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MARITAL PRESUMPTION AS A LEGAL OBSTACLE FOR GAINING LEGAL STATUS OF CHILDREN LOST IN ADMINISTRATIVE AND JUDICIAL LABYRINTHS IN NORTH MACEDONIA AND IN THE EUROPEAN COURT OF HUMAN RIGHTS' CASE-LAW

Abstract

In May 2021 a young man aged 19, born and raised in the Republic of North Macedonia died unexpectedly under unknown health circumstances. Namely, he did not have health insurance, nor a general practitioner to follow his health because he was never issued a birth certificate. The news wrote that the only proof of his existence were excellent grades at school-which against all legal impediments allowed him to educate. For the rest of the legal society, the person never existed. One would ask why this happened. The administrative organs would "silently presuppose" that the answer lies in the legal marital presumption of his mother's husband from whom she was separated but not divorced at the time of his birth (even though they divorced afterwards), while she was living with another man (genetic father of the deceased man) in an extra-marital relationship. This administrative and legal nightmare is in line with the Family Act but against internationally ratified documents, such as the Convention on the Rights of the Child (art. 7 and 8), the European Convention of Human Rights (art. 8) and the practice of the European Court of Human Rights (e.g. *Kroon and Others v. the Netherlands,* 1994). Even more, it unveils one rigid and therefore ill-functioning system. The text aims to emphasize that no matter how outdated national Family Act is (subject of another debate), national administrative and judicial organs should manifest flexible interpretation in light of the evolutionary concept of the law in the current time and context and through the prism of the specifics of each particular case. Family Act reforms are placed in the "waiting room" for a prolonged period. Yet, families have to live with the consequences of an ignorant legislator and strict and positivistic interpretation of laws in their application by national institutions every day. Unfortunately, for some of them, like the boy who had waited for recognition for too long before he died, justice delayed is justice terminally denied.

Key words: birth certificate, marital presumption, recognition, rebutting fatherhood, family life.

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I. INTRODUCTION - FACTS OF THE CASE OF T.S. IN THE NATIONAL LEGAL CONTEXT

In May, 2021 a sad news came out: a nineteen years old man (T.S.) who fought with the legal system to gain his basic human right i.e. to be recognized by the country in which he was born was found dead on a street without any evidence of physical assault. The reasons for his death remain blurred since without recognition in the birth certificate he was not entitled to health insurance, accordingly to any health protection during his life. Coming from a socially endangered family, he could not afford private health care. During his life, he also could not afford administrative and civil disputes over his status, for which a State advocate was appointed (only short before the end of his life). The advocate stated for several medias that she requested from the administrative organs responsible for the birth certificate to inscribe the boy or to explain the reasons why they have not allowed registration of a child born and raised in the Republic of Macedonia. In addition to it, she suggested two possible solutions to move further with the case: 1. Inscription in the birth certificate with mother's information provided only (if they consider the fatherhood recognition problematic) or 2. An information that they should initiate a civil litigation for a paternal proceeding prior to the inscription[1]. The administrative organ never responded to her requests, even though that is against the principals of the General Administrative Act and the Public Registers Act, especially their obligation to respond within 30 or (in more complex cases) 60 days from the day they received the request. Unfortunately, neither the young man's advocate nor the Public defender could not move a single stone in the mountain of national legal obstacles towards his rights as a human being, primarily to be recognized as such. The news wrote that the only proof of his existence were excellent grades at school which against all legal impediments allowed him to educate[2]. For the rest of the legal society, the boy never existed. One would ask why this happened. The administrative organs "silently would presuppose" that the answer lies in the legal marital presumption of his mother's husband from who she was separated but not divorced at the time of the birth, even though she divorced afterwards while living with another man (genetic father of the deceased boy) in an extra marital relationship. Namely, both his mother and her separated husband were Bulgarian citizens. Nevertheless, his genetic father who lived in an extra-marital relationship with his mother in the Republic of North Macedonia was Macedonian citizen and wanted to recognize his child (while he still could). Unfortunately, he could not because according to the national administrative organs the marital presumption applied at the time of the birth (article 50, FA)[3]. Therefore, a legal father of the child was to be the mother's husband at the time of the birth, irrelevant of the fact that they divorced afterwards and the fact that he is neither

[1] Delevska S.K., SDK text based on the advocate's testimonies regarding the case: https://sdk.mk/index.php/neraskazhani-prikazni/18-godishnoto-momche-bez-izvod-ako-ne-dobie-pred-upraven-ke-mora-vo-graganski-sud-no-tatko-mu-e-teshko-bolen-i-ne-mozhe-da-svedochi-deka-mu-e-sin/?fbclid=IwAR3xEG-404F21bWg3BdpvDbFTyS4CQaDYxPoUD2McHgAK_-uJMh5aRRvNCk and https://sdk.mk/index.php/neraskazhani-prikazni/upravata-za-matichni-knigi-ne-mu-dava-izvod-na-rodeni-na-polnoletniot-t-s-poradi-etnichkata-pripadnost-obvinuva-negovata-advokatka-i-najavuva-tuzhba-protiv-makedonija-vo-strazbur/?fbclid=IwAR2VeI7enoqqlPNbZ7AI9AKYb4mx1bWI4q5YBVrXyRwH8DAWIr0YKElS42g#.X7tnG_RTxQ0.facebook.

[2] Delevska S.K., SDK text regarding the case of T.S.: https://sdk.mk/index.php/neraskazhani-prikazni/pochina-19-godishnoto-momche-shto-drzhavata-go-ostavi-bez-izvod-i-zdravstvena-knishka-edinstven-dokaz-deka-postoel-se-petkite-vo-svidetelstvata/#.YLDVJjY84gt.facebook.

