96 of Presidential Decree no. 396/2000,seeking rectification of her birth certificate. On 4 May 2007 the courtdeclined jurisdiction and dismissed the application on the ground that section 28(5) of Law no. 184/1983 provided that where persons aged over twenty-five were seeking access to information about theirbirth parents the court with the appropriate jurisdiction was the Family Court.

12. On 5 June 2007 the applicant lodged an application with the TriesteFamily Court.On 11 June 2008 the court dismissed her application on the ground that, under section 28(7) of Law no. 184/983,she was prohibited from gaining access to information about her origins because her mother, at the time of the applicant's birth, had notagreed to have her identity disclosed.

13. The applicant appealed to the Court of Appeal, whichdismissed her appeal by a decision of 23 December 2008.

14. The court observed, in particular, that the Family Court hadstressed the fact that the applicant's birth mother had requested to keep her identity secret and that it had therefore correctly applied section 28(7) of Law no. 184 of 1983, even though the

applicant had been adopted under a simple adoption order,as simple adoption did nevertheless createa family status. The Court of Appeal found that section 28(7)was designed to guaranteerespect for the mother's wishes. The prohibition on allowing the applicant access to information about her origins also served a public interest.

15. The applicant did not lodge an appeal on points of law.

II. RELEVANT DOMESTIC LAW AND PRACTICE AND COMPARATIVE LAW

A. Domestic law and practice

16. Under Article 250 of the Civil Code, one of the parents may decide not to recognise his or her child. In order to exercise that right, the mother must,at the time of the birth, request the hospital tokeep her identity secret. In such a case a medical file containing medical information about the mother and child is drawn up.Only the child's general practitioner may have access to the file, with the permission of the child's guardian.

17. Simple adoption *(affiliazione*) was created in 1942 in order to provide assistance to abandoned or parentless children agedunder eighteen. Unlike full adoption, this did not create an effective family relationship and the person being adopted did not have to be childless; however, he or she did have to be aged under eighteen. A simple adoption order could be requested by: the personwith whom the child had been placed,the Health and Social Security Department, or the person who had been raising the child on their own initiative.

18. The Articles of the Civil Code providing for simple adoption were repealed as a result of the entry into force of Law no. 184 of4 May1983 (subsequently revised by Law no. 149 of 2001 and by Legislative Decreeno.196 of 30 June 2003).

19. Section **27 of Law**no. 184/1983 **guarantees the right to keep a child's origins secret in the absence of express authorisation by the judicial authority.**

20. Under section 28(7) of Law no. 184/1983, a mother who decides not to keep her child can give birth in a hospital and at the same time remain anonymous on the declaration of birth. That anonymity lasts one hundred years, after which access to the birth certificate becomes possible.

21. An adoption order, once issued by the court, issent to the register office so that a note can be made in the margin of the birth certificate.Any copies of the adopted child's civil-status certificates must be issued with only the new family name shown and must bear no mention of the biological father or mother or any annotation regarding the adoption. However, where the registrar is expressly so authorised by the court, he or she maydisclose this information.

22. Adopted children may have access to information about their origins and the identity oftheir birth parents on reaching the age oftwenty-five. Where there are compelling and proven reasons relating to their physical and mental health, they may obtain that information on their majority. An application is lodged with the family court

of their place of residence, which gives its decision after assessing the particular situation and hearing any persons whom it deems it necessary to hear.

23. Access to the information is refused where the birth mother has not recognised the child at birth and where one of the birth parents has declared their wish not to be named on the birth certificate or has given their consent to the adoption subject to remaining anonymous.

24. In a judgment of 16 November 2005, theConstitutional Court held that withholding information about a child's originswithout first verifying whether the mother still did not wish to be identified was compatible with Articles 2, 3 and 32 of the Constitution.

25. The Constitutional Court observed,in particular, that section 28(7) of Law no. 184/1983 aimed to protect mothers who – in difficult circumstances – decided not to keep their child, by allowing them the possibility of giving birth in a hospital and at the same time remaining anonymous on the declaration ofbirth. In the court's view, the mother could thus give birth in good conditions and was prevented from taking an irreversible decision. That possibility would be jeopardised if, under that provision,the mother were also to know that she mightone day be called upon by the judicial authority to confirm or waive her decision.

26. Article 111§ 7 of the Italian Constitution provides: "Appealsto the Court of Cassation in cases ofviolations of the law are always admissible against judgments or measures affecting personal freedom pronounced bythe ordinary or special courts".

