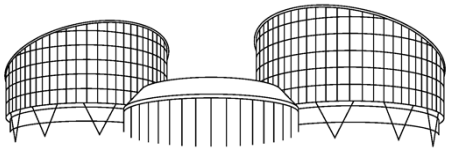

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ÇAPIN v. TURKEY

(Application no. 44690/09)

JUDGMENT

STRASBOURG

15 October 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Çapın v. Turkey,

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

Robert Spano, *President,*
Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Ivana Jelić,
Darian Pavli,
Saadet Yüksel, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 3 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 44690/09) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Mehmet Atilla Çapın ("the applicant"), on 13 August 2009.

2. The applicant was represented by Mr M. E. Keleş and Mrs M. Keleş, lawyers practising in İzmir. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged that the dismissal of his paternity action as time-barred had resulted in a breach of Articles 6 and 8 of the Convention.

4. On 13 June 2017 the complaints were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born out of wedlock in 1958 and currently lives in New York.

6. The facts of the case, as submitted by the parties and as they appear from the documents submitted by them, may be summarised as follows.

A. Paternity proceedings

7. On 31 October 2003 the applicant, who was forty-five years old at the time, filed an action for recognition of paternity alleging that İsmail S. was his biological father. He claimed that he had been placed in an orphanage at the age of four when his mother got married a second time, to a military officer who did not wish to have him as his son. He grew up as an orphan believing, because his mother had told him so, that his biological father had been killed in a road accident. He maintained that he had left the country, at the age of eighteen, to work in the United States, where he had lived for about twenty-five years and had a real estate business. He further maintained that it was not until October 2003 that he had learnt from his relatives, when he had travelled to Turkey, that the person whom he had presumed to be his father was not his biological father but was in fact his mother's first husband, N. Çapın, who had indeed been killed in a road accident. His relatives also told him that he had been born out of wedlock from his mother's extramarital relationship with "İsmail". He further submitted that the particular point in time when he had found out that the "İsmail" referred to in his national identity card could be İsmail S., an engineer working at a public utility company in Ankara, was 3 October 2003. He argued that he had therefore lodged the action in good time. Lastly, he asked the court to collect all evidence necessary to establish whether İsmail S. was his biological father, including identity register records, witness statements and DNA tests.

8. İsmail S. objected to the applicant's paternity claim. He submitted that there was a final and binding court judgment on the matter. He referred to the paternity action filed by the applicant's mother against him in 1958, which had been dismissed on the grounds that she led an "immoral life" within the meaning of the former Turkish Civil Code (Law no. 743), in force at the material time (see paragraph 21 below). He further maintained that the applicant had not lodged the paternity action within the statutory time-limits and that the applicant's allegation that he had discovered that he was the applicant's biological father during his trip to Turkey, after spending twenty-five years abroad, lacked credibility. He added that there had never been a "husband-and-wife" relationship between him and the applicant's mother.

9. The first-instance court heard testimony from the applicant's aunt, his half-sister (from his mother's marriage to her second husband) and his wife with a view to ascertaining whether the paternity action had been brought within the statutory time-limits and determining the well-foundedness of the applicant's paternity claim.

The applicant's aunt testified before the first-instance court that her sister had had an extramarital relationship in the period between 1956 and 1957 with İsmail S., who at that time had been working at a public utility

company in Ankara, and that she had become pregnant by him. She stated that she had known İsmail S. very well from the time when her sister had been in a relationship with him and that she had heard that he was still alive and living in Switzerland. She added that after the applicant was born her sister had filed a paternity action against İsmail S., which had been dismissed on the basis of false allegations made by İsmail S. about her sister. She confirmed that after her sister had married for the second time, she had placed the applicant in an orphanage. Lastly, she stated that she did not know how or when the applicant had discovered his father's identity or whether he was alive or dead.

The applicant's half-sister stated that she had always thought that the applicant had been the son of her mother's first husband, who had been killed in a road accident. She claimed that, until her aunt had told her so towards the end of 2002, she had not known that her mother had had an extramarital relationship with a man named İsmail from which the applicant had been born or that that person was alive and living in Switzerland. She explained that she had passed the information about the applicant's father to the applicant and his wife when they had come to visit her in Turkey sometime in October 2003. She added that her mother and aunt had always told the applicant that his father had been killed in a road accident and had kept the truth about his biological father secret from him.

The applicant's wife confirmed that her husband had been placed in an orphanage at a very young age and that he had been told that his father was dead. She stated that her husband's half-sister had told her what she had learnt from her aunt about the applicant's father. She added that she had passed that information to her husband, who had thus found out that İsmail S. was his biological father and had subsequently filed a paternity action for recognition of his paternity.

10. The first-instance court requested a copy of the applicant's birth certificate and the records of his family register. His birth certificate indicated that he had no paternal affiliation (*nesepsiz*). Moreover, "İsmail" appeared as the first name of his father on both his birth certificate and his family register records.