[3] Family Act (FA), *Official Gazette Republic of Macedonia 80/1992* (consolidated text).

a genetic father nor interested to parent him. Accordingly, they should have fist registered him as a father so that they could rebut his fatherhood afterwards. Only then, the genetic father would have been able to recognize his child. This is against any logical explanation, yet in line with the administrative organs' excuse – it is written in the law. In addition to it, if one follows what is written in the Law, there are rigid time- frames in which one could rebut paternity. The married husband has that possibility during the marriage or 300 days after the marriage dissolution (art. 64, par. 1 FA). He could initiate an official civil litigation for rebutting his parenthood in 3 months time-frame from the time he realized the birth of the child of his married or recently divorced wife (art. 64, par. 2 FA). He is allowed to ask the Supreme Court an extended time-frame for such a litigation if he finds facts and evidence showing that he is not a father of his married/recently divorced wife (art. 65, par. 1 FA). What if he does not have any information about the birth, is not interested and therefore passive? In any case, he is not allowed to ask for such prolongation if the child has reached maturity (that is 18 years old - according to the positive law). On the other hand, not only the married husband, but also the mother and the child have the possibility of initiating such a litigation, also under strict conditions. For the mother, she could start a litigation 3 months after the birth of the child (without the possibility of additional extension of that time-frame, unlike her husband (art. 66, par. 2). This is a very limited period, especially having in mind that a mother of a child after giving birth is very likely to have handful work to take care of the baby and less likely to have time to initiate a court proceeding. For the child, there is such a possibility up until he/she is 21. Unfortunately, according to the law, the genetic father does not have an active legitimation to initiate a litigation for rebutting husband's fatherhood in front of the court for purposes of his later recognition. Therefore, he is very much considered by the law as an outsider or a complete stranger into this family union. In the case of T.S., at the time when he asked for his recognition in the birth certificate and prior to his death, his genetic father was no longer capable of recognizing him, since he was critically ill and could not communicate. In any case, it is explicitly forbidden to launch a proceeding for rebutting fatherhood after the child's death (article 72 FA). Even though, before his death, his advocate announced that the next step in this traumatic odyssey would be to launch an application in front of ECtHR, this is unlikely to happen now *post mortem*. The young man had siblings, born under the same circumstances but in another, in this sense more flexible country – Republic of Serbia. In contrast to his situation, they were issued with birth certificates there, meaning that Serbian national institutions found a way to recognize the factual reality beyond the legal marital presumption.

2. NATIONAL LEGISLATION – AFFILIATION, ESTABLISHING AND REBUTTING PARENTAL RESPONSIBILITIES

The *Family Act* uses the term "parental right" to depict what in most European countries and international documents is referred to as "parental responsibilities". In this sense, the term "parental right" encompasses the rights and obligations of the parents to care for the personality, rights and interests of their children[4]. Bearing in mind the Convention on the Rights of the Child (CRC) and the primary obligation of the parents to care for their children, instead of exercising rights over them, the term "parental right" should be replaced with the term "parental responsibilities". Consequently, the text will use the term "parental responsibilities", with the meaning of "parental right" as used by the *Family Act*, for purposes of consistency.

[4] *Op. cit. Family Act*, *article 44.*

Parental responsibilities of the father are to be established differently depending on the context in which the conception occurred: (1) without or (2) with the assistance of reproductive technology. In the first case, the establishment of the parenthood depends on the marital/extra-marital relationship of the parents. If the child is born within a marital relationship, the parenthood can be established on the ground of the legal presumption: "the husband of the mother is the father of the child born during the marriage or 300 days after the dissolution of the marriage"[5]. The presumption can be rebutted before the court by the husband, the mother or the child under certain circumstances and within certain time limits (usually on grounds of biological/genetic relatedness)[6]. The law omits to include the genetic progenitor (if different from the husband) as an active party able to initiate court litigation to rebut paternity based on the ground of presumption (as a first step towards establishing his own fatherhood). The progenitor's legal affiliation can only be established if the mother or the child initiate court litigation and rebut the paternity of the married husband, after which the recognition of the genetic parent may follow. This means that the law favours protection of family life as constituted in marital cohesion over genetic bonds.[7] The rationale is derived from two premises: (1) marriage has been perceived as a preferable medium for founding and raising families throughout history and even nowadays, (2) it promotes legal protection of already established familial links and therefore legal certainty[8].

On the other hand, the establishment of fatherhood in relation to a child born out of wedlock (not necessarily an extra-marital relationship) is associated with the act of recognition[9]. Such a recognition would result in legal parenthood only if there is consent by the mother, the guardian (if the mother is not alive or missing) and the child is older than 16[10]. If the recognition is followed by consent, both statements cannot be withheld[11]. If the consent for the recognition is not provided, the person who claims the fatherhood may seek judicial recognition of his genetic link with the child, which eventually will establish him as a father[12]. The same request for judicial recognition of fatherhood may also be launched by the mother, the guardian of the child or the child (from 18

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[5] *Ibid.*, *article 50*.

[6] *Ibid*., articles *64-67*. The time limits for the husband to launch proceedings to rebut his fatherhood are rather restrictive – 3 months after he receives the information regarding the fact of the birth of the child (*article 64*, *paragraph 1*). Nevertheless, he is allowed to request from the *Supreme court* an extension of the time period and new validity date for his petition (up to the time of the child gaining majority) if he has revealed new facts and proof that deny his genetic paternity (*article 65*). In this context, the Supreme Court made a decision explicitly stating that the suspicious mind and accordingly, the psychological and health-related consequences are not *per se* a sufficient ground to accept the petition and extend the due date. See more in the Decree of the Supreme Court – Решение на Врховниот суд на Република Македонија, бр. 38/98, 16.12.1999. The purpose of the restrictive terms for challenging the genetic relatedness that derive from the marital presumption can be explained by the fact that the law firstly prioritizes genes as important in the relation, and, only secondly protects the already established family link with the child.

[7] Ignovska E., *Sperm Donation, Single Women and Filiation*, Intersentia, 2015.

[8] Other European legislation is also familiar with this legal solution. For instance, in the Netherlands, a third party (apart from the marital partners) cannot dispute the legal fatherhood of the mother's husband, even if the third party can prove that he (not the husband) is the child's biological father. Furthermore, under the Dutch law, a married man can only under very strict circumstances, recognize a child as his begotten with a woman who is not his wife. In England, on the other hand, both cases are possible: a third party outside the marriage may recognize the child as his, and a married man may recognize a child as his begotten with a woman who is not his wife. See more in Vonk, M., *Children and their Parents, A Comparative Study of the Legal Position of Children with Regard to their Intentional and Biological Parents in English and Dutch Law,* Intersentia, 2007, pg. 65. Under the national Macedonian legislation, there is no prohibition on a married man recognizing another woman's child as his.

[9] *Op. cit*., *Family Act*, *article 51*.

[10] *Ibid., articles 56* and *57*.

[11] *Ibid*., *article 59*.

