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

FIFTH SECTION

CASE OF MOLDOVAN v. UKRAINE

(Application no. 62020/14)

JUDGMENT

Art 8 • Positive obligations • Rejection of applicant's civil action for judicial recognition that a late person was his father • Right claimed by applicant disclosed sufficient relevant elements to fall within concept of "private life" • Compatibility *ratione materiae* • Domestic courts' application of the old 1969 Family Code making proof of cohabitation indispensable for the recognition of paternity despite wide use of reliable DNA testing • Failure to deal with DNA evidence submitted to them with sufficient thoroughness • Effects of approach akin to those of inflexible time-limits or other procedural limitations making it impossible to establish or challenge paternity, in particular using new testing methods

Prepared by the Registry. Does not bind the Court.

STRASBOURG

14 March 2024

FINAL

14/06/2024

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Moldovan v. Ukraine,

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

Georges Ravarani, *President*,
Lado Chanturia,
Carlo Ranzoni,
María Elósegui,
Mattias Guyomar,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 62020/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Oleksandr Volodymyrovych Moldovan ("the applicant"), on 4 September 2014;

the decision to give notice of the application to the Ukrainian Government ("the Government");

the parties' observations;

Having deliberated in private on 13 and 20 February 2024,

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

INTRODUCTION

1. The case concerns the rejection of the applicant's civil action for judicial recognition that a late person was his father. The applicant claims that, without justification, the courts refused to have regard to the DNA evidence and insisted on applying outdated legislation requiring proof of cohabitation and other "social" circumstances. He complained under Article 8 of the Convention in that respect.

THE FACTS

2. The applicant was born in 1993 and lives in the village of Chornivka, Chernivtsi Region. The applicant was represented by Mr B.V. Fokiy, a lawyer practising in Chernivtsi.

3. The Government were represented by their Agent, Ms M. Sokorenko.

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

5. The applicant was born out of wedlock. A fictitious name was noted as the name of the father in his birth record, on the mother's declaration.

6. On 25 September 2012 the person the applicant considered to be his father, Mr Ch., died.

7. In November 2012 the applicant lodged a court application against Ch.'s mother and sister, Ch.'s lawful successors, seeking recognition of Ch. as his father and the amendment of his birth record to that effect. The applicant stated in his application that he was seeking recognition of Ch.'s paternity because he wished to inherit his estate. He noted that paternity could be confirmed by a DNA test. The applicant asked the court to call and hear four persons as witnesses: his mother, Ms M.O., Mr Kh. and Ms P.D.

8. At the applicant's request, the Khotyn District Court of the Chernivtsi Region ordered that a DNA test be carried out by the Odesa Bureau of Forensic Medical Examinations ("the Odesa Bureau"), a public institution.

9. On 3 December 2012 liquid blood samples were collected from the applicant and his mother by the Chernivtsi Bureau of Forensic Medical Examinations ("the Chernivtsi Bureau"), also a public institution. They were sealed in tubes. The Chernivtsi Bureau also provided a sealed packet containing a sample of dried blood from Ch.'s corpse. The parties did not explain why Ch.'s samples had been taken from his corpse and kept by the Chernivtsi Bureau. As is indicated in a letter of 2 April 2013 from the Chernivtsi Bureau to the local court, the samples were provided to the applicant for him to organise their delivery to the Odesa Bureau as this could not be done by the Chernivtsi Bureau itself. From the expert report of 4 January 2013, it appears that the samples were delivered by a private delivery company. The experts noted in their report that the samples arrived duly packed and that the seals were intact.

10. The DNA test results produced by the Odesa Bureau revealed that the probability that Ch. had been the applicant's father was 99.9999%.

11. It appears from the local court's ruling of 16 December 2013 that in March 2013 Ch.'s sister had asked for a new expert examination to be ordered, alleging that the Odesa Bureau had not complied with the appropriate procedures. However, at the hearing held on that day her representative withdrew that request (the ruling does not explain the reasons for that). The court ruled to accept that withdrawal.

