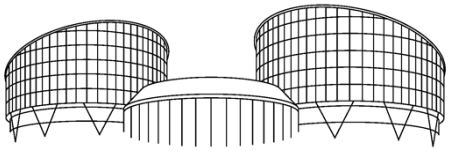

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF MITREVSKA v. NORTH MACEDONIA

(Application no. 20949/21)

JUDGMENT

Art 8 • Positive obligations • Private life • Inability of the applicant, who was adopted as a child, to obtain information concerning her biological origins and health information about her biological parents • Information concerning a completed adoption constituting an official secret under domestic law which could not be shared • Lack of possibility to obtain access to non-identifying information concerning an adopted person's biological origins or childhood • No exception on medical grounds preventing the domestic authorities from assessing applicant's arguments as to alleged need to obtain health-related information • Failure to strike a balance between the competing interests at stake • Margin of appreciation overstepped

Prepared by the Registry. Does not bind the Court.

STRASBOURG

14 May 2024

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 Mitrevska v. North Macedonia,

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Pauliine Koskelo,
Saadet Yüksel,
Lorraine Schembri Orland,
Diana Sârcu,
Davor Derenčinović*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 20949/21) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Macedonian/citizen of the Republic of North Macedonia, Ms Mirjana Mitrevska ("the applicant"), on 9 April 2021;

the decision to give notice to the Government of North Macedonia ("the Government") of the complaint under Article 8 of the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 9 April 2024,

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

INTRODUCTION

1. The case concerns the inability of the applicant, who was adopted as a child, to obtain information concerning her biological origins and health information about her biological parents. She complained of a violation of her rights under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1977 and lives in Skopje. She was represented by Ms P. Zefikj-Jakimovska, a lawyer practising in Skopje.

3. The Government were represented by their Agent, Ms D. Djonova.

4. The facts of the case may be summarised as follows.

5. The applicant submitted that she had been adopted as a child, on an unspecified date, under a "full adoption" procedure.

6. On 19 April 2017 the applicant requested information about her adoption from the Skopje Social Care Centre ("the Centre"). She submitted that in 2014 she had been diagnosed with depressive anxiety disorder and speech problems and that her doctors had requested information concerning her family's medical history in order to determine whether she had a

hereditary disease. She requested a copy of the whole adoption file, and in particular the following information: her name before the adoption, her place of birth, her health records, whether she was born within or out of wedlock, the names and addresses of her biological parents, their psychological and health conditions and the reasons for her adoption, the date of her adoption and the case number of the adoption decision, and any important notes in the file. She relied on Article 8 of the Convention and Article 7 of the United Nations Convention on the Rights of the Child. The request states that the applicant submitted copies of documents concerning her medical history in support of her request. The Government argued that she had not submitted any such documents.

7. On 2 May 2017 the Centre informed the applicant that she should address her request to the Adoption Commission ("the Commission"), which was part of the Ministry of Labour and Social Policy ("the Ministry"). On 12 May 2017 the applicant made the same request as described in paragraph 6 above to the Commission.

8. On 1 June 2017 the applicant sent the same request to the Centre again, asking additional information concerning her childhood and her stay in a social care home in Bitola. She argued that the information she was seeking was necessary to "establish a picture of her history, development and early childhood" and that she needed to understand her emotional and psychological development as a child. Lastly, she asked the Centre to give a formal decision in accordance with the General Administrative Proceedings Act, so that she would subsequently be able to challenge it by means of further legal remedies.

9. On 13 June 2017 the Centre notified the applicant that, under section 123-a of the Family Act, information concerning completed adoptions (*засновани посвојувања*) was an official secret, which made it impossible to share any information concerning a completed adoption.

10. In a letter of 25 June 2017 the Commission informed the applicant that the Centre had had power to deal with adoption before the Commission had been established in 2004. It further stated that under section 113 of the Family Act (see paragraph 16 below), a full adoption gave to the adoptee and adopter the rights and responsibilities that original blood relatives had had, so that a full adoption terminated all rights and responsibilities between the adoptee and his or her biological family, and that under section 123-a of the Family Act, information concerning a completed adoption was an official secret (*службена тајна*), which made it impossible to share any information about it.