11. On 12 October 2005 İsmail S. died and the case continued against his wife and two sons. In November 2006 the heirs of İsmail S. submitted a petition to the first-instance court in which they reiterated the deceased's objections in reply to the applicant's claims and asked the court to dismiss the lawsuit. They mentioned that the applicant's guardian (*kayyum*), appointed pursuant to the former Turkish Civil Code (see paragraph 21 below), had also filed a paternity action on behalf of the applicant. The guardian's lawsuit had been examined together with the action filed by the applicant's mother and dismissed on the same ground as the latter (see paragraph 8 above).

12. On 3 October 2007 the Ankara Family Court dismissed the lawsuit as time-barred.

13. The impugned passages of the Ankara Family Court's judgment read as follows:

> "... The lawsuit concerns the establishment of paternal affiliation by virtue of Articles 301 et seq. of the Turkish Civil Code. Pursuant to Article 303 § 2 of the Turkish Civil Code, the child must file the paternity action within one year of reaching the age of majority. The last paragraph of that provision provides that, following the expiry of the one-year time-limit, if there are valid grounds justifying the delay, [the paternity action] may be brought within one month following the elimination of the causes of delay. It follows that before examining the merits of the lawsuit it must be determined whether it was brought within the statutory time-limits.
>
> According to the evidence gathered, the claimant was born in 1958 and therefore the one-year time-limit had already expired; accordingly, [he] filed the present lawsuit relying on the one-month time-limit under Article 303 *in fine* of the Turkish Civil Code. He was registered as without paternal affiliation from his mother's extramarital relationship and with "İsmail" as the name of his father. The defendant, İsmail S., is the same "İsmail" against whom his mother filed an unsuccessful paternity action. It is against the ordinary course of life that the claimant, who lives in the United States of America and has attained a certain status, does not know this. The claimant was told that his father İsmail was dead but he discovered in October 2003 that he was not dead and that he was living in Switzerland. Be that as it may, knowing whether the biological father is dead or alive has no bearing on the starting point of the time-limits. In fact, pursuant to Article 301 § 2 of the Turkish Civil Code, if the putative father is alive the lawsuit must be brought against him and, if dead, against his heirs. Therefore, the court must come to the conclusion that the lawsuit was lodged after the expiry of the statutory time-limits ...".

14. On 11 November 2007 the applicant appealed against the judgment. He maintained that he had rarely been in contact with his mother and half-siblings since he had been raised as an orphan and had lived abroad after he left the orphanage. Referring to his passport records, he submitted that he had not returned to Turkey - even for his mother's funeral in 1996 - with the exception of a short trip in 1994. He claimed that the only information he had about his father was his first name, "İsmail", which was indicated on his national identity card. He had thought that he had been placed in the orphanage because that "İsmail" had been killed in a road accident. He emphasised that he had not been aware, until he instituted the present proceedings, that the person whom his mother had told him was his father was not his biological father or that his mother had previously filed a paternity action against İsmail S. He argued that he had filed the paternity action in time and that in any case the right to know his parentage formed a crucial component of his right to know his identity and therefore should not be subject to any time-limits. He added that he only wished to find out whether or not İsmail S. was actually his biological father and that he was not interested in his assets or the estate since he owned a large real estate business with 150 employees.

15. On 20 January 2009 the Court of Cassation held that the applicant had failed to prove the existence of grounds capable of justifying his delay in filing the lawsuit and therefore dismissed his appeal.

16. On 3 March 2009 the applicant requested rectification of the Court of Cassation's decision of 20 January 2009, reiterating the arguments in his appeal petition.

17. On 4 May 2009 the Court of Cassation found the applicant's objections unfounded and dismissed his request for rectification.

B. Application to have the proceedings reopened

18. After the present application had been lodged with the Court, the applicant applied to the Ankara Family Court on 4 November 2015 to have the paternity proceedings reopened. He referred to decisions of the Turkish Constitutional Court repealing the time-limits in so far as paternity actions filed by the child were concerned (see paragraph 23 below) and to the Court's judgment in *Turnalı v. Turkey* (no. 4914/03, 7 April 2009).

19. The Government submitted that the applicant's application had not been processed on account of his failure to pay the court fees for service of his application on the opposing parties. They provided the Court with the Ankara Family Court's interim decision dated 8 December 2015 in which the applicant was asked to submit the addresses of the heirs of İsmail S. within a period of two weeks. They also produced the application submitted by the applicant to that effect on 30 December 2015, on which appeared a handwritten note stating that the fees for service of the application on the heirs of İsmail S., who were living abroad, had not been paid.