12. In the hearing of 16 December 2013, the Khotyn District Court of the Chernivtsi Region ("the District Court") adopted a judgment dismissing the applicant's application. In its two-page judgment it referred to the Plenary Supreme Court's Resolution no. 3 of 15 May 2006, in accordance with which matters relating to the establishment of the paternity of children born prior to 1 January 2004 (that is, before the new Family Code came into force) were governed by the provisions of the old 1969 Family Code. In particular, paragraph 3 of Article 53 of the old Family Code provided that where no joint declaration had been made by the parents and paternity was being established by a court, the court should take into account "cohabitation and living as one household by the mother and the defendant prior to the child's birth, or joint upbringing and support of the child, or any evidence that reliably corroborates

the acknowledgment of paternity by the defendant.” The District Court noted in that connection:

> “... It was established at the court hearing that [the applicant’s mother] had not cohabited with Ch. and had not lived with him in one household.
>
> Those circumstances are confirmed by the testimony of [the applicant’s mother] herself, and of witnesses M.V. and P.A., as well as by the certificates [of the local village council] confirming that Ch. had lived in the village of Bochkivtsi in the Khotyn District from 1978 until his death and had been in a joint household with his mother.
>
> Both the applicant and his mother confirmed to the court that Ch. had not helped the applicant when he intended to go to university.
>
> Witness M.V. confirmed to the court that Ch. had consistently denied that he was the applicant’s father.
>
> ...
>
> The applicant failed to prove that his mother and Ch. had brought him up together, or that Ch. had ever accepted paternity.
>
> ...
>
> The court considers that, in and of itself, the fact of the biological origins of a child born before 1 January 2004 [as proved by the DNA test] – if cohabitation and living in one household by the parents before the child’s birth or the joint upbringing of the child, or the acknowledgment of paternity, have not been proven – is not a ground for judicial recognition of paternity under Article 53 of the [1969] Family Code ...”

13. As indicated in the minutes of the hearing, apart from the two witnesses for the defence, M.V. and P.A., the court heard all the witnesses requested by the applicant (see paragraph 7 above).

14. The applicant appealed. He argued that the first-instance court had failed to properly analyse the evidence available, as the evidence referred to by the court showed that Ch. had not cohabited with the applicant’s mother *after* the applicant’s birth, whereas the 1969 Code also mentioned cohabitation *prior to* the child’s birth as a condition for judicial recognition of paternity. The District Court had failed to take into account the fact that all the witnesses had confirmed that Ch. had cohabited with the applicant’s mother prior to the applicant’s birth, had visited her in the maternity hospital and had organised his baptism ceremony. The fact that Ch. had not funded the applicant’s university studies did not prove that Ch. rejected his paternity, as he could simply have had other reasons for such a decision – for example, disagreement with the applicant’s life choices. But the very fact that this question was being discussed between Ch. and the applicant was yet another proof that Ch. was part of the applicant’s life. Lastly, the applicant stated that, had the court analysed all the evidence in the file properly, the DNA test result would have been the “ultimate and irrebuttable” proof of paternity.

15. On 5 February 2014 the Chernivtsi Region Court of Appeal (“the Court of Appeal”) upheld the first-instance court’s judgment. It confirmed the applicability of the 1969 Code and stated the following:

> “According to Article 53 [of the 1969 Family Code] the court can establish paternity only if the following circumstances have been proved: cohabitation and the maintenance of a joint household by the [mother] and the [putative father] before the birth of the child, or the joint upbringing and support of the child, or any evidence that reliably corroborates an acknowledgment of paternity by the defendant. ...
>
> It appears from the provision cited that paternity may be established by a court if at least one of the above-mentioned circumstances is proved ...”

The Court of Appeal went on to agree with the District Court’s assessment that there was insufficient evidence of any of such circumstances. In particular, the case material indicated that Ch. had never supported the child financially or participated in his life. Ch.’s relatives had first become acquainted with the applicant and his mother at Ch.’s funeral.