11. On 3 July 2017 the applicant again asked the Centre to give a formal decision. On 11 July 2017 the Centre notified her that it could not do so. It referred to, *inter alia*, section 6(1) of the General Administrative Proceedings Act, which defines the principle of proportionality in administrative

proceedings (see paragraph 21 below), and to section 123-a of the Family Act.

12. On 31 July 2017 the applicant appealed to the Ministry, asking it to give a formal decision or to instruct the Centre to give one. On 24 August 2017 the Commission notified the applicant that the Centre had considered that the applicant's request did not concern an issue to be decided under the Family Act. In reply to two further requests from the applicant to similar effect, on 15 November 2017 and 3 May 2018 the Commission notified her that neither it nor the Centre could give a formal decision.

13. On 16 May 2018 the applicant brought a claim against the Ministry in the Administrative Court. She complained that neither the Centre nor the Commission had given a formal decision on her request for information concerning her adoption ("claim for failure to act on the part of the administrative authorities"; *тужба поради молчење на администрацијата*) and argued that the Commission had been wrong to apply the Family Act because it had not been in force at the time when she had been adopted. She relied on Article 8 of the Convention and other international instruments.

14. On 13 July 2018 the Administrative Court dismissed the claim, holding that there had been no failure to act by the administrative authorities. It found that the authorities had correctly notified the applicant that under section 123-a of the Family Act, the information requested was an official secret and that the matter did not concern an issue of rights guaranteed by the Family Act. By a judgment of 29 June 2020, served on the applicant's representative on 9 December 2020, the Higher Administrative Court confirmed that finding.

15. In separate proceedings concerning another person, who was represented by the same lawyer as the applicant in the present case, on 11 March 2021 the lawyer requested a copy of the Higher Administrative Court's judgment in those proceedings (see paragraph 24 below).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. FAMILY ACT OF 1992 AS AMENDED ("THE FAMILY ACT")

16. Section 113(2) of the Family Act provides that full adoption terminates the rights and responsibilities between the adoptee and his or her former family.

17. The amendments of 2004 introduced section 123-a, which makes information about completed adoptions an official secret.

II. ADOPTION ACT ("THE 1973 ADOPTION ACT")

18. Under section 1 of the 1973 Adoption Act, an adoption could be full or partial (*потполно и непотполно посвојување*).

19. Section 20(2) was essentially identical to section 113(2) of the Family Act (see paragraph 16 above).

20. The 1973 Adoption Act did not include a provision concerning the secrecy of information relating to adoptions. It ceased to apply with the entry into force of the Family Act.

III. THE GENERAL ADMINISTRATIVE PROCEEDINGS ACT OF 2015

21. Section 6(1) of the General Administrative Proceedings Act defines the principle of proportionality in administrative proceedings. It provides that the administrative authority must ensure that the rights and legal interests of a party to administrative proceedings are fulfilled and protected, unless they are harmful for the rights or interests of third parties or for the public interest as determined by law.

IV. THE CRIMINAL CODE OF 1996 (AS AMENDED)

22. Under Article 360 § 1 of the Criminal Code, the public disclosure of information constituting an official secret is punishable by imprisonment for between three months and five years.

V. OTHER RELEVANT PROVISIONS

23. The relevant provisions of the Constitution and the Courts Act have been summarised in *Taleski v. North Macedonia* ((dec.), no. 77796/17 and five other applications, §§ 41 and 43-44, 24 January 2023).

VI. DOMESTIC PRACTICE

24. By judgment no. U-5.br.1265/2017 of 23 August 2018 (upheld by the Higher Administrative Court by judgment no. UZ.3 1169/19 of 24 January 2020), the Administrative Court upheld a refusal by the administrative bodies for free access to information concerning the claimant's adoption record. It found that the Family Act, and not the 1973 Adoption Act, applied to the request for information.