20. The applicant contested the Government's submissions. He maintained that he had not been asked to pay fees for service of his application on the opposing parties and that he had submitted the addresses of the heirs within the time stipulated. Accordingly, he claimed that his application to have the proceedings reopened was still pending before the Ankara Family Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The former Turkish Civil Code

21. The former Turkish Civil Code was in force when the applicant's mother and his court-appointed guardian filed a paternity action against İsmail S. Under the former Turkish Civil Code, if a court was informed of a child's birth outside marriage it was required to immediately appoint a guardian to protect the child's interests. The law provided that a paternity action could be filed before the child's birth or at the latest within one year

following the child's birth. It also stipulated that a paternity action should be dismissed if it was established that the mother had behaved "promiscuously" while she was pregnant.

B. The new Turkish Civil Code

22. The new Turkish Civil Code (Law no. 4721), which entered into force on 22 November 2001, repealed and replaced the former Turkish Civil Code. The relevant Articles of the new Turkish Civil Code governing paternity actions, which were in force at the time of the domestic proceedings, read as follows:

Article 301 – Paternity action

"A mother or child may request a court to establish paternal affiliation between the child and the father.

The action shall be brought against the father; if the father is dead, against his heirs.

..."

Article 303 – Time-limits

"The paternity action may be filed before or after the child's birth. The mother's right to file an action shall expire within one year following the child's birth.

If the child has had a guardian appointed after the birth, the one-year period shall run from the date on which notice of the appointment is given; if no guardian is appointed, it shall run from the date on which the child attains his or her majority.

...

Notwithstanding the expiry of the one-year period, if there are circumstances capable of justifying the delay an action may be brought within one month following the elimination of these circumstances."

23. The Turkish Constitutional Court repealed Article 303 § 2 of the Turkish Civil Code by a decision of 27 October 2011. Subsequently, on 15 March 2012, it repealed Article 303 *in fine* in so far as the paternity actions filed by the child were concerned. In both decisions, the Constitutional Court ruled that the time-limits disproportionately restricted the child's right to have its paternal parentage established. Pursuant to the Constitution, the Constitutional Court's decisions of unconstitutionality do not have a retroactive effect. Moreover, the Constitutional Court specified that the decision of 15 March 2012 would take effect one year following its publication in the Official Gazette dated 21 July 2012. Accordingly, since 22 July 2013 there has no longer been a time-limit under Turkish law for the institution of paternity proceedings by a child against the putative father.

C. The Court of Cassation's decisions

24. The Government provided the Court with two decisions of the Court of Cassation concerning the collection of DNA evidence in paternity proceedings.

25. In a decision of 23 May 2013 (E. 2013/7034 - K. 2013/8942) the Court of Cassation reversed the first-instance court's judgment, which had dismissed the paternity action as time-barred, on the grounds that at the time the first-instance court had delivered its judgment the Turkish Constitutional Court's decision repealing Article 303 § 2 had already taken effect. Accordingly, it held that the first-instance court should examine the paternity action on its merits and deliver its judgment on the basis of the results of a DNA analysis.

26. In a decision of 8 January 2013 (E. 2013/11088 - K. 2013/13915) the Court of Cassation reversed the first-instance court's judgment, which had dismissed the paternity action for lack of sufficient evidence, and ordered the first-instance court to carry out a DNA test and decide accordingly.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

27. Relying on Articles 6 and 8 of the Convention, the applicant complained that the dismissal of his paternity as time-barred had denied him the right to uncover the biological reality concerning his natural father.

28. The Court therefore considers that the applicant's complaint should be examined under Article 8 of the Convention alone, which reads as follows:

> "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."

29. The Government contested the applicant's argument.

A. Admissibility

30. The Government objected to the admissibility of the application on two grounds. They contended, firstly, that the application did not fall within the scope of Article 8 of the Convention. Secondly, the Government

maintained that the applicant had not availed himself of all available domestic remedies.

1. Incompatibility ratione materiae

31. The Government argued that there had never been a relationship between the applicant and İsmail S. which could be qualified as "family life" since the paternity issue remained unresolved at the domestic level. Referring to the Court's judgment in *Haas v. the Netherlands* (no. 36983/97, § 43, ECHR 2004-I), they further argued that Article 8 was not applicable since the applicant already knew the identity of the putative father and the case concerned only an issue of evidence as to whether legal ties between himself and his father should be established.

32. The applicant contested the Government's arguments, reiterating his claim that he had not known his putative father's identity before he travelled to Turkey in October 2003. He submitted that he had filed the paternity action to determine his biological father's identity and therefore the present application concerned his right to family life and private life within the meaning of Article 8.

33. The Court reiterates that it has held on numerous occasions that paternity proceedings fall within the scope of Article 8 (see, among many authorities, *Backlund v. Finland*, no. 36498/05, § 37, 6 July 2010, and *Silva and Mondim Correia v. Portugal*, nos. 72105/14 and 20415/15, § 52, 3 October 2017). In the instant case the Court is not called upon to determine whether the proceedings to establish parental ties between the applicant and his putative father concern "family life" within the meaning of Article 8, since in any event the right to know one's ascendants falls within the scope of the concept of "private life", which encompasses important aspects of one's personal identity, such as the identity of one's parents (see *Odièvre v. France* [GC], no. 42326/98, § 29, ECHR 2003-III). There appears, furthermore, to be no reason of principle why the notion of "private life" should be construed to exclude the determination of a legal or biological relationship between a child born out of wedlock and his natural father (see *Mikulić v. Croatia*, no. 53176/99, § 53, ECHR 2002-I).