16. At the end of its judgment the Court of Appeal also added, in one sentence, that the reliability of the DNA test results in the applicant’s case was open to doubt since, “in breach of the relevant regulations”, the blood sample from Ch.’s body that had been used for testing had been transmitted to the expert institution by the applicant’s family. Therefore, “it could not be ruled out that the sample from Ch. had not been substituted by the applicant’s mother’s blood”.

17. In his cassation appeal the applicant repeated his previous arguments. He also asserted, on the question of the integrity of the samples used for the DNA test, that they had indeed been transmitted to the Odesa Bureau by him, but that everything had been packed up according to the proper procedures at a public institution and that the samples had arrived at the Odesa Bureau with their seals intact. Had the samples been switched, the seal and packaging would have been tampered with and the expert would not have accepted the samples for testing. The Court of Appeal had therefore based its findings in this respect not on evidence but on unacceptable assumptions.

18. On 27 February 2014 the Higher Specialised Court for Civil and Criminal Cases refused to open cassation proceedings, stating in its one-page judgment, that there was no indication of unlawfulness in the lower courts’ decisions.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. FAMILY CODE OF 1969

19. Under paragraph 3 of Article 53 of the Family Code of 1969, which remained unchanged after its adoption, where no joint declaration was made by the parents and paternity had to be established by a court, the court should take into account “cohabitation and living as one household by the mother and the defendant prior to the child’s birth, or joint upbringing and support of the child, or any evidence that reliably corroborates the acknowledgment of paternity by the defendant”.

II. FAMILY CODE OF 2002 (IN FORCE SINCE 1 JANUARY 2004)

20. Under paragraph 2 of Article 128 of the Family Code of 2002, paternity can be established on the basis of any evidence confirming the parentage of the child which has been collected in compliance with the rules of civil procedure.

III. CODE OF CIVIL PROCEDURE OF 2004 (AS IN FORCE AT THE MATERIAL TIME)

21. Under Article 147 of the Code of Civil Procedure of 2004, an expert report is not binding on the court and should be examined together with other evidence. If the judge disagrees with an expert report, that disagreement must be duly explained in the judgment. Article 150 also provides that if an expert report is considered ill-founded or if it contradicts other material from the case file, or doubts are otherwise raised as to its accuracy, the court may order a new expert examination, to be carried out by a different expert.

22. Under Article 303 of the 2004 Code, when examining a case on appeal, a court of appeal must consider the lawfulness of the first-instance court's judgment within the limits of the appeal and of the claims raised before the first-instance court. The court of appeal may examine new evidence not submitted to the first-instance court if there are good reasons why the evidence was not submitted earlier.

IV. RESOLUTION NO. 3 OF 15 MAY 2006 OF THE PLENARY SUPREME COURT OF UKRAINE

23. The Plenary Supreme Court's Resolution no. 3 of 15 May 2006 stated that, since the grounds for recognition of paternity by a court provided for by the new 2002 Family Code differed significantly from those in Article 53 of the 1969 Family Code, a court deciding which legal provision should be followed should be guided by the date of birth of the child. When considering cases concerning the establishment of paternity of a child born before 1 January 2004, the courts should apply the provisions of the 1969 Family Code, taking into account the entirety of the evidence that reliably confirmed the defendant's acknowledgment of paternity, and in particular, cohabitation and living as a joint household by the defendant and the child's mother before the child's birth, and their joint upbringing or support of the child.

24. Cases concerning the recognition of paternity in relation to a child who was born no earlier than 1 January 2004 should be examined in accordance with the provisions of the 2002 Family Code, in particular paragraph 2 of Article 128, which provides that paternity can be established on the basis of any evidence that confirms the parentage of the child and has been collected in compliance with the rules of civil procedure.

25. The Resolution has not been repealed. It is a guidance document for the lower courts.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

26. The applicant complained that the rejection of his claim for recognition that a late person was his father violated 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. The parties’ submissions

(a) The Government

27. The Government noted at the outset that the domestic court case file had been destroyed following the expiry of the time-limit for the preservation of such files, and that this considerably limited their ability to comprehensively examine the circumstances of the case. Their observations were thus based mostly on the documents provided by the applicant.