[12] *Ibid*.,*article 58*.

to 21 years old) if the biological father does not recognize the child as his himself[13]. The legal presumption for establishing fatherhood in relation to a child born outside a marital relationship supposes that the father of the child is the person with whom the mother had sexual intercourse in the framework between 180 and 300 days before the child was born, unless the opposite is proven. Therefore in deciding the paternity of the child, the court prioritizes medical proof of an existing biological/genetic link with the child, as well as the relationship and the mutual life between the mother and the defendant. Nevertheless, the existing presumption does not apply to conceptions as a result of assisted reproduction in extra-marital relationships, and therefore it is impossible to initiate proceedings for establishing parenthood.

From the above cited provisions in the *Family Act*, it follows that if the child is not conceived through assisted fertilization or adopted, the father of the child will be the genetic parent as a principal rule. An exception to this principle is envisaged in two cases: (1) the existent marital presumption was never rebutted, while the husband of the mother was not the genetic parent, and (2) the child of an extra-marital relationship was recognized by a person other than his genetic father. Once the parenthood is established, children are treated equally irrespective of their birth or the relationship of their parents[14].

When it comes to the establishment of motherhood in relation to a child conceived naturally and without the use of assisted reproduction, the *Family Act* has accepted the *Roman law* principle - *mater semper certa est*. Therefore the mother of the child is the woman who gives birth to the child except in the case of adoption (which is not an exception *per se* because the transfer of the status happens only afterwards). The motherhood can also be rebutted but only if it is proven that the registered mother on the birth certificate is not the mother who gave birth to the child. Bearing in mind that the contestation of motherhood can be invoked only if the child was not adopted, once again, the conclusion follows that the biological/genetic mother will be the mother of the child as a principal rule[15]. Following the debates over introducing surrogacies, there are two possibilities for their regulation: (1) to change the principle and consider the surrogate mother a delivery, surrogate woman, and the commissioning mother a mother from the time of the birth (as, for instance, in Greece), and (2) to keep the principle and apply the same rules as in adoption[16]. If the time of birth is accepted as a moment that generates legal consequences of parentage, then the second option is more adequate. Nevertheless, the national Law on Bio-medically Assisted Reproduction introduced surrogacies in 2014 without paying attention on these very important details, and therefore failed to be consistent with the Family Act. Nowadays, the surrogate woman

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[13] *Ibid*., *article 60*.

[14] The *Family Act*, articles *8* and *9*, the *Law on Inheritance* (Закон за наследувањето, *Службен весник на Република Македонија*, 47/96 (консолидиран текст), *article 4* (stating explicitly that in order to qualify the child as heir, the affiliation has to be established in a legally prescribed manner).

[15] The *Family Act*, *article 75*.

[16] This is differently regulated in different countries that regulate surrogacies. One modus of regulation is to treat women which give birth as mothers, and only afterwards to transfer the motherhood through court orders to the intended mothers. This is the case in the UK, making it similar to the procedure for giving the child up for adoption, which also allows a possibility for the surrogate mother to change her intention and not surrender the child for adoption. The other modus of regulation is through binding agreements authorized by the court before the transfer of a fertilized ova into the body of another woman (*art. 1458* of the *Greek Civil Code*), thus granting the commissioning parents the legal parenthood right after the birth of the child (as an exception to the rule *mater semper certaest*) in Greece (*art. 1464* of the *Greek Civil Code*). A similar solution is also provided in the Family Code of Ukraine. See more in Natzis N.A., "The Regulation of Surrogate Motherhood in Greece", *Social Science and Research Network*, 2010, pp. 3 and 6. Available online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1689774.

is obliged with a previously concluded Contract to withhold from recognition of the child[17]. Nevertheless, the Family Act does not ask recognition of the mother in order to establish her as a mother (that is reserved for the father only).

Parental proceedings are special civil proceedings under the jurisdiction of the *Law on Litigation Procedure,* integrated in the *Family Act*[18]. Their peculiarity is reflected in the fact that the court has authority (unlike in the other civil law disputes) to question the facts upon which the parties rely in their petition if they refer to their mutual juvenile children, even if they are not contested among the parties themselves[19]. The nature of their peculiarity is related to the priority of protection of the child's interests, even when they are in conflict with their parents' interests. If the child and the parent (that is a legal representative - legal guardian of the child) have conflicting interests, a special institution (*Centre for Social Affairs*) will appoint for the child a guardian *ad litem* for specific cases[20]. The data regarding the birth of the child, his/her parents, eventual later recognition of the fatherhood, establishing and rebutting of the fatherhood or motherhood, adoption, appointing a guardian for the child and the termination of his/her temporal role (…) are to be noted in the *Register of births* (*Матична книга на родените*)[21].

The provisions for establishing and rebutting parenthood analyzed above do not apply when the child is conceived with bio-medical assistance or when the child is adopted. Namely, it is forbidden to claim or rebut paternity and maternity before the court if the child is conceived through artificial insemination[22]. This way the legislator protects the anonymity of donors and the parents that gave the child up for adoption, or the later legal parents while infringing the right of the child to know his/her biological/genetic origins as stipulated in *articles 7* and *8* of the *CRC*, and in *article 8* of the *ECRH*.[23] Even though the proceedings for establishing parental links are not to be confused with the mere access to information about one's genetic origins, yet it remains controversial how the access to court for some children remains barred.

Parental responsibilities should normally be exercised mutually by both parents[24]. If the parents do not live together[25], or after dissolution of the marriage or termination of the extra-marital relationship, they continue to exist for both of them. Nevertheless, only one of them will have custody and will be fully entitled to live in the same household and care on a daily basis for the

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[17] *The Law on Bio-medically Assisted Fertilization*, (consolidated text), Article 12-v.

[18]*Article 1* of the Law stipulates: "this Law shall regulate the rules of the procedure on basis of which the court contends and decides upon the basic rights and obligations of the person and citizen in the disputes within the field of personal and family relations, labor relations, as well as property and other civil relations of natural persons and legal entities, unless it is envisaged, by a special law, that the court decides upon some of the listed disputes according to the rules of another procedure".Закон за парнична постапка, *Службен весник на Република Македонија*. бр. 79/05, 21.09.2005, (пречистен текст) 07/2011. The proceedings for establishing and rebutting paternity and maternity are placed between articles *262* and *272* of the *Family Act*.

[19] See *article 270* in conjunction with *article 257* of the *Family Act*.

[20]*Article 266* of the *Family Act*.

[21]*Article 4*, *Law on Registers of Birth* (Закон за матичната евиденција, Службен весник на Република Македонија, бр. 08/95, 15.02.1995).