25. By decision no. U.br. 93/2019 of 19 December 2019, the Constitutional Court decided not to initiate constitutional review proceedings brought by an individual in respect of section 123-a of the Family Act. The relevant part of the decision reads as follows:

> "Considering that the relations [stemming from adoption] are multi-layered for both the [adult] participants and the child, but also more widely in society, [and that] those

relations are subject to complex legislative regulation ... , the legislative categorisation of information concerning adoption as an official secret and the institutional restriction of general access to and use of that information for various purposes cannot be considered a restriction of the child's right to privacy ... That information has multiple indications (*насоки*) relating to the biological origins of the adopted child, which on the one hand includes information concerning the adopters and on the other hand information, which is not always known, concerning the biological parents, as well as other ... information. The categorisation in the [Family] Act of adoption information as an official secret reflects the intention of the legislature not to allow institutions in possession of such information to freely disclose it, [in the absence] of specific judicial decisions revoking the categorisation of it as an official secret...

The categorisation of [adoption] information as an official secret therefore has its own legal legitimacy and needs to be viewed as a restriction on the general accessibility of information, and as a [statutory rule of conduct for the professional] handling of information concerning adoption, in the interests of protecting the relations established by adoption and in the best interests of the adopted child.

... In analysing the [relevant] provision of the Family Act, a question of the opposite [nature] arises ..., [namely] what the consequences would be of free access to information concerning completed adoptions and its general use, and whether that would truly [protect] the adopted child's rights, [and] whether it would necessarily (*автоматски*) allow for the protection of his [or her] interests.

The truth of the biological origins of the adopted child, namely that he or she is not the adopters' [biological child], is [information] which can be shared with the adoptee by the adopters, but the biological origins are not known in every case, and that could have negative psychological aspects for the adoptee ..."

VII. RELEVANT INTERNATIONAL MATERIALS

A. International treaties

26. The relevant provisions of the United Nations Convention on the Rights of the Child, which was adopted on 20 November 1989 and came into force on 2 September 1990 (1577 UNTS 3), read as follows:

Article 3

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (...)"

Article 7

"1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. (...)"

Article 8

"1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."

27. The relevant provisions of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, concluded in The Hague on 29 May 1993, are worded as follows:

Article 30

"(1) The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

(2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State."

B. Council of Europe materials

1. European Convention on the Adoption of Children

28. The European Convention on the Adoption of Children (ETS no. 58) was opened for signature in Strasbourg on 24 April 1967 and entered into force in respect of the respondent State on 16 April 2003. The relevant provisions read as follows:

Article 20

"1. Provision shall be made to enable an adoption to be completed without disclosing to the child's family the identity of the adopter.

2. Provision shall be made to require or permit adoption proceedings to take place in camera.

3. The adopter and the adopted person shall be able to obtain a document which contains extracts from the public records attesting the fact, date and place of birth of the adopted person, but not expressly revealing the fact of adoption or the identity of his former parents.

4. Public records shall be kept and, in any event, their contents reproduced in such a way as to prevent persons who do not have a legitimate interest from learning the fact that a person has been adopted or, if that is disclosed, the identity of his former parents."

2. European Convention on the Adoption of Children (Revised)

29. The European Convention on the Adoption of Children (Revised) (CETS no. 202) was signed by the respondent State on 30 April 2013; it has not yet ratified it. The relevant provisions read as follows:

Article 22 – Access to and disclosure of information

"1. Provision may be made to enable an adoption to be completed without disclosing the identity of the adopter to the child's family of origin.

2. Provision shall be made to require or permit adoption proceedings to take place *in camera*.

3. The adopted child shall have access to information held by the competent authorities concerning his or her origins. Where his or her parents of origin have a legal right not to disclose their identity, it shall remain open to the competent authority, to the extent permitted by law, to determine whether to override that right and disclose identifying information, having regard to the circumstances and to the respective rights of the child and his or her parents of origin. Appropriate guidance may be given to an adopted child not having reached the age of majority.

4. The adopter and the adopted child shall be able to obtain a document which contains extracts from the public records attesting the date and place of birth of the adopted child, but not expressly revealing the fact of adoption or the identity of his or her parents of origin. States Parties may choose not to apply this provision to the other forms of adoption mentioned in Article 11, paragraph 4, of this Convention.

5. Having regard to a person's right to know about his or her identity and origin, relevant information regarding an adoption shall be collected and retained for at least 50 years after the adoption becomes final.

6. Public records shall be kept and, in any event, their contents reproduced in such a way as to prevent persons who do not have a legitimate interest from learning whether a person was adopted or not, and if this information is disclosed, the identity of his or her parents of origin."

3. Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine ("the Oviedo Convention", CETS no. 164)

30. The Oviedo Convention entered into force in respect of the respondent State on 1 January 2010. The relevant provision reads as follows:

Article 10 – Private life and right to information

"1. Everyone has the right to respect for private life in relation to information about his or her health.

2. Everyone is entitled to know any information collected about his or her health. However, the wishes of individuals not to be so informed shall be observed.

3. In exceptional cases, restrictions may be placed by law on the exercise of the rights contained in paragraph 2 in the interests of the patient."

4. Recommendation 1443 (2000) of the Parliamentary Assembly of the Council of Europe on International adoption: respecting children's rights

31. By its Recommendation 1443 (2000), the Parliamentary Assembly called on the Committee of Ministers of the Council of Europe to invite the member States to, *inter alia*, ensure the right of adopted children to learn of their origins at the latest on reaching the age of majority and to eliminate any clauses to the contrary from their national legislation.

32. In its reply adopted at the 785th meeting of the Ministers' Deputies (26–27 February 2002), the Committee of Ministers acknowledged that all children had a legitimate interest in knowing their origins. It also pointed out that substantive discussions were in progress on that question in several member States and that, in some situations and some countries, it had been deemed necessary to withhold some or all information about a child's origins (for example, in cases of medically assisted procreation involving an anonymous sperm donor).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

33. The applicant complained about the inability to obtain information concerning her adoption. She relied on Article 8 of the Convention, 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."

A. Admissibility

1. Six-month time-limit

34. The Government submitted that the application had been lodged outside the six-month time-limit because the proceedings the applicant had pursued for "failure to act on the part of the administrative authorities" had not been an effective remedy for the purposes of her complaint. The domestic authorities could not have granted her request, in view of the unequivocal wording of section 123-a of the Family Act (see paragraph 16 above) and the established practice of the administrative courts (see paragraph 24 above). The applicant could have found the judgment of the Higher Administrative Court of 24 January 2020 on a public website. On 19 December 2019 the Constitutional Court had held that section 123-a of the Family Act was compliant with the Constitution (see paragraph 25 above) and by that date at the latest the applicant should have become aware that her proceedings in the Administrative Court were an ineffective remedy.

35. The applicant argued that the practice of the administrative courts to which the Government had referred was irrelevant as it concerned the issue of access to public information. In any event, her representative had received the decision of the Higher Administrative Court of 24 January 2020, after she

had received the decision of that court in the applicant's case. The applicant had undertaken all reasonable steps to exhaust the available domestic remedies.

36. The Court reiterates that the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies which are normal and effective (see *Savickis and Others v. Latvia* [GC], no. 49270/11, § 131, 9 June 2022). The relevant principles concerning the effectiveness of a domestic remedy have been summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 74-75, 25 March 2014).

37. In the present case, the applicant complained to the Administrative Court about her inability to obtain information concerning her adoption and relied on Article 8 of the Convention (see paragraph 13 above). The Administrative and Higher Administrative Courts dismissed her complaint on the merits on the basis of substantive law (section 123-a of the Family Act). It appears that the judgment of the Higher Administrative Court in the other proceedings referred to by the Government had not yet been served on the applicant's lawyer when the Higher Administrative Court decided the applicant's case. Furthermore, there is nothing to suggest that there was a long-established practice of interpreting section 123-a of the Family Act in the way it had been interpreted in the applicant's case. Accordingly, it was reasonable for the applicant to await the judgment of the Higher Administrative Court in her own case before lodging her application. In addition, in its decision of 19 December 2019 the Constitutional Court referred to the possibility of an "official secret" being revoked in court proceedings (see paragraph 25 above). The Government did not argue that there was a more appropriate judicial recourse than the one pursued by the applicant. More importantly, the Administrative and Higher Administrative Court could directly apply the Convention (see the relevant provisions of the Constitution and the Courts Act referred to in paragraph 16 above; and see, *mutatis mutandis*, *Taleski*, cited above, § 101, in the context of criminal proceedings) and could examine, as sought by the applicant, whether the manner in which the domestic authorities had applied section 123-a of the Family Act was in compliance with Article 8 of the Convention. The Court therefore considers that the proceedings in the administrative courts are to be considered an effective remedy in the applicant's case. Accordingly, it dismisses the Government's objection that the application was lodged outside the six-month time-limit.