28. The Government argued further that the issues raised by the applicant in the present case focused merely on the right to inherit the estate of a deceased person and thus could not be covered by the notions of “private life” or “family life” within the meaning of Article 8. In this context they distinguished the cases mentioned when notice of the application was given. In particular, in *Jäggi v. Switzerland* (no. 58757/00, ECHR 2006-X) the applicant’s claim had not concerned inheritance rights, whereas the applicant’s claim in the present case was focused on them. In *Tavlı v. Turkey* (no. 11449/02, 9 November 2006) the courts had refused to examine the DNA evidence, whereas in the applicant’s case the courts had duly examined all the evidence. Lastly, in *A.L. v. Poland* (no. 28609/08, 18 February 2014) the applicant had challenged his own declaration of paternity on the basis of biological evidence, whereas the applicant in the present case had never requested changes in his birth record. Given those distinctions, the Government considered that the Court’s findings in those cases could not be applied to the present case.

29. Conversely, citing *Haas v. the Netherlands* (no. 36983/97, § 43, ECHR 2004-I), the Government asserted that the inheritance issues behind the applicant's claim to establish that Ch. had been his father precluded his complaints from being covered by the notions of "family" and "private" life. They underlined in that connection the findings of the domestic courts in the present case which had established that there were no ties connecting the applicant and his late purported father, as illustrated by the fact that Ch.'s relatives had first met the applicant and his mother at Ch.'s funeral (see paragraph 15 above).

(b) The applicant

30. The applicant replied that he had provided the Court with documents showing a full picture of the facts of the case.

31. He then argued that his claim did not only concern questions of inheritance and that in his application in the domestic courts he had also sought to have his birth records amended (see paragraph 7 above). He had sought to exercise his right to ascertain his origins and the identity of his father. This was important for him both from the point of view of his material interest in obtaining his inheritance and from the moral point of view, since he would preserve the memory of his father for the rest of his life. There therefore existed a direct link between the establishment of paternity and the applicant's private life. In that context he pointed to *Marckx v. Belgium* (13 June 1979, §§ 51 and 52, Series A no. 31) and *Pla and Puncernau v. Andorra* (no. 69498/01, § 26, ECHR 2004-VIII), in which the Court had held that the right of succession between parents and children fell within the ambit of Article 8.

2. The Court's assessment

32. The Court has held on numerous occasions that paternity-related proceedings fall within the scope of Article 8 (see, for example, *Mikulić v. Croatia*, no. 53176/99, § 51, ECHR 2002-I; *Jäggi*, cited above, § 25; and *Backlund v. Finland*, no. 36498/05, § 37, 6 July 2010). It has also found that the right of a child born out of wedlock to determine the legal relationship between him or her and his or her natural father falls within the scope of the concept of "private life" (see *Mikulić*, cited above, § 53, and *Jäggi*, cited above, §§ 25-26).

33. On the issue of whether the existence of an underlying material interest, including inheritance rights, excludes the application of the concept of "private life", as the Government may be seen as claiming with reference to the *Haas* case, the Court notes that in that case the domestic courts were faced not with an issue of "family life" within the meaning of Article 8 or an issue of "private life" seen in terms of personal identity, but with a question of evidence going to the question of whether legal family ties between the

applicant and the deceased should be recognised for inheritance purposes. In the circumstances of that case the Court concluded that it would be stretching the notion of family life too far to hold that its subject matter fell within the scope of that notion (see *Haas*, cited above, § 43).