27. A government bill on access to personal origins has been before the Italian Parliament since 2008. The bill has two main objectives:

i) to permit and make provision for a procedure whereby confidentiality can be waived without calling into question the legal consequences of the decision initially taken by the mother;

ii) to make a waiver of confidentiality subject to the express agreement of the mother and child.

Under the provisions of the bill, anyone aged twenty-fiveor over who has been adopted and not recognised at birth may apply to the family court for access to information about their origins, subject to the mother's agreement.Where the child seeks to discover his or her origins, the family court will take steps to find the mother and obtain her consent to waive confidentiality while respecting her private life. Where the mother has died and where the father has died or cannot be identified, the court will obtaininformation about their identity and any medical data that may disclose the existence of any transmissible hereditary diseases.

B. Right to knowledge of origins in the other member States of the Council of Europe

28. Whilst the system of anonymous or secret births would appear to exist in a minority of countriesin Europe, it is not exceptional. In addition toFrance, wherefor many years the positive law has provided for a system of anonymous births, other

national legislations, which are relatively recent as they have been drafted during the past decade, also provide for births in such conditions (Austria, Luxembourg, Russia, Slovakia).

In Francethe system of anonymous births tends to resemble that of secret births, like the practice in the CzechRepublic where thesecrecy of the birth mother's identity is temporary,rather thandefinitive,as access to the relevant information isdelayed.

29. The situation of children born anonymously or secretly is comparable to that of children who find it difficult, or even impossible, to gain access to their biological origins. The omission of the name of one or other or of both parents may sometimes be provided for by law, but this is very rare (Italy, Luxembourg, France). Usually factualcircumstances will prevent theregistrar from fullycompleting the child's birth certificate; court proceedings are brought to determine paternity/maternity and may be available to persons other than the child alone. Notwithstanding the fact that such actions may not necessarily be effectivein the particular circumstances, their very existence, allowing research to be done into personal ties maintained by a child with his birth family, provides a safeguard for the interested persons.

30. It should further be pointed out that the practice of abandoning children continues in modern forms:there is an undeniable increase in the number of"*windows*" or"*baby hatches*"reminiscent offoundling wheels in the Middle Ages. It is practically and materially impossible for the child to gain access to information about his or her birth family; the register of births will give a"*fictitious*"name to the childthat bears no connection to that of its birth parents. The circumstances of the birth may be only partially secret (Spain, Hungary),but thiswill then necessarily mean that some data is available. Legalproceedings are generally available forchildren searching for their birth mother (Bulgaria, Croatia, theformer Yugoslav Republic of Macedonia) ormothers who may be searching for their child (Ukraine).

31. In the case of fulladoption, the child will often lose all contact with its birth family; the newparent-childrelationship will totally erase any ties that may have existed during the child's previous life with other adults (Austria, France, Monaco, Bulgaria, Russia and the former Yugoslav Republic of Macedonia). Access to the birth certificate is sometimes possible from a minimum age (Germany, Croatia, Hungary, Latvia,Portugal). The child may be authorised to gain access to a widerrange of information (Bulgaria, Estonia, Lithuania, Switzerland,Spain), which often presupposes bringing legal proceedings whereby the competing interests may be examined.

32. The United Kingdom and Ireland have set up a mechanismmaking it easier for adopted persons to gain access torecords about their adoptionthat goes a long way towards reconciling the right to information of the adopted child and respect for the private and family life of the mother or, more broadly, the birth family.

THE LAW

...

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

33. Theapplicant complained ofher 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. She stated that she had been denied access to non-identifying information about her birth mother and family that wouldhave enabled her to trace some of her roots while ensuring the protection of third-party interests. She also complained that, in weighing the two competing interests, the legislature had given preference to the mother's interests alone without there being any possibility for the applicant to request, as in French law, a waiver of confidentiality of the mother's identity subject to the latter's agreement. She also submitted that she had been the subject of a simple adoption order, which had not created an effectivefamily relationship. She relied on 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."

34. The Government contested the applicant's allegations.

B. The merits

1. The parties'submissions

a) The applicant

35. The applicant submitted that, according to the Court's case-law, Article 8 of the Convention applied to both the child and the mother, and the right to know one's origins could not have the effect of simply denying a woman's interest in remaining anonymous in order to protect her health by giving birth in appropriate medical conditions: theconflict was between two private interests – which moreover affected two adults each endowed with her own free will – which were not easily reconciled, on account of the complex and delicate nature of the question raised by the secrecy of information about a child's origins regarding each and everyone's right to their personal history, the choice of the birth parents, the existing family tie and the adoptive parents. She argued that the Court should seek to balance the competing interests and examine whether in

the present case the Italian system had struck a reasonable balance between the competing rights and interests.