34. In the instant case the applicant, who was born out of wedlock, sought, through the courts, to ascertain the identity of his natural father. Contrary to the circumstances in *Haas*, cited above, the proceedings brought by the applicant were aimed at establishing the biological ties between himself and his putative father and therefore did not concern an inheritance dispute. Consequently, there is a direct link between the establishment of paternity and the applicant's private life (see *Turnalı*, cited above, § 36, and *Silva and Mondim Correia,* cited above, § 50).

35. Accordingly, the facts of the case fall within the scope of Article 8 of the Convention.

2. Non-exhaustion of domestic remedies

36. The Government submitted that the applicant had failed to exhaust all domestic remedies, within the meaning of Article 35 § 1 of the Convention, since the application to have the case reopened was still pending before the national courts (see paragraph 18 above).

37. The Government first pleaded that the applicant had not paid the fees for service of his application to have the proceedings reopened and had therefore failed to pursue that domestic remedy. They added that, once those proceedings were over, the applicant could have lodged an individual application before the Turkish Constitutional Court. However, he had not used that available and effective domestic remedy.

38. Secondly, they argued that the applicant could have requested that a DNA analysis be carried out on the remains of his putative father or on the latter's descendants' genetic material. In support of their argument, they provided two decisions of the Court of Cassation in which it had ordered the first-instance courts to deliver their judgments on the basis of the results of a DNA analysis (see paragraph 24 above).

39. The applicant argued that reopening proceedings was an exceptional and extraordinary remedy which was not compulsory and that he had exhausted all domestic remedies available to him before lodging the present application. He also contended that the only avenue by which he could obtain DNA samples of the putative father or his heirs was through paternity proceedings. He argued that the Court of Cassation's decisions submitted by the Government were not relevant to his case since his paternity action had been declared inadmissible for being time-barred, which precluded a substantive examination of his paternity claim.

40. As regards the first ground of non-exhaustion put forward by the Government, the Court reiterates its established case-law that an application for the reopening of the proceedings cannot, as a general rule, be taken into account for the purposes of applying Article 35 § 1 of the Convention (see, among other authorities, *Korzeniak v. Poland*, no. 56134/08, § 39, 10 January 2017). In the present case, the Court notes that the decision in the applicant's case had become final with the Court of Cassation's decision. In such circumstances, an application for reopening of the proceedings was an extraordinary remedy, which the applicant was not required to exhaust (see *Merter and Others v. Turkey*, no. 2249/03, § 33, 23 March 2010).

41. In respect of the second limb of the Government's argument, the Court notes that the applicant did indeed request the first-instance court to order a DNA test at the time he filed the paternity action (see paragraph 7 above). However, the first-instance court dismissed the applicant's action as time-barred, without an examination on the merits, which rendered the collection of DNA evidence impossible (compare and contrast *Grönmark v. Finland*, no. 17038/04, 6 July 2010). Furthermore, unlike in the Court of

Cassation's decisions referred to by the Government, in the applicant's case the Court of Cassation upheld the first-instance court's decision and therefore excluded the possibility of an examination on the merits. The Court further notes that the Government did not point to any other avenue under Turkish law by which the applicant could have compelled the putative father or his heirs to provide a sample of their DNA given that they denied the applicant's paternity claim.

42. Accordingly, the Government's objection regarding non-exhaustion of domestic remedies must be rejected.

3. Conclusion

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

B. Merits

1. The parties' submissions

(a) The applicant

44. The applicant reiterated the claims he had made before the domestic courts. He stated that, before talking to his half-sister in October 2003, he had not known that his mother had not told him the truth about his father's identity and that his biological father was İsmail S., who had previously worked as an engineer at a public utility company in Ankara. The applicant further claimed that the reason why he had not previously enquired about the identity of his biological father was because he had been told by his mother that his father had been killed in a road accident. Moreover, he had had no reason to question the veracity of the information given to him by his mother because her first husband had indeed been killed in a road accident.

45. He added that he had been placed in an orphanage at the age of four and had left the country when he reached the age of eighteen. Throughout that time he had rarely been in contact with his mother or his other relatives. In those circumstances he could not reasonably have been expected to know the full identity of his father before his trip to Turkey in October 2003. He contended that the witness statements and the evidence in the case file before the domestic courts also demonstrated that the full identity of his putative father had not been known to him before he had filed the paternity action.