34. On the other hand, in the later case of *Kalacheva v. Russia* (no. 3451/05, 7 May 2009), in which the applicant sought to establish the paternity of her child in order to be able to claim child maintenance, the Court accepted that the recognition of paternity could have a number of implications for an interested person, including financial ones (ibid., §§ 7 and 29). Furthermore, in the more recent cases of *Backlund v. Finland* (cited above) and *Boljević v. Serbia* (no. 47443/14, § 28, 16 June 2020) the Court has reaffirmed that there was no reason of principle to exclude paternity matters from the scope of Article 8. Moreover, the Court has also found Article 8 to be applicable in cases regarding the annulment of an adoption allegedly concluded solely for inheritance purposes (*Zaieţ v. Romania*, no. 44958/05, §§ 28, 42 and 47-51, 24 March 2015) and access to family allowances (*Beeler v. Switzerland* [GC], no. 78630/12, §§ 72 and 79-82, 20 October 2020 and *Yocheva and Ganeva v. Bulgaria*, nos. 18592/15 and 43863/15, §§ 72-3, 11 May 2021).

35. In the present case, the applicant had stated in his application to the domestic courts to have his origins established that he wished to inherit from his late purported father, Ch. Contrary to what the Government maintained, the applicant also sought to have his birth records amended accordingly. In his observations before the Court, the applicant claimed that he also wished to preserve the memory of his father. In the domestic proceedings the applicant sought, by presenting witness evidence, to show that Ch. had maintained relations, if limited ones, with him and his mother. Given this, the Court considers that the right claimed by the applicant discloses sufficient relevant elements to fall within the concept of "private life".

36. Accordingly, Article 8 of the Convention applies and the Court has jurisdiction *ratione materiae*.

37. The Court further notes that the application 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

38. The applicant submitted that the domestic courts had violated his right to respect for his private and family life by making it impossible for him to establish his origins and the identity of his father.

39. The applicant further submitted that the first-instance court had failed to comment on the DNA test results in any way. The Court of Appeal's findings concerning the reliability of the DNA evidence had signs of "gross

arbitrariness" as the court had found the test results unreliable in the absence of any evidence that the samples had been tampered with. As the experts had noted in the report, the samples had arrived with their seals intact (see paragraph 9 above). Had it been otherwise, the experts would have been obliged to refuse to conduct the testing. While the defendants had disagreed with the test results, at the hearing held on 16 December 2013 they had rejected the idea of conducting a new examination (see paragraph 11 above). They had not submitted any alternative test results while the sample of Ch.'s blood had been still available, so a new test would have been possible. The defendants, therefore, had not used their procedural rights to challenge the test results. In that context the applicant referred to the Court's statement in *Kalacheva* (cited above, § 34) that "today a DNA test is the only scientific method of determining accurately the paternity of the child in question; and its probative value substantially outweighs any other evidence presented by the parties to prove or disprove the fact of an intimate relationship". Overall, the domestic courts in the present case had disregarded the essential and decisive evidence in the case confirming that Ch. had been his father.

40. The applicant also referred to a judgment of the Supreme Court of Ukraine of 6 May 2020 in another case, no. 201/11183/16-ц, in which a "legal" father had challenged his paternity, and which suggested, according to the applicant, that, even if the old 1969 Code applied to the facts of a case, "any evidence" could be used by the courts to establish paternity, including a DNA test. The Supreme Court relied in that respect on the Court's findings in the case of *Kalacheva* (cited above). The applicant submitted that the Supreme Court had thus endorsed "the philosophy of the Court".

41. The applicant lastly pointed out that a number of witnesses had confirmed in the hearings before the District Court that Ch. had cohabited with the applicant's mother *prior* to the applicant's birth, had visited her in the maternity ward and had organised the applicant's baptism ceremony. However, that evidence had not been addressed in the courts' decisions, which were focused on the defence's witnesses' statements that the applicant's mother and Ch. had never cohabited *after* his birth. The applicant also repeated his arguments in which he disagreed with the domestic courts' assessment of Ch.'s refusal to fund his university studies.

42. The Government submitted no comments on the merits of the case.

2. The Court's assessment

43. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by public authorities. There may in addition 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. 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 contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see, for example, *Kroon and Others v. the Netherlands*, 27 October 1994, § 31, Series A no. 297-C, and *Mikulić*, cited above, §§ 57-58).

44. The Court also reiterates that its 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. The Court will therefore examine whether the respondent State, in handling the applicant's action for judicial recognition that a late person was his father, has complied with its positive obligations under Article 8 of the Convention (see, *inter alia*, *Boljević,* cited above, § 45, with further references).

