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IN THE “WAITING ROOM” OF REFORM: BALANCING AUTONOMY AND PROTECTION IN NORTH MACEDONIAN FAMILY LAW WITH A FOCUS ON THE CONSTITUTIONAL COURT’S RULINGS REGARDING THE CHILD’S RIGHT TO KNOW THEIR ORIGINS*

Abstract

The Macedonian Family Law, adopted in 1992 following the country’s independence, sought to establish a distinct national identity while still reflecting Yugoslav legal traditions. Despite multiple amendments aimed at adapting the legislation to evolving societal and familial realities, the reforms have been piecemeal, leaving the legal framework outdated in terms of its substance, structure, and coherence. A Commission has been drafting a new Civil Code, including Family Law, for nearly 15 years. NGO and citizen initiatives have addressed specific issues, such as granting adopted children the right to know their origins and introducing joint parental responsibilities following divorce. The Government has faced several adverse judgments from the European Court of Human Rights in cases concerning child custody and the enforcement of decisions following divorce or separation, the right of adopted persons to respect for their private life, and the right of transgender persons to legal recognition. Nevertheless, comprehensive reform remains “in the waiting room”. Pending legislative overhaul, this paper analyses key issues in Macedonian family law. It examines children’s rights under the UN Convention on the Rights of the Child, the rights of vulnerable adults under the UN Convention on the Rights of Persons with Disabilities, and the broader protection of private and family life under the European Convention on Human Rights. The analysis also considers a Constitutional Court decision concerning an important children’s right – the right to know one’s origins – and assesses whether the forthcoming Civil Code will comply with international human rights

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standards. It is concluded that the courts – including the Constitutional Court, the first-instance courts, the appellate courts, and the Supreme Court – possess the capacity to promote and facilitate reforms in family law, provided that they consistently apply not only domestic legislation but also the international standards by which the State is bound through the ratification of international instruments, while carefully interpreting the jurisprudence of the European Court of Human Rights.

Keywords: *North Macedonia, outdated family law, autonomy, protection, children's rights, public law, private law*

1. INTRODUCTION: FAMILY LAW BETWEEN AUTONOMY AND PROTECTION – SETTING THE STAGE FOR REFORM IN NORTH MACEDONIA

Family law embodies one of the most sensitive intersections between individual autonomy[1] and protection as state intervention.[2] On the one hand, it enables respect

[1] Autonomy is a concept that has been elaborated profoundly in developmental psychology, moral, political and bioethical philosophy, usually as a capacity to make informed, unforced decisions. It is rooted in the concept of respect of persons and their capacity for self-determination and often associated with capacity to make decisions. For instance, in biomedical ethics, assessing a patient's competence is crucial, especially in cases involving minors or those with cognitive impairments (see more in: Beachump and Childress, 2001). In law, the concept of autonomy is related to the institute of legal capacity. In the Republic of North Macedonia, there is a difference between legal capacity in a narrow and in a wider sense. In a wider sense, it means the capacity to have rights (mk. *правна способност*) and is acquired at birth (Art. 45.a of the Law on Obligations, Official Gazette of the Republic of North Macedonia, nos. 18/01, 78/01, 4/02, 59/02, 5/03, 84/08, 81/09, 161/09, 23/13, 123/13, 215/21, 154/23) means the ability of a person to have rights and liabilities, i.e. to be a subject before the law. In a narrow sense, legal capacity is the capacity to act or exercise these rights (mk. *деловна способност*) or sometimes referred to as business capacity or acting legal capacity and it assumes the ability to make independent decisions about rights and obligations. The legal (business) capacity is acquired upon reaching 18 years of age (the age of maturity). Only in the case of this capacity, full or partial deprivation is possible. In the Macedonian legal system, there is full and partial deprivation of legal capacity. Legal capacity in a narrow sense (business capacity) means a possibility for a person to be recognized as a subject – holder of rights and responsibilities and acting accordingly (to execute them). It is a precondition for enjoying both personal and property rights: consenting decisions about personal choices – where to live, medical treatments, concluding contracts, filing appeals and legal remedies, concluding marriage, acknowledging and rebutting parenthood, etc., but also political rights, including voting. Natural persons up to 14 years and adults (over 18 years) deprived of legal capacity are legally incapable. Natural persons from 14 to 18 years and adults (over 18) with limited legal capacity have limited legal capacity, unless it is otherwise stipulated by law (Art. 45.b of the Law on Obligations). The regulation of legal capacity in North Macedonia is outdated and not in line with the international human rights standards as it may undermine autonomy and free will, especially of persons deprived of legal capacity (see more in: Ignovska, 2024a; Ignovska, 2024b; Ignovska 2024d, 7).