2. Applicability of Article 8 of the Convention

38. The Government submitted that Article 8 was not applicable. The applicant had had no "family life" with her biological parents. The information requested by the applicant did not come, either fully or partly, within the scope of "private life" within the meaning of Article 8 of the

Convention. In particular, none of the information requested was relevant to the applicant's health.

39. The applicant argued that the information requested concerned her health and her social situation, and could be relevant for the treatment of her medical condition.

40. The Court reiterates that the right to know one's parentage falls within the scope of the concept of "private life" (see, for example, *Boljević v. Serbia,* no. 47443/14, § 28, 16 June 2020, and *Gauvin-Fournis and Silliau v. France*, nos. 21424/16 and 45728/17, § 109, 7 September 2023). Birth, and in particular the circumstances in which a child is born, forms part of a child's, and subsequently the adult's, private life guaranteed by Article 8 of the Convention (see *Odièvre v. France* [GC], no. 42326/98, § 29, ECHR 2003-III, with further references). In addition, the right to effective access to information concerning a person's health is linked to his or her private life within the meaning of Article 8 (see *K.H. and Others v. Slovakia*, no. 32881/04, § 44, ECHR 2009 (extracts)).

41. In the present case, the applicant sought information concerning her adoption and biological origins, including information about the identity of her biological parents, their health, the reasons for her adoption, and her childhood before her adoption. The Court considers that the information sought by the applicant concerned her "private life" within the meaning of Article 8, which is therefore applicable to the present case. It follows that the Government's objection under this heading must also be dismissed.

3. Conclusion

42. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

43. The applicant complained that the domestic authorities' refusal to provide information concerning her adoption, including any relevant medical information, was unlawful in that she had been adopted under the 1973 Adoption Act, which did not categorise information concerning completed adoptions as secret, and the authorities had retroactively applied the Family Act. The interference with her rights had not pursued a legitimate aim. The domestic authorities had not attempted to strike a balance between the two interests at stake, as required by section 6(1) of the General Administrative Proceedings Act. In particular, they had not ascertained whether at the time of the adoption the biological mother had wished information about her to be withheld, whether at the time of the applicant's request she had still been alive

and her wish remained the same, or whether it had been possible to share certain non-identifying information concerning the applicant's adoption. The applicant's interest in obtaining information about her origins, in particular health-related information, was increasing with the passage of time.

44. The Government argued that there had been no interference with the applicant's right to respect for her private and family life. Any possible interference was compliant with the Family Act, which had applied to the applicant's case given that when she had brought the proceedings requesting information, the Family Act had already been in force. Section 123-a of the Family Act had the legitimate aim of protecting the rights and interests of all those concerned in the adoption process. The secrecy of the relevant information was a factor that encouraged adoption. The potential disclosure of information concerning adoptions could encourage births outside hospitals; the restriction on disclosing information was therefore also aimed at protecting the health of biological mothers and children. There was no consensus among Council of Europe member States on the issue at hand, and they enjoyed a wide margin of appreciation. The domestic authorities had acted lawfully; had they decided otherwise they could have been prosecuted for disclosing an official secret (see Article 360 of the Criminal Code, paragraph 22 above). Furthermore, they had acted in accordance with section 6(1) of the General Administrative Proceedings Act (see paragraph 21 above), which prohibited a person enjoying his or her rights at the expense of rights of other persons. The applicant had sought detailed information concerning her adoption which was irrelevant to her health condition, three years after she had been diagnosed with her disease. She had not complained domestically that the domestic authorities had not balanced the conflicting interests at stake. Section 123-a of the Family Act by itself sufficiently balanced all the competing interests; the decision of the Constitutional Court in another case (see paragraph 25 above) was also relevant to the applicant's case.

2. The Court's assessment

(a) General principles

45. Although the object of Article 8 is essentially to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private life. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance which has to be struck between the competing interests; and in both contexts the State enjoys a certain margin of appreciation (see, among other authorities, *Odièvre*, cited

above, §§ 40 and 49, and *C.E. and Others v. France*, nos. 29775/18 and 29693/19, § 83, 24 March 2022).