36. The applicant submitted that no otherlegislative system protected the mother's anonymity to such an extent – giving birth anonymously and then abandoning the child anonymously – as that formalised and institutionalised in Italy.

37. Thus, the applicant pointed out that the United Nations Convention on the Rights of the Child of 20 November 1989 provided that a child had from birth "as far as possible, the right to know his or her parents" (Article 7). Likewise, the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption, which had been ratified by Italy, provided that the competent authorities of a Contracting State must ensure that information held by them concerning a child's origins, in particular information concerning the identity of his or her parents, as well as the child's medical history, would be preserved.The competent authorities were required to ensure that the child or his or her representative had access to such information, under appropriate guidance, in so far as was permitted by the law of that State (Article 30).

38. In Recommendation 1443 (2000) of 26 January 2000 – "International adoption: respecting children's rights" – the Parliamentary Assembly of the Council of Europeinvited the States to "ensure the right of adopted children to learn of their origins at the latest on their majority and to eliminate from national legislation any clauses to the contrary".

39. In the applicant's submission, Italy had exceeded the limits of its margin of appreciation because the system in place did not take account of the child's interests. In that connection she pointed out that the Italian system was very different from the French system that the Court had examined in the case of*Odièvre v. France* ([GC],no. 42326/98, ECHR 2003-III) as it precluded children from obtaining information about the identity of the mother and even non-identifying information about the mother and thebirth family. The system did not provide for access to the file, even with the mother's agreement. Accordingly, the child's interest in knowing his or her origins was entirely sacrificed, without any balance being struck between the competing interests and without any possibility of weighing up the interests at stake. Italian law accepted the mother's decisionas a blanket ban on any request for information made by the applicant, regardless of the reason for or the legitimacy of that decision. A refusal by the mother wasirreversibly and in all circumstances binding on the child, who had no legal means by which to contesther birthmother's unilateral decision. The mother couldthus, at her own discretion, bring asuffering child into the world who was condemned, for life, not to know its origins. A blind preference was given to the mother's interests alone. Furthermore, the mother could also, in the same way, paralyse the rights of third parties, particularly those of the biological father or brothers and sisters, who could also be deprived of therights guaranteed by Article 8 of the Convention.

40. The applicant complained that Italy had failed to guarantee respect for her private life on account of its legal system, which imposed a blanket ban on revealing

any information about the birth mother where the latter had requested the non-disclosure of her identity and which, above all, prohibited the communicationof non-identifying information about the mother, whether this be by the Child Welfare Service or any otherbody that could provide access to that information.

41. The applicant also submitted that although she had requested access to information about her origins once she had become an adult, a person's vital interest in obtaining the information necessary to uncover the truth aboutan important aspect of his or her personal identity, which was an integral part of the right to private life safeguarded by Article 8 of the Convention, was a subjective and highly personalright and thereforenot subject to statutory limitation.

b) The Government

42. The Government maintained that a woman's right to request that the birth and her identity be kept secretwas laid downby Article 250 of the Civil Code and section 28(7) of Law no. 184/1983, which guaranteed the right to keep a child's origins secret in the absence of express authorisation by the judicial authority. In the Government's submission, this was an interference in accordance with the law which also served to protecta public interest.

43. The Government did not deny that the notion of private life, which was also referred to in Article 8 of the Convention, could sometimes encompass information enabling a person's physical or social identity to be established. However, they pointed out that the State had not refused to furnish the applicant with information but had taken into account her mother's refusal from the beginning to allow her identity to be disclosed.

44. With regard to the proportionality of the interference, the Government submitted that a request by the child for access to information about its identity could conflict with the freedom which all women enjoyed to decline their role as mother or to assume responsibility for the child.Under Italian law, maternity was considered an aspect of private life and received statutory protection on that account. That protection had been confirmed by the Constitutional Court, which had declared unfounded a request for a review ofthe constitutionality of section 28(7) of Law no. 184 of 1983. The Constitutional Court stated that Law no. 149 of 28 March 2001,which had amended Law no. 184/1983, had introduced into the new section 28(1) an obligation on the adoptive parents to inform the adopted child that he or she had been adopted. Whilst the adoptive parents had not enabled the applicant to find out herorigins, it wasnoteworthy that the applicant had not decided to request information about her origins until2006.