[2] Protection of the state refers to the measures and actions taken by a government to ensure the safety, security, and stability of its territory and citizens. This includes law enforcement, military defense, and

for the right of individuals to determine their private and family life, including matters of marriage and relationships, reproductive choices and parenthood, right to know or not to know important elements of one's private life and personal identity etc. On the other hand, it enables the state to safeguard and protect vulnerable persons – marginalized groups, children, mothers, and persons with limited/deprived legal capacity and under custody, while also preserving social values and collective morality (Ignovska, 2023b, 1–4). This tension becomes visible especially in areas such as abortion, surrogacy, assisted reproduction, same-sex unions or empowerment of children and vulnerable adults where the boundaries between private rights and public morality are constantly contested. The ECHR provides the principal framework for balancing these interests, particularly through Art. 8 (respect for private and family life), Art. 12 (right to marry and to found a family), Art. 6 (right to a fair trial), and Art. 14 (non-discrimination). Yet, even within this framework, uniform answers are rare. The European Court of Human Rights (hereinafter: ECtHR) has developed the doctrine of the "margin of appreciation", allowing states a degree of discretion in regulating family matters in line with their traditions and social values. Where a broad European consensus exists, for example, in procedural guarantees for children, the margin narrows. Where consensus is absent, such as surrogacy or same-sex marriage, it widens (Guide on Article 8 of the European Convention on Human Rights, 2018).

Nevertheless, the Court has also emphasized that the ECHR is a "living instrument," evolving with social change. While in Schalk and Kopf v. Austria (ECtHR, 2010), the Court held that states were not required to recognize same-sex marriage, citing the absence of a European consensus, more recently, in Fedotova and Others v. Russia (ECtHR, 2023; Kochenov and Belavusau, 2019), it found that complete denial of legal recognition of same-sex couples violated Art. 8 (Ignovska, 2018). The Court of Justice of the European Union, in Coman *et al.* v. Inspectoratul General pentru Imigrări (2018), even went further, holding that the term "spouse" in European Union law is gender-neutral, opening the door for recognition in cross-border situations. This gradual development underscores how family law reflects broader struggles: between individual and collective values, between national traditions and European standards, and between stability and change.

policies aimed at preventing internal and external threats. For instance, the most important European Convention on Human Rights (Council of Europe Treaty Series (CETS) – nos. 005, 009, 044, 045, 046, 055, 114, 117, 118, 140, 146, 155, 177, 187, 194, 213, 214, Rome, 4 November 1950; hereinafter: ECHR) article for family law – Art. 8 balances between autonomy and protection by promoting the first in para. 1 and allowing the second in exceptional circumstances in para. 2: "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 wellbeing 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."

Many European states, including those of the former Yugoslavia, have had to reconcile inherited family law traditions with the requirements of European integration and evolving international standards. Croatia, for instance, constitutionally restricted marriage to opposite-sex couples but subsequently enacted the Law on Same-Sex Life Partnership (Official Gazette of the Republic of Croatia, nos. 92/14, 98/19) to align with European law. That Act grants same-sex partners many important rights, from health insurance to family pensions, even though adoption is still excluded (Ignovska, 2018). In 2022, the Croatian High Administrative Court issued a historic ruling confirming that same-sex couples in life partnerships have the right to adopt children. The ruling decision finds the current Civil Union Law discriminatory since implies a different treatment and does not comply with the positions of the ECtHR (Carzedda, 2022). That means that now, even though Croatia still does not have a national law explicitly regulating adoption by same-sex couples, judicial practice has established a legal precedent.

In North Macedonia, by contrast, same-sex couples still have no legal recognition. despite clear ECtHR jurisprudence – from Vallianatos and Others v. Greece (2013), Oliari and Others v. Italy (2015), Orlandi and Others v. Italy (2017) to Fedotova and Others v. Russia (2023), holding that states cannot deny all legal status to such unions. Even though it is almost certain that a future application against North Macedonia on this matter would succeed, no such application has yet been submitted. Therefore, North Macedonia risks being the last country in the Balkans to address this issue. Even the long-drafted Civil Code (Draft Civil Code, 2023;[3] Ministry of Justice, 2011) makes no mention of it. The case of X v. North Macedonia was a breakthrough for transgender rights, but it also highlighted the Court's inconsistent terminology, sometimes using "sex", sometimes "gender", while others both – sex/gender leaving national implementation incomplete and contested (X v. the Former Yugoslav Republic of Macedonia, ECtHR, 2019; see also: Ignovska and Arsov, 2025; Action plan 2023; Action plan 2020). Added to this, resistance from political actors and the Church has made progress even more difficult (Trajanoski, 2023).

Beyond the ECHR, international treaties such as the UN Convention on the Rights of the Child (UN Treaty Series, vol. 1577, 20 November 1989; hereinafter: CRC) and the UN Convention on the Rights of Persons with Disabilities (UN Treaty Series, vol. 2515, p.3, 2008; hereinafter: CRPD) emphasize the rights of vulnerable groups, further urging domestic legislatures to modernize family law. At the same time, they highlight two seemingly conflicting yet complementary elements that must coexist: the protec-

[3] Although a public consultation was conducted on the Draft Civil Code (mk. *Нацрт Граѓански законик*), the document has not been published nor otherwise made accessible to the public. The Draft Civil Code was made available to the author of this article (at the expert consultation organized by the Institute Iuridica Prima).

tion of the vulnerable and their empowerment through respect of their autonomy. This message is frequently reiterated, though rarely easy to implement.

North Macedonia still has a Family Law dating back to 1992 (Official Gazette of the Republic of North Macedonia, nos. 80/92, 9/96, 38/04, 33/06, 84/08, 67/10, 156/10, 39/12, 44/12, 10/13, 187/13, 113/14, 153/14, 150/21, 199/23). It has been amended, but never comprehensively reformed (Ignovska 2024c; Ignovska 2020b). As a result, we see a series of contradictions in practice.