[22]*Op. cit. Family Act*, articles *62*, *63* and *71*. There is inconsistency between the usage of the terminology in the *Family Act* (using the term "artificial insemination"), and the *Law on Bio-medically Assisted Fertilizations* (using the term "bio-medically assisted fertilization").

[23]Kleijkamp G.A., *Family Life and Family Interests, A Comparative Study on the Influence of the European Convention of Human Rights on Dutch Family Law and the Influence of the United States Constitution on American Family Law*, Kluwer Law International, 1999. pg. 26.

[24]*Op. cit*. *Family Act*, *article 76*.

[25]*Ibid.*, article 79 stipulates that the parents can agree among each other about the content of their relationship with the child, or the Centre of Social Work can decide for them.

welfare and upbringing of the child[26]. This means that the concept of joint parental responsibilities for both parents after the dissolution of their relationship as in most of the other European countries, and as stipulated in *article 9* of the *CRC* is not appreciated in its full capacity. There are numerous complaints before *the European Commission of Human Rights* and *the European Court of Human Rights* where applicants have alleged violations of the right to respect for family life under *article 8* of the *ECHR* due to denial of the right to custody or access after separation or divorce[27]. *The European Commission* and *the European Court* are clear that the breakdown of a couple's relationship does not destroy the right to family life either parent enjoys concerning the children born/adopted in that relationship[28]. Furthermore, any act by a State authority aimed at the removal of children from parental care leads to an interference with the exercise of the right to protect family life under *article 8* of the *ECHR*[29]. Nevertheless, this does not exclude the possibility of the State's withdrawal of custody from one of the parents if it is in the best interests of the child, and if it is in accordance with the limitation clause in *article 8*, *paragraph 2* of the *ECHR*[30]. Thus, harmonizing with the already accepted international documents and in terms of *article 9* of the *CRC* and *article 8* of *ECHR*, the Macedonian legislator should consider the possibility of introducing the concept of shared parental responsibilities after the dissolution of the relationship of the parents[31].

Apart from birth and adoption, affiliation can also be established between the child and the stepparent following a (re)marriage of one of the parents (father or mother) of the child. The stepparent does not take over the parental responsibilities of the child's other parent, even though in reality, he/she will have the role of a social parent. Nevertheless, the stepparent can gain the responsibility of maintenance of a child who is a minor only if the child does not have any other relatives (not just parents) obliged by the law and capable of undertaking maintenance[32]. The stepparent can also assume parental responsibility for the child by adopting the child, if the child does not have another registered parent, and if the other criteria for adoption are fulfilled[33].

The legal recognition of factual family life between persons sharing a common habitat without officially claiming affiliation status among them is integrated in the *Law on Inheritance*. *Article 29* of the law stipulates that the "person under care" and the "caregiver"[34], the stepparent and the stepchild, the mother and father-in-law, and the wife/husband of their child, as well as the other

[26]*Op. cit. Family Act*, *article 80*, decided by the court in separate civil litigation regulated in articles *272-273*.

[27] See more in Cohen J., "Respect for Private and Family Life", MacDonald R.S.J, Matscher F., Petzold H. (eds.), *The European System for the Protection of Human Rights*, Martinus Nijhoff Publishers, 1993, pp. 405-444. See also Ignovska E., „The case of Oluri v. the North Macedonia: Justice Delayed is Justice Denied", *Justice Obsevers*, 7.3.2020 (https://justiceobservers.org/article/74024/63647/187).

[28] See Gomien D. *et al*., *Law and Practice of the European Convention on Human Rights and the European Social Charter*, 1996, pp. 242-244.

[29]*Ibid.*, pg. 243.

[30]*Ibid.*

[31]Ignovska E., "The Family Law of the Republic of North Macedonia trhough the Prism of the European Convention on Human Rights", *Iustinianus Primus Law Review*, Vol. 11, 2020.

[32]*Op.cit. Family Act., article 182*.

[33]*Ibid*., articles *95-134*.

[34] A "person under care" for the purposes of the law is a child taken care of by another person without establishing an affiliation link among them (*article 19*, *paragraph 4*).

blood relatives that live together in "permanent community"[35], do inherit from each other under certain circumstances[36].

3. THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

3.1. Establishing and rebutting the parental legal affiliation grounded in the marital presumption

The case of *Kroon and Others v. the Netherlands*[37] concerned the marital presumption that the father of the child was the husband of the mother if the child was born during the marriage or 300 days after the dissolution of the marriage. A woman separated but not divorced from her missing husband, living with another partner with whom she gave birth to a child, was barred from rebutting the marital presumption and to establish family life due to the authorities' refusal to establish the fatherhood of her partner in the register of births. The *ECtHR* found violation of *article 8*, pointing out that marriage is not the only place where family ties can be established[38], reiterating that the crucial goal of the article is to protect the individual against arbitrary action by the public authorities. The Court also noted that the *State* must act in a manner to enable legal safeguards from the moment of birth or as soon as possible to integrate the child into his family. The Court also qualified the relationship between the partners as "family life", thus emphasizing the obligation of the State's authorities to provide mechanisms for establishing family ties as expeditiously as possible, while legally solving the burdens. The Court acknowledged that the "respect of family life" would be accomplished if the biological and social realities prevail over the legal presumption, which in the case was only a legal burden despite the intention of the parties. A similar situation of the impossibility to rebut the father's affiliation due to a marital presumption with a husband with whom the mother has ceased to live was highlighted in the case of *Chavdarov v. Bulgaria*[39]. The applicant (as a new partner of the woman, while the marriage was still not dissolved) was living with the mother during which period three children were born and registered as children of her husband due to the marriage presumption. After a while, the woman also left Mr.Chavdarov to start a mutual life with another man, during which period the applicant was living with his three children. In an attempt to establish his fatherhood in relation to the children he was living with, his lawyer consulted him about the legal impossibility to rebut the paternity of the married husband. Mr.Chavdarov complained before the ECtHR about his inability to establish fatherhood in relation to children to which he claimed to be both the genetic and social parent under *article 8* of the Convention. The Court found that family life was indisputably existent since he was living with the children together with their mother and after their separation, therefore developing an emotional link was reliable under the notion of "family life". The Court's decision