45. According to the Government, the Courtshould take account of the fact that the applicant, who was now nearly seventy years old, had been adopted when she was six and thatnon-consensual disclosure of her origins could be very difficult at this stage, having regard to the possiblenon-negligiblerisks for her health and her present family.

46. The Government submitted that the State enjoyed a margin of appreciation in the event of a conflict between two private interests. That margin of appreciation was

enlarged in the instant case by the fact that no European consensus on the issue of a child's access to information about its origins existed.

2. The Court's assessment

47. The Court reiterates that although the object of Article 8 is essentially that of protecting 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 primarily negative undertaking, there may be positive obligations inherent in an effective respect for private 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 (see *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91). 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 particular, in both instances regard must be had to the fair balance which has to be struck between the competing interests, and in both contexts the State enjoys a certain margin of appreciation (see *Mikulić*,cited above, § 58).

48. As in the case of*Odièvre* (cited above), the applicantcomplained that the respondent State had failed to ensure respect for her private life by its legal system, which totally precluded an action to establish maternity being brought if the birth mother had requested confidentiality and, above all, prohibited the Child Welfare Service or any other body that could give access to such information from communicating non-identifying data about the mother.

49. The Court points out that it has already stated (see *Odièvre*,cited above, § 43) that the issue of access to information about one's origins and the identity of one's birth parents is not of the same nature as that of access to a case record concerning a child in care or to evidence of alleged paternity. The applicant in the present case is an adopted child who is trying to trace another person, her birth mother, by whom she was abandoned at birth and who has expressly requested that information about the birth remain confidential.

50. The Court notes that the expression "everyone" in Article 8 of the Convention applies to both the child and the mother. On the one hand, the child has a right to know its origins, that right being derived from the notion of private life (see paragraph 47above). The child's vital interest in its personal development is also widely recognised in the general scheme of the Convention (see, among many other authorities, *Johansen v. Norway*, 7 August 1996, § 78, *Reports of Judgments and Decisions* 1996-III;*Mikulić*, cited above, § 64; or*Kutzner v. Germany*, no. 46544/99, § 66, ECHR 2002-I). On the other hand, a woman's interest in remaining anonymous in order to protect her health by giving birth in appropriate medical conditions cannot be denied.

51. There is also a general interest at stake, as the Italian legislature has consistently sought to protect the mother's and child's health during pregnancy and birth and to avoid illegal abortions and children being abandoned other than under the proper procedure.

52. The Court reiterates that the choice of the means calculated to secure compliance with Article 8 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 at issue (see *Odièvre*, cited above, § 46). 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.

53. The Court must examine whether a fair balance has been struck in the present case between the competing interests:on the one hand, the applicant's right to have access to information about her origins and, on the other, the mother's right to remain anonymous.

54. The Court has held that the States must be allowed to determine the means which they consider to be best suited to achieve the aim of reconciling the protection of the mother and the legitimate request on the part of the applicant to have access to information about her origins while protecting the general interest.

55. In the present case the Court observes that, unlike the situation in the case of*Odièvre* (cited above, § 48), the applicant did not have access to any information about her mother and birth family that would allow her to trace some of her roots,while ensuring the protection of third-party interests. The applicant's request for information about her origins was totally and definitively refused, without any balancing of the competing interests or prospect of a remedy.

56. Whilst it is true that the applicant, who is now sixty-nine years old, has been able to develop her personality even in the absence of certainty as to the identity of her birthmother, it must be acknowledged that an individual's interest in discovering his or her parentage does not disappear with age, quite the reverse. Moreover, the applicant has shown a genuine interest in ascertaining her mother's identity, since she has tried to obtain conclusive information on the subject. Such conduct implies mental and psychological suffering, even if this has not been medically attested (see *Jäggi v. Switzerland*, no. 58757/00, § 40,ECHR 2006-X).