One example is divorce and respect of autonomy versus alleged protection by the state for purposes of lowering the divorce rates. Historically, all countries of the region had mandatory conciliation before Centers for Social Work prior divorce. Croatia abandoned this and introduced compulsory counselling and family mediation, based on information and voluntary agreement (Poretti, 2015). The primary purpose of counseling is to provide accurate information regarding divorce consequences, children's rights, and the preparation of joint parental plans, rather than to reconcile spouses or impose outcomes. Family mediation on the other hand, is distinct from counseling and from the older conciliation procedures. Its introduction reflects a shift towards promoting autonomy in decision-making, improving communication among family members, safeguarding the best interests of the child, and reducing the financial and emotional costs of family disputes. North Macedonia is one of the rare countries that still has the conciliation prior divorce as a matter of a try to reconcile the spouses. Since this trials are mandatory and nearly never successful, this is comparatively and internationally an outdated model (Ignovska, 2026). In addition, and closely related to the above (as divorcing parties are often in conflict, which affects their willingness and ability to continue exercising joint parental responsibilities), North Macedonia still does not recognize joint parental custody after divorce. The ECtHR has already found violations in case of Mitovi v. the Former Yugoslav Republic of Macedonia (2015) and Oluri v. North Macedonia (2020). The Oluri case in particular exposed serious procedural flaws, as decisions were left to the Centre for Social Work instead of the courts, undermining the very essence of judicial protection (Ignovska, 2023a; Ignovska, 2020a). The most important novelties in the Draft Civil Code are precisely about these matters – introduction of joint and separate parental custody after divorce and attempts to overcome the legacy of the conciliation institute and to replace it with mandatory counseling (if they have children) and mediation. The draft introduces mediation as a method for resolving disputes and promoting autonomy and voluntariness in three main areas in family disputes: (1) divorce between spouses, (2) custody and maintenance between parents and children, and (3) other significant family matters (Arts. 4:70–4:74, 4:47 and 4:62 of the Draft Civil Code).

Another example concerns the balance between autonomy and protection of the elderly, persons deprived of legal capacity and persons under guardianship. Croatia has

made efforts to improve their legal position. Notably, the system of guardianship was partially reformed in the most recent Family Law, although some criticisms regarding its implementation remain (Rešetar and Lucić, 2024). Following the CRPD, the deprivation of legal capacity poses a problem from the perspective of human rights protection, as such individuals find themselves in a situation resembling "civil death". Therefore, comparatively speaking, the global trend is to uphold the autonomy of these individuals by introducing a supported decision-making model instead of a substituted decision-making model. This stands in stark contrast to the current situation in North Macedonia, where there has been no serious discussion about reforming legal capacity, and the Draft Civil Code remains silent on the issue. The general impression is that this topic is largely absent from public discourse (Ignovska, 2024c).

The third example concerns the child's right to know their origins, which requires balancing the child's autonomy with the state's protective role in safeguarding parental anonymity, preventing unsafe abortions, and addressing child abandonment. Adopted children and children conceived through gamete donation, unlike in Croatia, have no legal access to information about their genetic identity in North Macedonia. Yet in practice, they often rely on their private initiatives on social networks to discover their origins. This is contrary to Art. 8 of the ECHR and Arts. 7 and 8 of the CRC and the Court's case law in Odièvre v. France (ECtHR, 2003), Godelli v. Italy (ECtHR, 2012) and most recently Mitrevska v. North Macedonia (ECtHR, 2024). In 2018, the Constitutional Court of North Macedonia struck down the rule that limited a child's right to contest parenthood until the age of 21 (Constitutional Court's Decision, 2018). The Court argued that the right to know one's genetic origin is unlimited. Nevertheless, it blurred two very different issues: access to genetic information, and legal challenges to parenthood.4 In doing so, it risked destabilizing established family relations and misread Strasbourg case law, such as Mikulić v. Croatia (ECtHR, 2002). The real problem – the lack of a clear right of access to genetic information – remains unsolved.

This article examines the implications of stagnation in family law. Numerous topics warrant analysis, elaboration, and eventual reform concerning both children and adults as family members. Since it is not possible to address all of them within a single article, and given that many have already been discussed by the author, the discussion focuses on those issues that require balancing autonomy and protection in relation to children that still remain inadequately addressed at the national level. In this context, the second

[4] The ECtHR reiterated that the right to an identity, which includes the right to know one's origins, is an integral part of the notion of private life. However, that right is distinct from the right to bring proceedings to have a legal parent-child relationship established (see also in Godelli v. Italy, ECtHR, 2012, para. 49: "The Court points out that it has already stated (Odièvre v. France, ECtHR, 2003, para. 43) that the issue of access to information about one's origins and the identity of one's birth parents is not of the same nature as that of access to a case record concerning a child in care or to evidence of alleged paternity.").

part analyses the current state of family law regulation, with particular attention to children's rights in proceedings that affect them, such as those concerning the disclosure of genetic identity and the establishment of parenthood, through the rationale of the Constitutional Court in the aforementioned case and the practice of the ECtHR. The final part offers conclusions on whether North Macedonia is capable of moving beyond its current "waiting room" status and aligning its family law framework with European human rights standards.