[35] "Permanent community" for the purposes of the law is defined as a community of continuous joint habitation for at least five years before the death of the *de cuius* (*article 29*, *paragraph 3*).
[36] If the deceased does not have a living marital partner and other heirs from the first succession order, then they inherit the whole inheritance in equal shares. If the deceased has a living marital partner, then the persons sharing a common habitat would inherit one half of the inheritance in equal shares (*article 29*, paragraphs *1* and *2*).
[37] *Kroon and Others v. the Netherlands*, European Court of Human Rights, No. 18535/91, judgment of 27.10.1994.
[38] Similar opinion regarding not only the marital community but also extra-marital relationships as legal cradles for establishing fatherhood was also recognized in the case *Keegan v. Ireland*, European Court of Human Rights, No. 16969/90, judgment from 26.05.1994.
[39] *Chavdarov v. Bulgaria*, European Court of Human Rights, No. 3465/03, judgment of 21.11. 2010.

in this case was dramatically different in comparison to the previous, finding unanimously no violation of *article 8*, claiming that the legal impossibility of having biological paternity established was due to the applicant's passivity to use the national legal possibilities to become a legal father. Namely, after examining the national legal context, the Court found that there were other possibilities for him to establish his fatherhood such as adopting the children, or asking for their custody, as they were abandoned underage children. Since he had not undertaken such actions, the Court stated that it was his own passivity and not the irresponsiveness of the Bulgarian legal system to the obligations undertaken by the Convention, even though the impossibility to rebut the presumption of the married husband remained. Nevertheless, the Court held that the current impossibility to establish his fatherhood was not contrary to the "respect of his family life" but it was due to his inaction to use the possibilities available in the national legal system to establish his own paternal link in other alternative ways (not necessarily by rebutting the fatherhood of the husband). The Court noted that the margin of appreciation in cases of establishing parental links is wide, while also recognizing the lack of *European consensus* on the issue whether domestic legislation should enable the biological father to rebut the marital presumption of the husband's paternity. Nevertheless, this has a point only for purposes of protecting the already existent legal family where the legal father actually fathers the child[40]. Once that is not the case and there is no other way to protect both: the genetic father who intends to father and the child's interests, such impossibility causes multiple infringements of article 8.

A similar conclusion was drawn in the case of *Schneider v. Germany*[41]. The case, though, differed in two important facts: (1) there was no pretention of rebutting the legal fatherhood, and (2) it did not involve the factual family life of the child with the biological father (due to the marital presumption and the shared life of the mother with the husband after the birth of the child). The German courts refused the applicant to access information and contact the boy for whom he claimed to be the biological father from an extra-marital relationship with a married woman. The Court declared the inadmissibility of his claim due to the fact that there was no social relationship between them resulting with any actual responsibility for the child, which was a condition for allowing any sort of protection of the relationship under the *German Basic Law*. Instead, it emphasized that the possibility for rebutting parenthood was an available legal option, even though not claimed by the applicant. In contrast, the *ECtHR* found violation of *article 8*, concluding that depriving a person of having information and contact with his own affiliates is an infringement of their private life. The absence of actual family life in the case was considered not to be Mr. Schneider's fault. The Court also concluded that the German courts should have also taken care of examining the best interests of the child when deciding the access of the biological father to already established family life with the presumed (thus legal) father. The Court also objected to the alleged possibility of rebutting legal fatherhood due to the fact that under the *German Civil Code* it would have been predetermined to fail. Even more, the justification of that kind was unacceptable because the goal of such proceedings is different from the applicant's petition aiming to access information and to establish contacts with the child. Along these lines, the *ECtHR* concluded that the German courts protect the marital presumption mechanically, without examining either the child's best interests nor the applicant's interests, and thus fail to balance between the competing rights. The *ECtHR* recommended that on a case-to-case basis, it should be examined which are the child's

[40] See a later very interesting case on the topic *Mandet v. France*, European Court of Human Rights, No. 30955/12, judgment of 14.4.2016.

[41] *Schneider v. Germany*, European Court of Human Rights, No. 17080/07, judgment of 15.09.2011.

interests and how they can be balanced in the particular circumstances and in relation to the other interested parties.

The case of *Mizzi v. Malta*[42] also concerns the impossibility to rebut the marital presumption, but this time from the husband himself. Following separation with his wife, a child was born and was automatically registered as the applicant's child. After DNA tests, the applicant confirmed that he was not biologically related to the child which led him to the decision to launch proceedings for rebutting his fatherhood. He was rejected from the possibility of civil litigation due to the fact that under the national law, he was only entitled to do so if he also petitioned the adulterous behavior of his wife and that the birth had been concealed from him. The *ECtHR* found violation of *article 6 (1)* as regards his inability to commence civil litigation to rebut his paternity which also violated *article 8* as creating vagueness and uncertainty of his family relationships despite the genetic evidence. The Court also found violation of *article 14* in conjunction with *article 6 (1)* and *article 8* due to the restricted time limits[43] imposed on him to initiate the procedure for rebutting his fatherhood, which in turn did not apply to the other "interested parties".

A specific case regarding the value given to DNA tests when the marital presumption conflicts with the genetic reality of an adulterous relationship is *M.B. v. the United Kingdom*[44] before the *European Commission of Human Rights*. The case concerned a sexual relationship of a married woman outside her marriage. The woman was not able to conceive a child during 15 years of attempts with her husband. Nevertheless, she got pregnant whilst at the same time having an extra-marital relationship. She decided to keep the child and the marriage, refusing a parental responsibility agreement with the applicant. Nevertheless, her lover did not wish to deprive his future relationship with the child who he thought was his. Thus, he applied to the court for an order of parental responsibilities and contact with the child. The woman opposed any DNA tests that might disturb the presumption of legitimacy that her husband enjoyed. The Court protected the already created family life between the married couple, and refused further DNA tests. The Court considered that the child may have interests in knowing the biological truth, but in the particular case, they were related to preservation of the continuity of the existent family life. The applicant complained of deprivation of a fair trial contrary to *article 6* of the Convention. He also invoked *article 8* of the Convention arguing that family and blood relationships are part of his right to family and private life. In addition, he also stated that his child was deprived from the possibility to inherit from him, from substantial information to enable her to avoid marrying with prohibited degrees of relationship and from the correct knowledge of her genetic origins, which might be relevant to her health. He also claimed that he had been subject to discrimination contrary to *article 14* of the Convention by not being allowed on equal grounds as that of the mother to recognize and register his parenthood. The Commission rejected his claim for a fair trial, since his petition was inadmissible in the first instance. It also rejected his claim that his child's rights would be violated if DNA tests were not performed, claiming that he was not the child's guardian or legal representative. The Commission also considered that there was no violation of *article 8* since his family life was never established (no cohabitation nor demonstrable interest and commitment by the natural father to the child both before and after the birth, as well as rejection by the mother).