57. The Court notes that, unlike the French system examined in*Odièvre*, Italian law does not attempt to strike any balance between the competing rights and interests at stake. In the absence of any machinery enabling the applicant's right to find out her origins to be balanced againstthe mother's interests in remaining anonymous, blind preference is inevitably given to the latter. Moreover**, in*Odièvre* the Court observed that the new Law of 22 January 2002 improved the prospect of obtaining agreement to waive confidentiality and would facilitate searches for information about a person's biological origins as a National Council for Access to Information about Personal Origins had been set up. The law was of immediate application and now allowed the persons concerned to request disclosure of their mother's identity,**

subject to the latter's consent being obtained (see *Odièvre*, cited above, § 49), and to have access to non-identifying information. In Italy the bill amending Law no. 184/1983has been before Parliament since 2008 (see paragraph 27 above).

58. In the present case the Court notes that where the birth mother has decided to remain anonymous, Italian law does not allow a child who was not formally recognised at birth and was subsequently adopted to request either access to non-identifying information concerning his or her origins or the disclosure of the mother's identity. Accordingly, the Court considers that the Italian authorities failed to strike a balance and achieve proportionality between the interests at stake and thus overstepped the margin of appreciation which it must be afforded.

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

...

FOR THESE REASONS, THE COURT

...

2. *Holds*,by six votes to one,that there has been a violation of Article 8 of the Convention;

...

Done in French, and notified in writing on 25 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

FrançoiseTulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinionof Judge A.Sajó is annexed to this judgment.

F.T.
F.E.P.

DISSENTING OPINION OF JUDGE SAJO

To my regret, I have to dissent in this case in respect of the finding of a violation of Article 8.

In situations where the Convention rights of two right-holders come into conflict, the role of the Court is to satisfy itself that a proper balance has been struck in the case. This means that an appropriate margin of appreciation must be afforded to the domestic authorities to carry out the balancing exercise; the role of the Court is supervisory. Where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 107, ECHR 2012).

This case requires the balancing of the mother's Article 8 right not to disclose information about a most intimate fact of her life and that of her offspring (the applicant) to know her origins. If this were the only issue in the case I would have no difficulty following the reasoning of the majority. Moreover, only the most compelling reasons are acceptable where a right is denied in all circumstances by a blanket prohibition. However, the legislation, with its absolute ban on the disclosure of information regarding maternity (where the parent has refused such disclosure), reasonably serves Convention rights beyond the scope of Article 8. The protection of anonymity is a measure that serves the right to life of the offspring: in the present case the possibility of giving birth anonymously with an absolute guarantee of anonymity must have allowed the applicant to be born and to be born in circumstances that do not endanger her health and/or the health of the mother. That anonymity is related to the State's duty to protect the right to life, a right that is the direct emanation of the highest value of the Convention. Contrary to the generally applicable consideration that all Convention rights are, in the abstract, equal, the right to life is recognized as a supreme right. Of course, the right to life is only indirectly protected by the anonymity provision. However, this supremacy is decisive for me in the balancing exercise, which cannot be limited to a conflict between two Article 8 right-holders. I would add that the applicant – contrary to *Jäggi v. Switzerland*, no. 58757/00, § 44, ECHR 2006-X and paragraph 67 of the present judgment –did not show particular and lasting concern about her origins, as she waited twenty-three years before bringing her claim before a court. This would be a consideration in the balancing exercise if I were supposed to be doing the actual balancing. However, that is not my duty here. The balancing exercise was carried out by the Italian Constitutional Court in a comparable case (Sentenza no. 425/2005).

"In cases arising from individual applications the Court's task is not to review the relevant legislation or practice in the abstract; it must as far aspossible confine itself, without overlooking the general context, to examining the issues raised by the case before it ... Consequently, the Court's task is not to substitute itself for the competent national authorities in determining the most appropriate policy for regulating matters"(see S.H. and Others v. Austria [GC], no. 57813/00, § 92, ECHR 2011) of anonymous births. It is not for the Court to review the necessity of the absolute ban that was found constitutional by the Italian legislature, comparing the rights that are protected by the Convention, as long as this measure is not arbitrary and the balancing reasonably takes into consideration all the rights in question. It is true that there is no study on record before us to show that the guarantee of anonymity has indeed reduced the number of abortions; nor do we have data on the sense of relief the guarantee of anonymity gives to mothers. But the measure is certainly not capricious, and many women do actually rely on the guarantees of the system. If the present case were about the genetic markers of the applicant which she needed to know for reasons of health, the case might have ended differently for me, but the case is about the interest of a lady of respectable age whose personal development does not require specific knowledge. The Italian Constitutional Court took into consideration all the relevant aspects of the situation and there is nothing specific in the case that would necessitate a departure from its findings.