2. INDIVIDUAL AUTONOMY AND STATE PROTECTION REGARDING CHILDREN IN PROCEEDINGS AFFECTING THEIR PRIVATE AND FAMILY LIFE: THE CONSTITUTIONAL COURT'S RULINGS

The 2018 Decision of the Constitutional Court of the Republic of North Macedonia (153/2017, 20 June 2018) concerns the annulment of Art. 67, para. 2 and Art. 70, para. 2 of the Family Law, which prescribed a time limit within which a child could bring an action to contest paternity or maternity, namely no later than the age of twenty-one. In its reasoning, the Court referred to Art. 8, para. 1, line 3 of the Constitution of the Republic of North Macedonia (Official Gazette of the Republic of North Macedonia, nos. 1/92, 31/98, 91/01, 84/03, 107/05, 3/09, 49/11, 6/19, 36/19), which identifies the rule of law as one of the fundamental values of the constitutional order. However, the essence of the judgment more directly pertains to line 1 of the same Article, which guarantees respect for the fundamental freedoms and rights of the individual and the citizen, as recognized by international law and enshrined in the Constitution. The Court also relied on Art. 9 of the Constitution, ensuring equality of citizens in their freedoms and rights irrespective of various personal grounds, as well as on Art. 25, which protects the privacy of personal and family life, dignity, and reputation of every citizen, a provision most closely corresponding to Art. 8 of the ECHR. Furthermore, the Decision interprets Art. 8, para. 2 of the ECHR as encompassing the right to know one's origins, thereby prohibiting state interference with this aspect of private life. The Court concluded that imposing an age limit for initiating proceedings to contest paternity or maternity constitutes an unjustified restriction on the right of the concerned individual to seek judicial determination of their personal status (Constitutional Court's Decision, 2018, para. 5). The Decision continues with the following explanation: "According to the rights granted under Art. 8 of the ECHR, the child has the right to establish a legal relationship with his or her biological father or mother, since otherwise this would constitute an interference with the child's right to respect for his or her private and family life." (Constitutional Court's Decision, 2018, para. 5). Furthermore, the Decision also examines another contentious provision of the Family Law – Art. 2, which defines

the family as "a life community of parents and children and other relatives, if they live in a shared household. The family arises through the birth of children and through adoption." This definition could be criticized for its narrow and exclusionary character. It that sense, it fails to recognize the diversity of contemporary family forms, such as marital and non-marital partnerships (without children) or families formed through gestational surrogacy. In the context of the Constitutional Court's reasoning, however, its specific relevance lies in the omission of family situations where, for instance, the mother's subsequent partner has recognized a child born out of wedlock as his own, despite not being the child's biological father. This issue parallels the circumstances examined in Róman v. Finland (ECtHR, 2013) to which the Constitutional Court expressly referred, and which is also reflected in the provisions of the Family Law itself (Arts. 51–57 of the Family Law). It is particularly significant that declarations of acknowledgment of paternity, as well as the corresponding declarations of consent by the mother and the child, are deemed irrevocable. Pursuant to Art. 59 of the Family Law, such declarations may be annulled only if made under coercion, fraud, or mistake. The Constitutional Court further referred to Art. 64, para. 2, which prescribes an exceptionally short time limit (three months from the child's birth) within which the presumed father may contest paternity. Additionally, Art. 106 authorizes the mother to give consent for the child's adoption. Read in conjunction with Art. 103, para. 9, the provision stipulates that the consent of a person identified by the mother as the parent of a child born out of wedlock is not required if that person fails to initiate proceedings for the acknowledgment or establishment of paternity within three months from the child's birth. Although not explicitly addressed in the Court's reasoning, paras. 3 and 4 of Art. 103 raise comparable constitutional concerns. These provisions exclude the requirement of parental consent in cases where a parent has been deprived of legal capacity or parental rights, where the parent's residence has remained unknown for more than nine months, or where the parent has failed to demonstrate any interest in the child during that period. From a constitutional perspective, such provisions appear even more problematic than those annulled by the Court, namely, the rules restricting the child's right to contest paternity or maternity to the age of twenty-one.

While the Constitutional Court's decision did not prompt an adequate legislative revision of the Family Law, beyond the annulment of the challenged provisions, nor is influential on the Draft version of the Civil Code,[5] subsequent amendments were made to address the unduly short period granted to the presumed father for contesting paternity (Law on Amendments and Supplements to the Family Law, Official Gazette of the Republic of North Macedonia, no. 199/23). Consequently, the Family Law was amended to extend the period within which a lawsuit to contest paternity may be in-

5 Arts. 4:144, 4:151 and 4:156 from the Draft Version of the Civil Code regulate this matter in the exact way the Family Law does.