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[42] *Mizzi v. Malta,* European Court of Human Rights, No. 26111/02, judgment of 12.01.2006.

[43] The restricted time limits for initiating civil proceedings for rebutting parenthood have a rationale of protecting children after establishing factual family life with the father. The exceptions are allowed after consent from the *Constitutional court*. The same issue with this kind of regulation regarding the restricted time limits, the Court also noted in the case of *Roman v. Finland*, European Court of Human Rights, No. 13072/05, judgment of 29.03.2013.

[44] *M.B. v. the United Kingdom*, European Commission on Human Rights, No. 22920/93, judgment of 06.04.1994.

Therefore the Commission found that "there are sound reasons of legal certainty and security of family relationships for States to apply a general presumption according to which a married man is regarded as the father of his wife's children and to require a good cause before allowing the presumption to be disturbed[45]". Therefore the best interests of the child were interpreted in the light of maintaining the security of the already existent family and not in the light of obtaining verification of the biological fact of the applicant. The Commission also dismissed the claim of discrimination, stating that the fact that women find themselves rarely in a position to prove their biological connection with the child is due to the natural difference between the genders and not to the discriminatory treatment of the Court.

The case of *Anayo v. Germany*[46] also included conflict between the marital presumption for establishing the fatherhood of the husband and the biological relationship of the extramarital partner of the mother with the children (twins in the case). Following the extramarital relationship parallel to the existent marriage, the mother of the child decided to continue the marital life with her husband, whom by the legal marital presumption was already considered the father of the children. The marital partners and the *Karlsruhe Court of Appeal* refused Mr.Anayo any contact with the twins because he did not hold any parental responsibilities for them, while also he did not have any factual social and family life. *The German Basic Law* protects the biological link between parents and children only under a condition of already existent family life, not including here the wish of establishing family life in the future. The *ECtHR* found violation of *article 8*, thus the private and family life of the applicant, holding that the non-existent family life in the case was a result of the refusal of the mother and the legal parent against the efforts of Mr. Anayo to establish contact with his children. Along these lines, the Court recognized that not only the existent family life, but also the desire to establish one, falls under the scope of *article 8*, when the reason for its non-existence is not attributable to the applicant. In the case, the applicant showed a proactive attitude to establish family life, even though he was barred both by the legal parents and institutionally. Even more, the Court found that the German courts did not examine profoundly if it was in the children's best interest to meet their biological father, while already having a legal father, despite the fact that the father demonstrated constant active behaviour. Therefore the Court again asked for a better balance in the relational context of all parties concerned when it comes to parental proceedings.

3.2. Establishing parental legal affiliation out of wedlock

Both cases of *Ahrens v. Germany*[47] and *Kautzor v Germany*[48] called upon *article 8* (alone and in conjunction with *article 14*) regarding the refusal of the German courts to rebut paternity of an already established legal fatherhood *via* recognition of the child born outside a marital relationship. Mr. Ahrens assumed that he was the biological father of a child whose mother had a common-household relationship with another man who recognized the child as his. Both legal parents shared parental responsibilities over bringing up the child together. After asserting through medical tests that Mr. Ahrens was the genetic father of the child, the *Court of Appeal* decided that the fact of already established family life between the child and the legal father was stronger than merely the

[45] See No. 18535/91, Comm. Rep. 7.4.93.
[46] *Anayo v. Germany*, European Court of Human Rights, No.20578/07, judgment of 21.12.2010.
[47] *Ahrens v. Germany*, European Court of Human Rights, No. 450071/09, judgment of 22.03.2012.
[48] *Kautzor v. Germany*, European Court of Human Rights, No. 23338/09, judgment of 22.03.2012.

biological connection and thus refused to permit Mr. Ahrens to challenge the paternity of the legal father.
Mr. Kautzor also assumed that he was the biological father of his former wife's daughter which was recognized by the mother's new partner with whom the mother shared a common household and family life. Mr.Kautzor was precluded from civil proceedings for rebutting legal paternity on the same grounds – already established social, legal and family life with the legal father. Even more, in his case, he was also precluded from the possibility of undergoing medical tests to prove his genetic connection with the child, since according to the *Federal Constitutional Court* he did not have the right to establish biological paternity without also establishing legal paternity. In his case, the *ECtHR* noted that there was a *European consensus* that existed in all 26 Member States that a procedure for the sole purpose of establishing biological fatherhood without formally challenging legal fatherhood was not recognized.
In both cases, the *ECtHR* found that even though the impossibility of establishing legal affiliation with their children interfered with the applicants' private and family life as protected under *article 8*, it did not violate the purpose of the article itself, since apart from the biological reality, social and family life was never established. On the contrary, the *ECtHR* considered that a violation of the private and family life of the already established families would arise if their rights were reaffirmed. The Court furthermore emphasized that since there was no *European consensus* regarding the possibility of biological fathers establishing parenthood in relation to their children[49], the margin of appreciation of the national regulations was wide in deciding their acceptable legal solution. The Court also rejected the claim under *article 8* in conjunction with *article 14*, claiming that the different treatment between the applicants, the mother, the legal fathers and the child was not discriminatory, but intended to protect already established family life from external disturbances.
The case of *Marckx v. Belgium*[50] was a cornerstone case in establishing affiliation links outside marriage, therefore tackling the discrimination between "legitimate" as born in marriage and "illegitimate" children as born out of wedlock. The applicant claimed that as a single mother she was barred from establishing motherhood in relation to her baby daughter from her birth. Namely, the Roman-law principle - *mater semper certa est*- did not apply under the former Belgian law. Therefore Mrs. Marckx had to take additional legal action – firstly, to recognize her daughter, and secondly, to adopt her if she wanted to qualify for a wider range of rights and responsibilities in relation to inheritance (that go along automatically if parenthood is established in a marital relationship). The applicant claimed that the manner of establishing the parental link, the extension of the family ties towards the other relatives (e.g. grandparents), and the scope of rights and obligations granted to illegitimate children was discriminatory in comparison to children and families founded in marriage. Therefore she questioned if private and family life as protected in *article 8* also encompassed the biological tie she had with her daughter, and if the legal consequences of such family life extend to the property and inheritance between them and other family members. The *ECtHR* found violation of *article 8* in conjunction with *article 14* as the respect for private and family life should not discriminate between "legitimate" and "illegitimate"