46. The expression "everyone" in Article 8 of the Convention applies to both the child and the mother in an adoption case. On the one hand, the child has a right to know his or her origins, that right being derived from the notion of private life. The child's vital interest in his or her personal development is also widely recognised in the general scheme of the Convention (see *Odièvre*, cited above, § 44, and *Godelli v. Italy*, no. 33783/09, § 50, 25 September 2012, with further references). Moreover, an individual's interest in discovering his or her parentage does not disappear with age, quite the reverse (see *Godelli*, cited above, § 56). On the other hand, in the case of *Godelli*, where the biological mother had expressed a wish to be anonymous when she gave birth to her daughter, the Court found that the woman's interest in remaining anonymous in order to protect her health by giving birth in appropriate medical conditions could not be denied (ibid., § 50). Lastly, there may also be a general interest at stake, as domestic authorities may seek, for example, to protect the mother's and the child's health during pregnancy and birth or avoid illegal abortions or child abandonment (ibid., § 51).

47. The choice of the means calculated to secure compliance with Article 8 in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation (ibid., § 52; see also *Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother* [GC], request no. P16-2018-001, French Court of Cassation, § 51, 10 April 2019). Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will normally be restricted. Where, however, there is no consensus within the member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin will be wider. By reason of their direct and continuous contact with the vital forces of their countries, the State authorities are, in principle, in a better position than the international judge to give an opinion, not only on the "exact content of the requirements of morals" in their country, but also on the necessity of a restriction intended to meet them. There will usually be a wide margin of appreciation accorded if the State is required to strike a balance between competing private and public interests or Convention rights (see *S.H. and Others v. Austria* [GC], no. 57813/00, § 94, ECHR 2011, with further references).

48. Lastly, the Court has already found that, on one hand, there is a positive obligation to provide an "effective and accessible procedure" enabling the applicants to have access to health-related data (see *K.H. and Others v. Slovakia*, cited above, §§ 44, 45 and 47). On the other

hand, from the perspective of the person whose medical data are disclosed, the Court has held that respecting the confidentiality of such data is a vital principle in the legal systems of all the Contracting Parties to the Convention. Domestic law must afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 of the Convention (see *Y.G. v. Russia*, no. 8647/12, § 44, 30 August 2022).

(b) Application of those principles to the present case

49. In the instant case, the gist of the applicant's complaint is that the domestic authorities violated her rights under Article 8 of the Convention by not providing her with access to information concerning her biological origins. The Court considers that her complaint needs to be examined from the perspective of the positive obligation of the State to ensure effective respect for her rights as protected by Article 8 (see, *mutatis mutandis, Gauvin-Fournis and Silliau*, cited above, § 110).

50. The Court reiterates that persons who, like the applicant in the present case, seek to establish their parentage have a vital interest, protected by the Convention, in receiving the information necessary to discover the truth about an important aspect of their personal identity (see, *mutatis mutandis*, *Jäggi v. Switzerland*, no. 58757/00, § 38, ECHR 2006-X). In addition, the applicant also had an interest in obtaining information relevant to her health, given that she argued in the domestic proceedings that she was seeking information concerning the medical history of her parents in order to determine whether she had a hereditary disease.

51. The Court observes that the domestic authorities made no attempt to ascertain whether the applicant's biological parents or her adoptive parents had expressed a wish that her adoption remain secret (compare and contrast *Odièvre*, cited above, § 10 and 12, and *Godelli*, cited above, §§ 6 and 49, in which the biological mothers of the applicant had clearly expressed a wish to remain anonymous). The Court does not wish to speculate on this issue (see, *mutatis mutandis*, *Boljević*, cited above, § 54). On the other hand, the Court considers that a general interest is at stake, namely the protection of the health of biological mothers, who since 2004 have had an expectation that information about them, and about their children at the stages of pregnancy and birth, would remain secret (see, similarly, *Godelli*, cited above, § 51).