itiated to one year from the child's birth. Under Art. 65, a man asserting that he is the child's biological father may challenge the paternity of the presumed father only if he simultaneously seeks judicial recognition of his own paternity, thereby ensuring that the child is not left without a legally recognized parent. Furthermore, para. 3 of Art. 67 was revised to address situations in which the mother's marital partner has declared before the Center for Social Work that he does not regard himself as the child's father but refrains from initiating proceedings to contest paternity. In such circumstances, the child's guardian, with the prior approval of the Center for Social Work, may file the lawsuit within three months following the partner's declaration (Art. 67, para 3 of the Family Law). These amendments are substantive and significant, particularly given that, previously, the presumed father often was unaware or, if aware, lacked sufficient time within the original three-month period, or one year if allowed by the Supreme Court ((old) Art. 65 of the Family Law) to challenge paternity following the child's birth. Consequently, the legislation introduced a one-year limitation period for filing a claim to contest paternity, extending the time frame previously available to the parties. A man asserting biological fatherhood may contest the paternity of the presumed father only if he simultaneously petitions for a determination of his own paternal status ((new) Art. 65 of the Family Law), thereby safeguarding the child from being left without parental recognition. Of particular concern is the provision that exempts fathers from the requirement to consent to adoption in cases where the father has been deprived of legal capacity or parental authority, where his whereabouts are unknown, where he has shown no interest in the child, or where he has not acknowledged the child as his own. Such exemptions raise significant issues under the framework of the Council of Europe's Convention on the Adoption of Children (Council of Europe Treaty Series (CETS) – no. 202, Strasbourg, 27 November 2008), as they may undermine procedural safeguards intended to protect the rights of both the child and the biological parent (Art. 5, para. 2 and Art. 22, para. 3).

In its reasoning, the Constitutional Court noted that, given the complex nature of the legal question, it sought guidance from the Venice Commission's Forum, which referenced pertinent ECtHR case law, including Calin and Others v. Romania (ECtHR, 2016), Roman v. Finland (ECtHR, 2013), Mikulić v. Croatia (ECtHR, 2002), and Jäggi v. Switzerland (ECtHR, 2006). While the cited cases served an illustrative purpose, they did not directly form the basis for the annulment of the challenged provisions. Specifically, Calin and Others v. Romania (ECtHR, 2016) addressed the child's inability to challenge the mother's or legal guardian's inaction in establishing paternity within a set timeframe, whereas Roman v. Finland (ECtHR, 2013) concerned a violation of the child's right to private life due to the lack of means to discover the identity of the biological father. On this basis, the Court determined that rigid statutory deadlines for initiating paternity proceedings, coupled with the national courts' failure to adequately balance competing interests, amounted to a breach of the child's right to private life

under Art. 8 of the ECHR (Roman v. Finland, ECtHR, 2013). Conversely, the Mikulić v. Croatia (ECtHR, 2002) judgment has been subject to misinterpretation. While the case is a seminal authority on the differentiation between private and family life within the scope of Art. 8 of the ECHR, the ECtHR also held that a violation of Art. 6, para. 1, occurred due to the unreasonable duration of the legal proceedings. The domestic courts failed to order DNA testing of the alleged father, leaving the child in prolonged uncertainty regarding her identity. The ECtHR found violations of Art. 6, para. 1, Art. 8, and Art. 13 of the ECHR, emphasizing that the child's right to know her genetic origin forms part of private life and that national procedures must ensure a fair balance between the interests of the child and the alleged father. The ECtHR supported the decision by acknowledging that the paternity procedure under the Croatian law did not strike a fair balance between the right of the applicant to certainty when it comes to the child's personal identity and the supposed father's denial to undergo DNA tests as a prerequisite for establishing the link with the child. The case represents an important step in the ECtHR's recognition of the child's right to know the genetic origin as part of personal identity and therefore private life, even though there was no existent family life between the child and the presumed father.

In general, the case law of the ECtHR concerning the establishment or rebuttal of legal parenthood can be observed in both marital and extramarital contexts (Ignovska, 2015, 53–57, 57–61, 64–68).

In the first context, legal affiliation is based on the marital presumption of paternity. The ECtHR has already developed a substantial body of case law in this area. The case of Kroon and Others v. the Netherlands (ECtHR, 1994) concerned the marital presumption that a child born during marriage or within 300 days of its dissolution was presumed to be the husband's. The applicant, separated but not divorced from her missing husband, had a child with another partner but was barred from rebutting the presumption and registering her partner as the father. The ECtHR found a violation of Art. 8, holding that marriage is not the only basis for family life and that states must provide mechanisms enabling the legal establishment of family ties from birth. The ECtHR emphasized that biological and social realities should prevail over rigid legal presumptions. In Chavdarov v. Bulgaria (ECtHR, 2010), the applicant, living with a married woman and their three children, could not rebut the husband's paternity due to national law. The ECtHR acknowledged the existence of "family life", but found no violation of Art. 8, noting that the applicant failed to use available national remedies, such as adoption or custody to establish a legal link. The Court underlined the wide margin of appreciation in such matters and the lack of European consensus on whether biological fathers should be able to rebut marital presumptions. In Schneider v. Germany (ECtHR, 2011), the applicant, claiming to be the biological father of a child born within marriage, was denied access and contact because no social relationship