46. He submitted that he had not learnt of the previous paternity action against İsmail S. filed by his mother and his guardian until he had received a

reply to his application. He argued that in their reasoning the domestic courts had relied on the decision given in that previous lawsuit even though it had dismissed the paternity action on the basis of an archaic and discriminatory provision of the former Turkish Civil Code which therefore should not have been taken into account. He further argued that the domestic courts had premised their conclusion that he must have been aware of that lawsuit, and therefore of the identity of the putative father, solely on the assumption of the "ordinary course of life" and that they had failed to take his particular circumstances into account. In his submission, the domestic courts had overlooked the fact that only the first name of his father "İsmail" appeared on his national identity card and that he had not learnt of the full identity and contact details of his biological father, that is, his first and last names and his address, until October 2003.

47. He also argued that in any case an individual's right to know the biological reality about his or her parentage conferred a right to establish the biological father's identity that could not be statute-barred. In his view, the Turkish Constitutional Court's decisions repealing the time-limits provided for by Article 303 of the Turkish Civil Code attested to the fact that the right to seek recognition of paternity should not be time-barred. Furthermore, he sought merely to obtain judicial determination of his biological relationship with his father and had no financial motives. Accordingly, the dismissal of his action amounted to an absolute denial of his right to know the true identity of his biological father and therefore was in violation of his rights guaranteed by Article 8 of the Convention.

(b) The Government

48. The Government argued that the applicant was to blame for the dismissal of his action as time-barred because he had failed to comply with the procedural rules governing paternity actions under Turkish law. Thus, there had been no interference with his right to respect for private life as guaranteed by Article 8 of the Convention.

49. The Government contended that even assuming that there had been an interference, it had been "in accordance with the law" and had pursued a legitimate aim. They maintained that the intention behind the time-limits under Article 303 of the new Turkish Civil Code, applied in the applicant's case, had been to protect putative fathers from stale claims and to ensure legal certainty. Relying on the Court's judgment in *Mizzi v. Malta* (no. 26111/02, § 83, ECHR 2006-I (extracts)), they argued that the time-limits provided for by Article 303 of the Turkish Civil Code had therefore been justified and compatible with the Convention.

50. They further argued that the Turkish legislation had provided a solution to the problem which arose when the putative father's identity became known only after the one-year time-limit under Article 303 § 2 had expired. They drew attention to Article 303 *in fine* of the Turkish Civil

Code, which set an additional period of one month allowing the child to file a paternity action after the expiry of the one-year time-limit, provided that there were good reasons for the delay.

51. In their view, the present case should be distinguished from the cases of *Phinikaridou* (no. 23890/02, 20 December 2007) and *Grönmark,* cited above, because not only had the time-limits in the applicant's case not been rigidly applied but also the applicant had failed to submit conclusive evidence in support of his paternity claim. According to the Government, as in the case of *Konstantinidis v. Greece* (no. 58809/09, 8 September 2014), the applicant's claims were not supported by any evidence and consisted merely of allegations which had been found inadmissible by the domestic courts.

52. The Government concluded that the domestic courts had struck a fair balance between the applicant's and the putative father's interests in so far as the applicant had failed to act with sufficient diligence in bringing the paternity proceedings against the putative father and in any case the matter fell within their margin of appreciation.

2. The Court's assessment

(a) General principles

53. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by public authorities. There may additionally be positive obligations inherent in ensuring effective "respect" for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *Mikulić*, cited above*,* § 57, and *S.H. and Others v. Austria* [GC], no. 57813/00, § 87, ECHR 2011). However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both cases consideration must be given to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole. A balancing exercise is also required with regard to competing private interests. In this connection it should be observed that the expression "everyone" in Article 8 of the Convention applies to both the child and the putative father. While, as stated earlier, on the one hand, people have a right to know their identity, on the other hand, a putative father's interest in being protected from allegations concerning circumstances that date back many years cannot be denied. Lastly, in addition to that conflict of interests, other interests may come into play, such as those of third parties – principally those of the putative father's family – and the general interests of legal certainty (see *Backlund*, cited above, § 46).

54. Whether in the context of positive or negative obligations, the State enjoys a certain margin of appreciation (see *Odièvre*, cited above, § 40, and *Mikulić*, cited above, § 58). The Court's task is not to substitute itself for the competent domestic authorities in regulating paternity disputes at the national level, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation (see *Konstantinidis*, cited above, § 43, and *Călin and Others v. Romania*, nos. 25057/11 and 2 others, § 86, 19 July 2016). The Court must therefore examine whether the respondent State, in handling an applicant's action for judicial recognition of paternity, has complied with its positive obligations under Article 8 of the Convention.

55. When examining the application in *Phinikaridou* (cited above), the Court carried out a comparative study of the Contracting States' legislation on the institution of actions for judicial recognition of paternity. That study revealed that there was no uniform approach in this field. In contrast to situations where proceedings were instituted by fathers to establish or deny paternity, a significant number of States did not set a limitation period for children to bring an action aimed at having paternity established. Indeed, a tendency could be observed towards increasing protection of the child's right to have its paternal parentage established (see *Phinikaridou*, cited above, § 58).