45. In the present case the domestic courts dismissed the applicant's application essentially because he had failed to prove that his mother and late putative father had ever cohabited or that Ch. had ever recognised his paternity in any way. These circumstances were required by the 1969 Family Code, which was found to be applicable to the applicant's case according to the Resolution of the Plenary Supreme Court of 2006, because of the applicant's date of birth.

46. The Court observes that the 1969 Family Code was adopted at a time when DNA testing was not yet widespread. The provisions of Article 53 of the Code thus provided an opportunity to establish paternity on "social" grounds (compare *Mikulić*, cited above, § 64 *in fine*). Those provisions remained unchanged for decades, even when reliable DNA testing was already being widely used.

47. The Court has stated on a number of occasions that DNA testing to establish paternity now constitutes a simple and very reliable method and that "its probative value substantially outweighs any other evidence presented by the parties to prove or disprove the fact of an intimate relationship" (see, for example, *Kalacheva*, cited above, § 34; *Brauer v. Germany*, no. 3545/04, § 43, 28 May 2009; and *Tsvetelin Petkov v. Bulgaria*, no. 2641/06, § 55, 15 July 2014).

48. In *Kalacheva* the domestic courts had refused to take the DNA test results into account as the parties had failed to comply with certain formal requirements. For the Court, the best interests of the child in that case required an unambiguous answer as to who the child's father was, and that issue could not be addressed satisfactorily without a DNA test; a second test was necessary given that the first one was found inadmissible for formal procedural reasons. When the applicant failed to request a second test, the courts also failed to order a new test, which was within their discretion. On

the basis of that sequence of events, the Court found a violation of Article 8 in that case (see *Kalacheva*, cited above, §§ 36-38).

49. In the present case, the Court of Appeal affirming the applicability of the 1969 Code and making it clear that, therefore, for a child born prior to 1 January 2004 DNA evidence alone could not be grounds for the judicial recognition of paternity made an additional comment, and in passing, about the doubts regarding the reliability of the DNA evidence submitted by the applicant (see paragraphs 15 and 16 above). The Court of Cassation upheld that approach in its one-page judgment (see paragraph 18 above).

50. In addition to such statement about the possible unreliability of the DNA evidence as submitted by the applicant having been made only in passing, the Court wishes to note that it does not in any event seem to have been based on an analysis of any thoroughness. In particular, the mention of the "breach of the relevant regulations" in the processing of samples was not supported by any reference to the domestic legal provisions; moreover, an assertion that samples might have been switched would normally have required the collection of evidence or at least a thorough discussion about the concrete reasons for such assumption, which had not been done. The experts involved were not called to give evidence, nor was a fresh expert assessment ordered. Furthermore, it is unclear when or how the argument regarding the reliability of the samples submitted for DNA testing came about, especially in the absence of any copies of the defendants' submissions to the courts and of the records of the court hearings. It is true that at some point the defendants did ask the local court to order a new expert examination, given that the appropriate procedures had not been complied with, but later they withdrew their request, and the local court did not mention anything about the reliability of the DNA evidence in its judgment (see paragraph 11 above). In the circumstances, it is questionable whether it was in line with the procedural rules governing the admission of new evidence in appellate proceedings for the reliability of the DNA evidence to have been examined for the first time in the Court of Appeal (see paragraph 21 above), and, if that was the case, whether the applicant was sufficiently aware of that argument and could have contested it effectively in the appellate proceedings. In view of the above, the Court observes that while the Court of Appeal raised the issue of reliability of the DNA test results, it did not consider it sufficiently thoroughly.

51. This being said, the Court is not called on to decide any issues regarding the reliability of the DNA test results since it is in any case apparent from the domestic courts' reasoning that, because the 1969 Family Code applied in the applicant's case, the only circumstances that could actually be considered relevant evidence of paternity were the "social" ones as provided by that Code. The issue before the Court is not whether the DNA evidence was reliable or whether Ch. was the applicant's father but solely whether the approach taken and the outcome of the proceedings disclosed a breach of the State's positive obligations under Article 8.