existed between them. The ECtHR found a violation of Art. 8, holding that refusing contact and information infringed the applicant's private life and that German courts had mechanically protected the marital presumption without balancing competing interests or considering the child's best interests. In Mizzi v. Malta (ECtHR, 2006), the applicant sought to rebut his paternity after DNA tests confirmed he was not the biological father of a child born during marriage. Maltese law required him to prove his wife's adultery and concealment of the birth to proceed. The ECtHR found violations of Art. 6, para. 1, and Art. 8, as the applicant had been denied access to court and legal clarity regarding his family status. The ECtHR also found a violation of Art. 14 in conjunction with Art. 6, para. 1, and Art. 8, since restrictive time limits applied only to him and not to other interested parties. The M.B. v. the United Kingdom (ECtHR, 1994) case (before the former Commission) involved a married woman who conceived a child through an extramarital affair. Her lover sought DNA testing and contact with the child, but the authorities refused, prioritizing the stability of the marital family. The Commission held there was no violation of Arts. 6, 8, or 14, reasoning that the applicant never had established family life and that maintaining the security of the existing family prevailed over biological truth. The Commission also found that the difference in treatment between men and women stemmed from biological realities, not discrimination. Finally, in Anayo v. Germany (ECtHR, 2010), the applicant, the biological father of twins born from an extramarital relationship, was denied any contact because he lacked parental responsibility and no family life existed. The ECtHR found a violation of Art. 8, holding that the applicant's wish and efforts to establish family life (blocked by the mother and legal father) fell within the article's protection. The ECtHR emphasized that the German courts failed to assess the children's best interests and reiterated that states must balance the rights of all parties in disputes over parental ties.

In the second context – establishing parental legal affiliation out of wedlock, the case law is also rich. In Ahrens v. Germany (ECtHR, 2012) and Kautzor v. Germany (ECtHR, 2012), the ECtHR examined Art. 8 (alone and with Art. 14) concerning the refusal of German courts to allow alleged biological fathers to challenge the paternity of a child already legally recognized by another man. In Ahrens, despite genetic proof of biological paternity, the Court of Appeal prioritized the stability of the existing family life between the child and the legal father. Similarly, in Kautzor v. Germany (ECtHR, 2012), the applicant was barred from both paternity proceedings and genetic testing, as German law did not allow establishment of biological paternity without legal paternity. The ECtHR found that while these refusals interfered with private life, they did not violate Art. 8, since no family life existed between the applicants and the children, and disturbing the established families would cause greater harm. The ECtHR also rejected discrimination claims under Art. 14, upholding the wide margin of appreciation afforded to states in balancing biological and social parenthood. The landmark Marckx v. Belgium (ECtHR, 1979) case transformed the legal status of "illegitimate" children.

The applicant, a single mother, was required under Belgian law to first recognize and then adopt her own child to secure inheritance and family rights available automatically to married parents. The ECtHR found violations of Art. 8, and Art. 14, holding that respect for family life must not discriminate between children born in or out of wedlock. The ECtHR emphasized that single mothers and their children constitute a family "no less than others" and that family life extends to close relatives such as grandparents. The need for adoption to create full family ties was itself discriminatory. Subsequent cases – Inze v. Austria (ECtHR, 1987), Mazurek v. France (ECtHR, 2000), and Merger and Cros v. France (ECtHR, 2004) reinforced this principle in the context of inheritance rights. In each, the ECtHR found violations of Art. 14 in conjunction with Art. 1 of Protocol no. 1, condemning distinctions between "legitimate" and "illegitimate" children. The Court noted a clear European trend toward eliminating such terminology and harmonizing inheritance rights regardless of birth status. In Camp and Bourimi v. the Netherlands (ECtHR, 2000) the Court again found a violation of Arts. 8 and 14, ruling that a child born out of wedlock should not be treated differently in inheritance matters simply because the father died before birth. The ECtHR reiterated that only "very weighty reasons" can justify distinctions based on birth. Finally, in Yousef v. the Netherlands (ECtHR, 2002), the applicant, a biological father who had minimal contact with his child born out of wedlock, was denied recognition of paternity after the mother's death. The ECtHR found no violation of Art. 8, agreeing that the domestic courts had rightly prioritized the child's best interests, stability, and welfare over the applicant's late attempt to establish fatherhood. The Court accepted that the decision was proportionate, especially given the applicant's limited previous involvement and potential ulterior motives.

The case law of the ECtHR in the field of children's rights, their right to know information about their genetic origin is also rich. The ECtHR has consistently examined the right to know one's origins as part of the right to respect for private life under Art. 8 of the ECHR. In Odièvre v. France (ECtHR, 2003), the applicant, adopted after birth under rules ensuring maternal anonymity, claimed a violation of Arts. 8 and 14 for being denied access to identifying information about her biological family. The Court acknowledged that the circumstances of one's birth form an essential part of personal identity protected under Art. 8 but found no violation, holding that France had struck a fair balance between the child's right to know, the mother's right to anonymity, and public interests such as protecting women's health and preventing illegal abortions. The later establishment of a National Council on Access to Information about Personal Origins, enabling conditional access to identifying data, further demonstrated France's effort to balance competing rights. In Godelli v. Italy (ECtHR, 2012), the ECtHR reached the opposite conclusion due to country's indifference. The applicant, abandoned at birth, was denied access to any identifying information about her origins due to the absolute secrecy imposed by Italian law. While reaffirming the