56. In the States in which a limitation period for bringing such proceedings existed, the length of the applicable period differed significantly, varying between one and thirty years. Furthermore, although there was a difference in the start-date of the limitation period, in the majority of these States the relevant period was calculated from the date of the child's birth or his or her reaching the age of majority or of a final judgment denying paternity irrespective of the child's awareness of the facts surrounding its paternal parentage and without providing for any exceptions. Only a small number of legal systems seemed to have devised solutions to the problem which arose when the relevant circumstances became known only after expiry of the time-limit, for instance by providing for the possibility of bringing an action after the time-limit had expired in cases where material or moral factors rendered it impossible to lodge it within that period, or if there was good reason for the delay (ibid., § 59).

57. The Court observes that it has previously accepted that the introduction of a time-limit for instituting paternity proceedings was justified by the desire to ensure legal certainty (see *Silva and Mondim Correia,* cited above, § 57). Accordingly, the existence of a limitation period is not, *per se*, incompatible with the Convention. What the Court needs to ascertain in a given case is whether the nature of the time-limit in question and/or the manner in which it is applied is compatible with the Convention (see *Backlund*, cited above, § 45, and *Phinikaridou*, cited above, § 52).

58. The Court has taken a number of factors into consideration in performing the "balancing of interests test" when examining cases concerning limitations on the institution of paternity claims. For instance, the specific point in time when an applicant becomes aware of the biological reality is pertinent. The Court will therefore examine whether the circumstances substantiating a particular paternity claim existed before or after the expiry of the applicable time-limit. Furthermore, the Court will examine whether an alternative form of redress exists in the event that the proceedings in question are time-barred. This would include, for example, the availability of effective domestic remedies to obtain an extension of the time-limit or exceptions to the application of a time-limit in situations where a person becomes aware of the biological reality after the time-limit has expired (see *Phinikaridou*, cited above, § 54). The yardstick against which the above factors are measured is whether a legal presumption has been allowed to prevail over the biological and social reality and if so whether, in the circumstances, this is compatible with the obligation to secure "effective" respect for private and family life, taking into account the margin of appreciation left to the State and the established facts and the wishes of those concerned (ibid., § 55; see also *Silva and Mondim Correia*, cited above, § 58).

59. The Court observes that, in applying the aforementioned general principles to paternity-related cases, it has drawn a distinction between cases where the time-limits put in place for instituting paternity proceedings were absolute in nature and cases where the domestic law provided for an extension of the time-limits, if relevant circumstances became known following their expiry, but the applicants were unable to benefit from that extension.

60. In relation to the first group of cases, the Court held that there had been a violation of Article 8 of the Convention on account of the application of an absolute time-limit which was imposed irrespective of a child's awareness of the circumstances surrounding its father's identity (see *Phinikaridou*, cited above, § 62).

In *Backlund*, cited above, and other cases against Finland, the Court put special emphasis on the existence of DNA and other evidence which established a biological reality and ruled that the national authorities should not allow legal reality to contradict biological reality (see *Grönmark*, cited above; *Laakso v. Finland*, no. 7361/05, 15 January 2013; and *Röman v. Finland*, no. 13072/05, 29 January 2013).

Also, in *Turnalı*, cited above, the Court found a violation of Article 8 principally because the domestic courts had not applied the relevant provision of Article 303 *in fine* of the new Turkish Civil Code, which provided for an exception to the absolute time-limit provided there were good reasons (see paragraph 22 above).

61. In the second group of cases the Court first established that the time-limits applied to the applicant were not absolute and then went on to determine whether the applicants had acted with sufficient diligence so as to benefit from the possibility of bringing an action after the time-limit had expired.

In *Konstantinidis* (cited above, § 61) and *Silva and Mondim Correia* (cited above, § 68), the Court found no violation of Article 8 on the grounds that the applicants had shown an unjustifiable lack of diligence in instituting proceedings. The Court emphasised that their vital interest in uncovering the biological truth about their father did not exempt them from complying with the requirements laid down by domestic law.

(b) Application to the present case

62. The Court notes that in the present case the applicant, born in 1958, filed a paternity action at the age of forty-five for recognition of paternity. The first-instance court, without examining the merits of the applicant's claims, held that he had lodged the paternity action outside the time-limits provided for by Article 303 of the Turkish Civil Code. The Court of Cassation upheld the first-instance court's judgment, holding that the applicant had failed to prove the existence of grounds capable of justifying his delay in filing the paternity action.