[49]The Court affirmed that even though comparatively, the majority of the *Council of Europe Member States* allowed the possibility for civil litigation in which the presumed biological father could challenge legal fatherhood established by acknowledgment, even when there was already established family life among them, there was also a significant minority of nine *Member States* in which the presumed biological father did not have the right to rebut the paternity of the legal father.
[50]*Marckx v. Belgium*, European Court of Human Rights, No. 6833/74, judgment of 13.06.1979.

children. The different manners for establishing motherhood based on grounds of the marital status of the mother were considered discriminatory towards the mother and children. The Court qualified an act as discriminatory if it "had no objective", did not pursue a "legitimate aim", and lacked a "reasonable relationship of proportionality between the means employed and the aim sought to be realized". Additionally, the Court acknowledged that "the *Committee of Ministers of the Council of Europe* regards the single woman and her child as one form of family, no less than others"[51]; therefore family life exists irrespective of the partnership or single parent status. The Belgian legislation had a restrictive interpretation of family and relatives since the established affiliation of illegitimate children created legal bonds only with the mother and not with the mother's family as well. According to the Court's opinion family life also included at least the family ties between near relatives (such as grandparents and grandchildren) since they constitute a substantive part of the family. The right to inheritance though, according to the Belgian authorities, gradually developed from recognition of adoption of an illegitimate child. In these terms, it could have never been equal with the right to inherit of legitimate children, since even at its utmost it excluded the other relatives of the mother. Namely, under the Belgian law, at the time of the case, while a "legitimate" child could have been fully integrated into his parents' families from the time of birth, an "illegitimate" child (even when adopted), could have never been integrated. Governments' reasoning for the adoption not to cover the inheritance rights between the other relatives was associated with the possibility of the relatives disapproving of it. The Court did not go on discussing discrimination under these grounds, finding that the mere fact that the mother has to adopt her child was already discriminatory. Consequently, the Court did not find violation of the patrimonial rights of the mother and daughter, reasoning that the already found violation on the other grounds was a prerequisite for the later discrimination.

A similar case that discriminated between "legitimate" and "illegitimate" children in the field of their inheritance was the later case of *Inze v. Austria*[52]. The *ECtHR* in this case found violation of *article 14* in conjunction with *article 1* of *Protocol No. 1* (right to peaceful enjoyment of possessions). The applicant claimed that under Austrian law he was not legally entitled to inherit his mother's property in the same way as her other legitimate child because he was born out of wedlock. Even later on, the *ECtHR* dealt with similar cases. In *Mazurek v. France*[53] and *Merger and Cros v. France*[54], the Court concluded that the French authorities treated children born in marriage and out of wedlock differently in the sphere of their inheritance rights. The Court found that an evident evolution of harmonizing the national laws in the field of abandoning the terminological difference between "legitimate" and "illegitimate" children, and consequently, discrimination is already a *European standard*[55]. Therefore the Court found violation of *article 1 of Protocol No. 1* in conjunction with *article 14*, after which the national authorities took measures to change the national legislation.

In the case of *Camp and Bourimi v. the Netherlands*[56], once again the *ECtHR* found violation of *articles 14* in conjunction with *article 8*, due to discrimination against a child born out of wedlock

[51] Referring to *Resolution (70) on the Social Protection of Unmarried Mothers and Their Children*, 15 of 15 May, 1970.

[52] *Inze v. Austria*, European Court of Human Rights, No. 8695/79, judgment of 28.10.1987.

[53] *Mazurek v. France*, European Court of Human Rights, No. 34406/97, judgment of 01.02.2000.

[54] *Merger and Cros v. France*, European Court of Human Rights, No. 68864/01, judgment of 22.12.2004.

[55] Inheritance of children born in and out of wedlock, though, is not a European standard yet. There are still countries that hold reservations regarding *article 9* of the *European Convention of the Legal Status of Children Born Out of Wedlock* which shows that the issue is still controversial.

[56] *Camp and Bourimi v. the Netherlands*, European Court of Human Rights, No. 28369/95, judgment of 03.10.2000.

to inherit from the father who died before the child's birth. In this case, neither the child was recognized (only proclaimed legitimate two years after the death of the father) nor the marital presumption for establishing parenthood applied. Nevertheless, the Court found that the fact that the father died before the child was born was not a valid reason to take a different approach towards the child born out of wedlock as compared with a child born in marriage, or a child that had an opportunity to be recognized by a living father after being born. Therefore the Court found discrimination between persons in similar situations based on birth. Even though it acknowledged that the States enjoy a margin of discretion to qualify if the different treatment should be categorized as discrimination, the Court also underlined that in concordance with the case-law, there have to be very weighty reasons to justify different treatment on the ground of birth out of wedlock to be considered in line with the Convention.

The case of *Mikulic v. Croatia*[57] regarded the impossibility of establishing fatherhood in relation to a child born out of wedlock. The child together with the mother filed a paternity suit with the Croatian courts, as being the only mechanism for establishing the parental link with the father who refused to recognize the child as his. The national law though, did not provide the possibility of a court order for DNA tests of the presumed biological father as the only way to confirm the biological link, and thus his legal paternity. Therefore the applicants claimed in the *ECtHR* under *article 8* that the domestic courts failed to decide the child's paternity claim while leaving her uncertain in regard to the personal identity encompassed under private and family life. She also complained under *article 6 (1)*about the long paternity proceedings outside the reasonable time requirement, and under *article 13* the lack of any effective remedy to speed up the process since Croatian law does not oblige defendants in paternity suits to undergo DNA tests. The *ECtHR* found violation of *articles 6 (1), 8* and *13*, emphasizing that the Croatian courts failed to regard the best interest of the child in the paternity dispute. The Court supported the decision by acknowledging that the paternity procedure under the Croatian law did not strike a fair balance between the right of the applicant to certainty when it comes to the child's personal identity and the supposed father's denial to undergo DNA tests as a prerequisite for establishing the link with the child. The case represents an important step in the *ECtHR*'s recognition of the child's right to know the genetic origin as part of personal identity and therefore private life, even though there was no existent family life between the child and the presumed father.