State's margin of appreciation, the Court held that the Italian system failed to provide any mechanism to balance the mother's and the child's interests, thus violating Art. 8. It emphasized that States must ensure procedures allowing, at least conditionally, access to one's biological origins. In Jäggi v. Switzerland (ECtHR, 2006), the applicant was prevented from conducting post-mortem DNA testing to establish paternity. The ECtHR found a violation of Art. 8, stressing that knowledge of one's ancestry is a vital component of personal identity and that legal certainty alone cannot justify denying this right. The interest in discovering biological truth, it held, does not diminish with age. In Gaskin v. the United Kingdom (ECtHR, 1989), the applicant, formerly under foster care, was denied access to his childhood records due to third-party confidentiality. The ECtHR found a violation of Art. 8, recognizing that access to personal history is essential for understanding one's identity and development. However, it found no violation of Art. 10, holding that the ECHR does not impose a positive obligation to disclose information against the will of local authorities. The judgment underscored that when third-party consent is withheld, an independent authority should decide on access to ensure proportionality and fairness. In Mandet v. France (ECtHR, 2016), the presumed biological father sought recognition of his paternity in respect of a child who already had both a legal and social father, requesting that the existing family ties remain unchanged. Nevertheless, the domestic courts held that it was in the child's best interests to know the truth about his origins, therefore the child's duty to know its origins prevailed over his wish to remain in the dark (Merckx, 2016).

Across these cases, the ECtHR has progressively developed a nuanced interpretation of Art. 8, framing the right to know one's origins as a relational and balanced right, requiring States to reconcile competing private and public interests while safeguarding individual identity. According to the ECtHR, both biological ties and cohabitation are two of the most important common factors to be taken under consideration when examining the existence of the family life. The notion of family life in Art. 8 is not confined solely to formally established ties and may encompass other *de facto* relationships or even forms of intended family life. Private life is a broader concept which may encompass the right to establish and develop relationship with other human being. It may embrace aspects of an individual's physical and social identity (Council of Europe, n. d.). Regarding contestation of the paternity of a child, the ECtHR has examined among others, the existence of rigid limitation periods for contesting paternity and the impossibility of the biological father to contest the paternity of his alleged biological child (Mizzi v. Malta, ECtHR, 2006; Shofman v. Russia, ECtHR, 2005). An inflexible time for contesting paternity which runs irrespective of the putative father's (un)awareness of the circumstances casting doubt on his paternity may raise serious questions in terms of protection of his private and family life. However, the ECtHR establishes that statutory deadlines for filing parentage claims are not inherently incompatible with the ECHR, as they serve the legitimate aim of ensuring legal certainty and the stability

of family relationships (Mizzi v. Malta, ECtHR, 2006; Backlund v. Finland, ECtHR, 2011). Under the principle of the 'margin of appreciation,' the Court recognizes that member states possess the discretion to regulate the specific methods of establishing biological origins according to their domestic legal traditions, rather than having national authorities substituted by the Court's own judgment (Çapin v. Turkey, ECtHR, 2019; Chavdarov v. Bulgaria, ECtHR, 2010). Consequently, the ECtHR's oversight under Art. 8 of the ECHR is focused not on the existence of such time limits *per se*, but on their proportionality, specifically, whether the nature and application of a particular deadline strike a fair balance between the individual's right to identity and the general interest of legal stability (Radić and Morankić, 2025, 222). Also, the ECtHR has not found violation in cases where the alleged biological father's claim to contest the paternity of another man was rejected on the basis of absence of close personal relationships between him and the child (Ahrens v. Germany, ECtHR, 2012; Kautzor v. Germany, ECtHR, 2012).

Thus, the Constitutional Court's decision from 2018 not only misinterpreted the ECtHR's case law and consequently annulled the wrong provisions of the Family Law (Art. 67, para. 2, and Art. 70, para. 2 instead of Art. 123-a), but also dismissed a subsequent separate initiative that explicitly challenged Article 123-a without even assessing its merits (Resolution of the Constitutional Court of the Republic of North Macedonia, 93/2019, 19 December 2019). The approach taken by the Constitutional Court decision from 2018 severely undermines the legal certainty of already established family relationships. The Court failed to account for the fact that the right to information regarding one's origins and the right to contest parentage constitute distinct and separate legal proceedings. This lack of differentiation is also sometimes reflected in academic discourse, particularly within literature from countries sharing the legal traditions of the former Yugoslavia. Some scholars criticize the overemphasis on biological truth in parentage disputes, arguing that "uncontrolled and indefinite access to such genetic testing has become a factor in destabilizing family relationships" (Ponjavić, 2024, 14). However, such critiques often fail to draw a clear distinction between these two separate legal avenues. Traditionally, courts rely on DNA evidence as conclusive in parentage disputes, rather than integrating it with the more nuanced standard of "factual family life". Moreover, the Court cited several ECtHR cases, including the aforementioned Odièvre v. France (2003). Yet, rather than amending Art. 123-a of the Family Law to explicitly grant children the right to access information about their genetic origin, the Court instead removed the time limit for challenging parenthood altogether. Additionally, the Court misinterpreted the key European family law case, Mikulić v. Croatia (ECtHR, 2002), framing it as an infringement of the applicant's family life, whereas the case actually concerned the child's private life. This distinction is crucial: family life, in the sense of Art. 8 of the ECHR, was not at issue; rather, the prolonged proceedings

implicated Art. 6 of the ECHR, given the alleged father's refusal to provide DNA material on the grounds of protecting his bodily integrity.