63. In the light of the general principles concerning limitation periods for instituting paternity proceedings and its relevant case-law (see paragraphs 53-61 above), the Court must consider whether the dismissal of the applicant's action as time-barred interfered with his rights under Article 8 and, if so, whether the interference was "in accordance with the law", pursued a legitimate aim and was "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention.

i. Whether there was interference

64. The Court considers that the dismissal of the applicant's action prevented him from discovering whether İsmail S. was actually his natural father and therefore amounted to an interference with his right to respect for his private life.

ii. Whether the interference was "in accordance with the law" and pursued a legitimate aim

65. The Court notes that there is no dispute between the parties as regards the lawfulness of the interference. It observes that the judgments delivered by the domestic courts were based on Article 303 *in fine* of the Turkish Civil Code which was in force at the time of the impugned paternity proceedings (see paragraph 22 above). In view of the foregoing, the Court finds that the interference complained of was "in accordance with the law".

66. As regards the question of a legitimate aim, the Court notes that, as stated in paragraph 57 above, the existence of a limitation period is not, *per se*, incompatible with the Convention and the introduction of a time-limit is justified by the desire to ensure legal certainty in respect of family relations and to protect the putative father and his family from stale claims (see, among others, *Silva and Mondim Correia,* cited above, § 57). In the light of its established case-law, it considers that the interference in question therefore pursued a legitimate aim.

67. The Court must next ascertain whether the nature of the time-limit in question, and/or the manner in which it was applied, was compatible with the Convention (see *Silva and Mondim Correia*, cited above, § 64).

iii. Whether the interference was proportionate in the present case

68. The Court notes that at the material time Article 303 § 2 of the Turkish Civil Code governed the time-limits within which an action for judicial recognition of paternity had to be instituted. The legislator set a period of one year in respect of a paternity action to be filed by a mother, which started running from the child's birth, and by the child's guardian, which started running from notification of the appointment. The legislator then set a period of one year in respect of a child, in cases where no guardian had been appointed, which started running from the child's majority. In the light of its case-law, the Court considers that the time-limit under Article 303 § 2 was not unreasonable and granted reasonably sufficient time to an individual, having reached the age of majority, to decide whether or not to start paternity proceedings while at the same time safeguarding legal certainty in respect of the putative father and his family (see, *mutatis mutandis*, *Konstantinidis*, cited above, § 54; and compare and contrast *Călin and Others*, cited above, § 95).

69. The Court further observes that the legislator set an additional period of one month, only in respect of a paternity action filed by a child, if circumstances justifying the belated filing of the action became known to the child after the expiry of the one-year time-limit. Article 303 *in fine* required the child to institute paternity proceedings within one month following the elimination of the causes of delay. Accordingly, although the time-limit was short, an element the Court will take into account in its assessment below (see paragraphs 71-80 below), it had the effect of precluding the statutory framework from imposing an absolute time-limit for paternity actions brought by children (see, *mutatis mutandis*, *Silva and Mondim Correia*, cited above, § 65; compare and contrast *Phinikaridou*, cited above, § 65, and *Backlund*, cited above, § 56).

70. The Court must now examine whether the application of the time-limits in the applicant's case was compatible with Article 8 of the Convention. In particular, it will examine whether the national courts, when

dismissing the applicant's action, adequately assessed the competing interests at stake and gave relevant and sufficient reasons for their decisions.

71. The Court notes that there is a dispute between the parties as to whether or not the applicant knew who his natural father was before October 2003. The Government argued that the applicant had never claimed before the domestic courts that he did not know who his father was. According to the Government, the applicant had merely claimed that he had learnt in October 2003 that his biological father was alive. The applicant contested the Government's arguments, repeating his claims that he had been misled into believing that his mother's first husband was his biological father and that he had found out the true identity of his biological father in October 2003.

72. The Court notes at the outset that it is not up to the Court to say whether or not the applicant actually knew İsmail S. was his presumed father before October 2003. The Court also notes that while, as the Government argued, the applicant did not have in his possession evidence supporting his claims, it was precisely to obtain conclusive evidence about the identity of his natural father that the applicant filed the impugned action. As mentioned in paragraph 41 above, paternity proceedings were the only avenue available by which the applicant could obtain DNA evidence from İsmail S. or his heirs since they denied paternity. Also, there were no official documents indicating with certainty the full identity of the applicant's father (contrast *Laakso*, cited above, § 50, and *Röman*, cited above, § 55) and the previous paternity action filed by the applicant's mother and his guardian had been dismissed on the basis of a presumption which was subsequently repealed and which did not involve a conclusive determination of paternity.

73. The Court observes that in his submissions to the domestic courts the applicant had referred to the exceptional circumstances of his upbringing to justify why he had instituted paternity proceedings at the age of forty-five but not any sooner (contrast *Silva and Mondim Correia,* cited above, § 67). He claimed that he had been placed in an orphanage at the age of four and had grown up as an orphan believing that his father had died in a road accident, because his mother had told him so. Once he reached the age of eighteen, he had left his home country and lived abroad for twenty-five years, estranged from his mother and his relatives. The Court notes that these allegations were not discredited at any stage of the proceedings.