52. In the domestic proceedings at issue, which began in 2012, the courts followed the 2006 Resolution of the Plenary Supreme Court, which required the application of the 1969 Family Code to the applicant's case, making proof of cohabitation indispensable for the recognition of paternity. In the Court's view, the effects of such an approach are comparable to those of inflexible time-limits or other procedural limitations which make it impossible to establish or challenge paternity, in particular using new testing methods. The Court has on numerous occasions found that such limitations run counter to the importance of the private life interest at stake (see *A.L. v. Poland*, cited above, § 71; *Tavli*, cited above, § 34; and, for a more recent example, *Boljević*, cited above, § 55).

53. While it is not the Court's function to interpret domestic law or to express a view on the appropriateness of the legal regulation chosen by the legislature of a respondent State in a given field, in the present circumstances the Court concludes that the domestic courts' above-mentioned approach, combined with their failure to deal with the DNA evidence submitted to them with sufficient thoroughness, amounted to a breach of their positive obligations under Article 8 to secure the applicant's right to respect for his private life.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage.

57. The Government contested that claim, reiterating their position that the application was manifestly ill-founded.

58. The Court accepts that the applicant has suffered non-pecuniary damage as a result of the State's failure to comply with its positive obligations relating to the right to respect for his private life. Making an assessment on an equitable basis, it awards the applicant EUR 4,500, plus any tax that may be chargeable on that amount.

B. Costs and expenses

59. The applicant claimed 288 Ukrainian hryvnias (UAH, approximately EUR 7) for postal expenses incurred during the proceedings before the Court,

as well as translation costs of UAH 3,800 (approximately EUR 93). He also claimed EUR 2,000 in lawyer's fees for representation before the Court. The contract between the applicant and his lawyer provides that the applicant must pay that amount after the Court delivers a judgment regardless of the conclusions it reaches. The applicant provided a detailed description of the tasks fulfilled, the time spent by his lawyer and his fees (20 hours of work at the rate of EUR 100 per hour) and asked for that amount to be paid directly to his lawyer's account.

60. The Government contested those claims. As to the postal services, they noted that the receipts provided by the applicant did not show that the payments had been made specifically for correspondence with the Court. As to the translation costs, they noted, firstly, that, in principle, as the applicant was represented by a lawyer who, in accordance with the Rules of Court, should have a good command of one of the official languages of the Court, no need for translation should have arisen. They argued further that the document submitted in support of that claim, namely a simple certificate by a translator attesting the payment, was not acceptable evidence. As to the lawyer's fees, the Government argued that the amount claimed by the applicant was excessive; in this respect they referred to the awards made by the Court in *Kulykov and Others v. Ukraine* (nos. 5114/09 and 17 others, § 159, 19 January 2017) and *Bogdanov v. Ukraine* ([Committee], no. 27380/20, § 21, 4 May 2023).

61. 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. As to legal fees, although the applicant has not yet paid them, he is under a contractual obligation to do so. As can be seen from the case material, Mr Fokiy duly represented the applicant before the Court, and is therefore entitled to seek payment of his fees under the contract. Accordingly, the Court considers that the fees have been "actually incurred" (see *Belousov v. Ukraine*, no. 4494/07, § 115, 7 November 2013, with further references). The Court also notes that it has already ruled in certain cases that awards in relation to costs and expenses can be paid directly into the accounts of applicants' representatives (ibid., § 116, with further references).

62. Nevertheless, regard being had to the documents in its possession and the above-mentioned criteria, the Court considers it reasonable to award EUR 500 in legal fees for the proceedings before the Court, to be paid into the bank account of the applicant's lawyer, Mr Fokiy, as indicated by the applicant.

63. The Court finds the applicant's other claims for costs and expenses not substantiated with relevant documents.

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, 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 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of legal fees, to be transferred directly to the account of the applicant's lawyer, Mr B.V. Fokiy;
   (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 14 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Georges Ravarani President