52. As to the margin of appreciation afforded to the domestic authorities, the Court notes, on the one hand, that the access of adopted children to information concerning their biological origins is a sensitive moral and ethical issue that involves striking a balance between private and public interests. Hence the State should be accorded a wider margin of appreciation. On the other hand, the right to an identity, which includes the right to know one's parentage, is an integral part of the notion of private life. In such cases,

particularly rigorous scrutiny is called for when weighing up the competing interests (ibid., § 52). This narrows the State's margin of appreciation.

53. The Court notes that both the administrative authorities and the courts at two levels of jurisdiction refused the applicant's request for information about her origins. In doing so, they merely relied on section 123-a of the Family Act, which provided for the secrecy of information concerning completed adoptions. While they also referred to section 6(1) of the General Administrative Proceedings Act, which laid down the principle of proportionality in administrative matters, they did not expressly identify the competing interests at stake or balance them against the applicant's interests (compare *Godelli*, cited above, § 57). They did not address at all her argument concerning the need to obtain information about her biological parents' medical history.

54. As to section 123-a of the Family Act itself, as interpreted by the domestic authorities, the Court observes that this provision categorises all information concerning completed adoptions as an official secret. It does not provide for the possibility of obtaining non-identifying information concerning a person's biological origins, adoption or childhood (contrast *Odièvre*, cited above, § 48). Furthermore, it does not provide for an exception on medical grounds to the rule that information concerning the adoption is secret (contrast *Gauvin-Fournis and Silliau*, cited above, § 126), which prevented the domestic authorities from assessing the applicant's arguments as to the alleged need to obtain health-related information.

55. The Court bears in mind that in respect of questions of general policy, and especially in respect of complex societal questions, particular importance is to be given to the role of the national legislature (ibid., § 116). However, in the present case there is no information available on the legislative process which resulted in the 2004 amendments to the Family Act introducing the rule of secrecy provided for by section 123-a. In particular, no information is available as to whether and how the legislative authorities balanced the competing interests at stake (compare and contrast *Gauvin-Fournis and Silliau*, cited above, §§ 118-123, in which the Court considered the profound public debate on the legislation in question and found that the legislator had weighed the competing interests in a rich and evolving reflective process).

56. In dismissing the challenge to the constitutionality of section 123-a of the Family Act (paragraph 25 above), the Constitutional Court considered the complexity of the relationship established by adoption and gave weight to the general interest in protecting that relationship, as well as to the individual interests of the adopted child. However, it gave no consideration at all to the interest of an adopted adult, as in the applicant's case, in obtaining information about his or her biological origins or his or her family's medical history.

57. Finally, as regards the Government's argument that the applicant was adopted through a "full adoption" procedure, it appears that under

section 123-a of the Family Act the type of adoption ("full" or "partial") was irrelevant from the perspective of access to information concerning the adoption; such information was an official secret irrespective of the type of adoption. In any event, the fact that the applicant was adopted through a "full adoption" procedure does not automatically release the domestic authorities from the obligation to balance the competing interests at stake.

(i) Conclusion

58. The Court bears in mind the sensitivity of the issue at hand and does not underestimate the impact that a disclosure of adoption-related information may have on the persons concerned. It notes the absence of a possibility to obtain access to non-identifying information. In view of the above considerations, it finds that the domestic authorities failed to strike a balance between the competing interests at stake and thus overstepped the margin of appreciation afforded to them.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. Article 41 of the Convention provides:

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

A. Damage

61. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

62. The Government contested this claim as unsubstantiated and excessive.

63. The Court considers that the applicant must have endured emotional distress and anguish on account of the refusal of access to information concerning her origins (see *Godelli*, cited above, § 76) and awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

64. The applicant also claimed EUR 1,440 for the costs and expenses incurred before the Court.

65. The Government contested the claim as not sufficiently substantiated and excessive.

66. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, for example, *D.H. and Others v. North Macedonia*, no. 44033/17, § 75, 18 July 2023). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum requested by the applicant for costs and expenses incurred in the proceedings before it, plus any tax that may be chargeable to her.

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 due to the domestic authorities' failure to strike a balance between the competing interests at stake in the proceedings for access to information concerning the applicant's biological origins;

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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,440 (one thousand four hundred and forty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
      (iii) 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 14 May 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President