74. The Court further observes that after having collected the necessary evidence and examining the case file the domestic courts found that the applicant had been unable to adduce any valid reason capable of justifying his delay in filing the paternity action. Their conclusion was premised on the fact that the "İsmail" referred to in the applicant's birth and identity documents was İsmail S., against whom the applicant's mother and his guardian had previously filed a paternity action. On that basis, they held that

it would have been against the "ordinary course of life" for the applicant not to be aware of his father's identity before October 2003. In their view, the circumstances which had become known to the applicant were not the identity of his natural father but the fact that he was alive, which did not constitute a good reason for not filing the paternity action within the time-limits provided for by Article 303 of the Turkish Civil Code.

75. The Court considers that the circumstances in which a person seeks judicial recognition of paternity are often particularly difficult. It observes that this was especially the case for the applicant, who had had to live the majority of his life separated from his family and had been able to spend only a limited amount of time with them. The domestic courts, however, took no account of the applicant's exceptional circumstances when they dismissed his action as time-barred. In particular, they did not explain what the concept of the "ordinary course of life" entailed in the particular context of the paternity proceedings and how it corresponded to the applicant's circumstances. The first-instance court made only a general reference to the fact that the applicant was living in the United States and had reached a certain status in society in support of its assumption that he had already known about the previous paternity action against İsmail S., even though the lawsuit in question had been filed almost forty-five years previously, when the applicant was only a newborn. The Court of Cassation summarily dismissed the applicant's appeal, holding that the applicant had failed to prove that there were good reasons for his delay.

76. The Court notes that the reasoning thus adopted by the domestic courts is not such as to enable to it establish that in the instant case they balanced the applicant's right to uncover the truth about his biological father against the general interest in protecting legal certainty of family relationships or the interests of the putative father and his family in accordance with the relevant criteria mentioned above (see paragraphs 53-61 above). It considers that neither the first-instance court's judgment nor the Court of Cassation's decision, which upheld the first-instance court's judgment, provides a sufficient response to the question whether the dismissal of the applicant's action on a procedural ground, which deprived him of the only opportunity to find out the biological truth about himself and his paternal parentage, would disproportionately harm his right to private life.

77. The Court reiterates that everyone has a vital interest, protected by Article 8 of the Convention, to know the truth about his or her identity and to eliminate any uncertainty about it (see *Odièvre,* cited above, § 29). In proceedings for establishment of paternity, where a careful balancing exercise is required, the best interest of the child should be given priority. Turning to the present case, the Court notes that at the time of the domestic proceedings, he was forty-five years old and has already developed his personality notwithstanding the uncertainty about his paternal ties.

However, having found out the full identity of the putative father, he showed a genuine interest in ascertaining whether or not he was his biological father and in obtaining conclusive information on the subject. In this connection, the Court recalls that the interest of persons in receiving the information necessary to eliminate any uncertainty in respect of his personal identity does not disappear with age, quite the reverse (see *Jäggi v. Switzerland*, no. 58757/00, §§ 38 and 40, ECHR 2006-X).

78. By way of observation, the Court lastly notes that after the present application was lodged with the Court, the Constitutional Court found unconstitutional and annulled the time-limits under Article 303 of the Turkish Civil Code applicable to paternity actions filed by children (see paragraph 23 above). The Court, however, notes that these developments have no bearing on the present application before the Court.

79. In the light of the foregoing, the Court finds that, although the time-limits provided for by Article 303 of the Turkish Civil Code were not absolute in nature, their interpretation and application by the domestic courts to the circumstances of the applicant's case, without a balancing of the rights and interests at stake, was disproportionate to the aims pursued and therefore failed to secure the applicant's right to respect for his private life.

80. Accordingly, there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. Article 41 of the Convention provides:

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

82. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage and EUR 100,000 in respect of pecuniary damage and costs and expenses in relation to his representation before the domestic courts and the Court.

83. The Government submitted that the applicant's just satisfaction claims were excessive and unfounded.

A. Damage

84. As regards pecuniary damage, the Court notes that it has found a violation of Article 8 on the grounds that the applicant's action for paternity was dismissed by the domestic courts as time-barred. It has not examined the merits of the present case because the responsibility for determining the

paternity issue in the applicant's case lies solely with the domestic courts. Accordingly, it finds that there is no causal connection between the violation found and the pecuniary damage claimed; it therefore rejects this claim (see *Grönmark v. Finland* (just satisfaction), no. 17038/04, § 15, 12 July 2011).

85. Having regard to the nature of the violation found, and making its assessment on an equitable basis, the Court awards EUR 5,000 to the applicant in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

86. The Government objected to the applicant's claims for costs and expenses, arguing that he had not provided proof of a contract between himself and his lawyer or any proof of payment or invoice showing that he had actually incurred any expenses.

87. The Court reiterates that, according to its case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, among other authorities, *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 187, 29 November 2016).

88. In the present case, the applicant has not substantiated his claim for costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand Euros) plus

any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement in respect of non-pecuniary damage;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Robert Spano
President