In the case of *Yousef v. the Netherlands*[58] the applicant claimed that he could not establish legal fatherhood in relation to his biological child born out of wedlock. The applicant did not recognize the child as his after her birth, while he was also not sharing the same household with the mother and the child. They only started living together later on and for no longer than a year. Afterwards, the applicant went to his home country of Egypt, retaining little or no contact with his child. Returning to the Netherlands after two and a half years, he tried to establish regular contact with his child. He repeatedly asked the mother of the child for permission to recognize the child as his while being constantly refused. After the death of the mother, her brother was appointed as a guardian of the child following a will of the mother. The applicant initiated proceedings for establishing fatherhood in relation to his child, while being refused by the Netherlands' courts on grounds of protecting the best interest of the child. The suspicion was that the applicant wanted to misuse the proceedings for establishing parenthood just to be able to obtain a residence permit and security benefits in the Netherlands. The applicant later on married and had another son. Nevertheless, he complained under *article 8* that he was restricted from recognizing his own

[57] *Mikulic v. Croatia*, European Court of Human Rights, No. 53176/99, judgment of 07.02.2002.
[58] *Yousef v. the Netherlands*, European Court of Human Rights, No. 33711/96, judgment of 05.11.2002.

biological child as his own. The *ECtHR* found no violation of *article 8*, claiming that the Netherlands' Courts fairly balanced the interests by claiming that the child's best interests should prevail, while considering these in contrast with the claim of the applicant to establish fatherhood. The Court considered that the decision in favour of the applicant could have distanced the child from the family with whom she was already living and being taken care of.
Selected, above analyzed cases have their own specifics regarding the marital presumption. In cases of attempts to legally recognize the child from birth, the marital presumption was decisive and burdensome for children born out of wedlock as a parallel relationship to marriage in the following cases: *Kroon and Others v. the Netherlands*, *Chavdarov v. Bulgaria*, *Schneider v. Germany*, *Mizzi v. Malta*, and *Anayo v. Germany.* Nevertheless, the Court brought different decisions based on the each case particularities (mainly having other legal alternatives to achieve the same goal or not).
The circumstances of being born out of wedlock invoked the impossibility to register fatherhood such as in the cases *Camp and Bourimi v. the Netherlands*, *Mikulic v. Croatia* and *Yousef v. the Netherlands*. The recognition of parenthood out of wedlock is burdensome to prove the opposite, to rebut it, and thus, to establish legal parenthood on the basis of a biological link later on after the birth of the child. Along these lines, in the cases of *Ahrens v. Germany* and *Kautzor v. Germany* the legal certainty of the already established family ties was safeguarded.

IV. CONCLUSION

The affiliation law's developments manifest an obvious paradox: on the one hand, there is an increasing emphasis on biological truth (for instance, the case Mandet v. France), while on the other hand parental rights and responsibilities are increasingly granted to persons other than the biological parents (for instance, the case M.B. v. The United Kingdom).
In recent years, the notion of family life has been viewed in a more sociological and functional light, with the main emphasis placed on the protection of children's interests. The ECtHR through its decisions reflects the spirit of the existing family laws: equality and pedo-centrism[59]. The fundamental principle of filiation law has always been legal certainty and protection of already established families. This is especially evident in the wide acceptance of the marital presumption and proceedings that impose time limits for challenging parenthood. The predominantly biological criterion as the determent for establishing parent-child relationships is losing ground next to the social mandate for the determination of what constitutes a legal family life. For these reasons, the time limits for challenging parenthood tend to legally secure the position of the already established parent who "does" the parenting when confronted with the person who merely "is" a genetic contributor. But what happens when both realities - biological and factual coincide, yet a person

[59] Almeida S., "The Right to Respect for (Private and) Family Life in the Case-Law of the ECtHR; the Protection of New Forms of Family", *Academia.edu*, pg.25. (https://www.academia.edu/2269426/The_right_to_respect_for_private_and_family_life_in_the_caselaw_of_the_European_Court_of_Human_rights_the_protection_of_new_forms_of_family).
This is aside but also in line of what other authors have commented stating that antidisciminatory norms and the best interests of the child principle are main pillars of what we could call emerging "European" family law nowadays. See more in Banda F., Eekelaar J., "International Conceptions of the Family", *International and Comparative Law Quarterly*, Vol 66, October 2017, pp 833–862.

is not able to establish own fatherhood due to marital presumption of an absent supposed father? What happens when there is no conflict between child's rights, biological father's rights and alleged father's rights, yet the State holds firmly to the marital presumption of the absent, other father? Is this to be considered a State's passive intrusion into one's private and family life? Is the State obliged to register children soon after their birth? From the above analyzed, the answer would be yes.

The national Family Act should be reformed in many aspects. Regarding the marital presumption and its application, the law should give an active legitimation to the genetic father to rebut fatherhood of the mother's husband for the purposes of recognizing his (if he proves his legal interest, as well as the child's best interest, especially in cases when they live together) and longer period for the mother and her married husband to rebut paternity. In the meanwhile, there are other mechanisms how to overcome its inconsistencies or gaps (especially since such cases are time-sensitive and any prolongation may cause irreversible harm to the concerned). That is by more creative interpretation (following the ECtHR's case-law) by practitioners[60]. Laws should not be interpreted restrictively. Instead, they should be interpreted flexible bearing in mind the time when they were brought, the evolutive path of the case-law of the ECtHR and the circumstances in each particular case. The Court itself has stated many times that human rights are an evolving concept and that they should be interpreted in each particular case via the prism of its specifics. Therefore, the national institutions (especially Courts) should evaluate cases more flexible in line with the internationally ratified documents and the case-law of the ECtHR. Regarding the analyzed case, on the one hand, national administrative organs should act in concordance with article 7 of the CRC and be open to register children as soon as possible after birth for purposes of gaining recognized status in one society. On the other hand, national judges should judge having in mind the rich case-law of the ECtHR regarding its interpretation of the article 8 of the ECHR in paternity cases (in line with Kroon and Others v. the Netherlands and the other above analyzed cases).

The general conclusion is that the marriage is not the only place where children are born. While families and their stories differ, rigid laws cannot encompass them all. Therefore judges should interpret laws in a flexible manner in order to bring "tailor made" and accurate decisions.

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[60] See for instance a Report stating that they do that only rarely Ристиќ Ј., Треневска З., Деловски В.,*Анализа на степенот на користење и цитирање на судската пракса од страна на националните судови*, Центар за правни истражувања и анализи, Скопје, 2020. See also Preshova D., *Judicial Culture and Role of Judges in Developing the Law in North Macedonia*, IDSCS, September, 2021.

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