Finally, the extent to which the Constitutional Court's decision diverged from its stated rationale – namely, the protection of the right to know one's origins as an essential aspect of private life is best illustrated by the recent case of Mitrevska v. North Macedonia (ECtHR, 2024). In this case, the ECtHR found that North Macedonia had violated its positive obligations under Art. 8 of the ECHR, as the domestic authorities failed to strike a fair balance between the competing interests at stake and thereby exceeded their margin of appreciation. Furthermore, the authorities made no effort to determine whether either the applicant's biological parents or her adoptive parents had expressed a wish to keep the adoption secret (Stefanovska, 2024). As a result, it was concluded that the Macedonian institutions involved in the case (from the Centre for Social Work to the Constitutional Court) failed to adequately consider the interests of the applicant as an adopted adult. In the decision regarding the initiative that challenged the constitutionality of Art. 123-a of the Family Law, the Constitutional Court prioritized the protection of the general interest while neglecting the individual rights and interests of the adopted person (something that the Court claimed it already did in the previous decision).

3. CONCLUSION: FROM WAITING TO ACTION – JUDICIAL IMPLEMENTATION AS A CATALYST FOR FAMILY LAW REFORM PENDING LEGISLATIVE REFORMS

At the constitutional level, Arts. 98 and 118 of the Constitution obligate Macedonian courts to apply international treaties directly and to give them precedence over domestic law. In practice, however, courts rarely engage systematically with ECtHR jurisprudence (Ristić *et al.*, 2020), and reforms in family law remain fragmented, reactive, and often non-responsive. This points to a deeper issue: even where international treaties are directly applicable, courts in North Macedonia often remain constrained by the literal text of domestic legislation. Only the higher courts (the Appellate Courts and, primarily, the Supreme Court) are gradually beginning to reference Strasbourg case law. Although the Constitutional Court has issued several family law-related decisions citing ECtHR jurisprudence, these rulings have been shown to be flawed in their interpretation of the ECHR and the Court's case law. This situation represents both an opportunity and a cautionary note: as long as international standards are not applied appropriately and consistently, national reforms will remain trapped in the "waiting room".

The aforementioned Constitutional Court decisions diverged from their stated purpose – to afford children individual autonomy in seeking and discovering their origins.

Instead, they prioritized the protection of biological parents' anonymity and the secrecy surrounding the foundations of intended parenthood, purportedly in the interest of safeguarding public order and preventing practices such as illegal abortions and the abandonment of children at birth. Instead of focusing on Arts. 2,[6] 123-a[7] or 71 and 75[8] from the Family Law, the public attention was focused on annulment of Art. 67, para. 2, and Art. 70, para. 2 of the Family Law.[9] Specifically, the age limit for a child to contest paternity does not pose a significant issue, since the child could challenge paternity even before attaining full legal capacity, through representatives such as the mother or a guardian appointed by the Centre for Social Work. Moreover, permitting a child to contest legal parental relationships indefinitely could open the door to systematic misuse of legal proceedings, particularly those relying exclusively on DNA evidence, rather than balancing biological facts with the lived reality of family life. Such an approach may facilitate malpractices and pose a serious threat to legal certainty, especially for presumed parents who have cared for the child over an extended period. Furthermore, the Court misinterpreted the ECtHR case law, which had been presented as guidance by the Venice Commission's Forum, in both its 2018 and 2019 decisions, failing to anticipate that such an approach could result in future violations of children's rights. Consequently, North Macedonia lost the case of Mitrevska v. North Macedonia (ECtHR, 2024), which concerned an identical legal question.

Thus, instead of seizing the opportunity to act as a forerunner of reform and to ensure that potential human rights violations could be addressed at a higher national level prior being addressed at a supranational level, the Constitutional Court remained "lost in translation" between national legal provisions and international human rights standards and case law. The potential to drive reforms in family law also exists for other courts (first-instance, appellate, and the Supreme Court), provided they consistently apply not only domestic law but also the international standards the state has committed to through ratification of international instruments and the careful interpretation of ECtHR's jurisprudence. This issue remains highly relevant even with the adoption of a new Civil Code, since, despite its potential to enhance the legal position of certain family members or to address specific legislative gaps, the Code risks becoming outdated before its enactment due to prolonged legislative processes and because it is already

6 That defines the family as "a life community of parents and children and other relatives, if they live in a shared household. The family arises through the birth of children and through adoption".

7 That renders that any data regarding adoptions are to be considered as classified secret.

8 That forbid establishment or contestation of maternity or paternity in cases where the parental relationship has arisen through adoption or artificial insemination. See more in: Ignovska, 2021a; Ignovska, 2021b; Ignovska, 2019.

9 That prescribed a time limit within which a child could bring an action to contest paternity or maternity.

outpaced in certain areas, for instance, at the intersection of family law and the human rights of persons with disabilities.

At its core, family law is about people and about fundamental aspects of the human condition: dignity, identity, and the right to build and sustain meaningful interpersonal relationships. Its purpose is to balance between autonomy and protection – to protect the vulnerable, but not to suffocate free will. In doing so, family law occupies a unique position at the intersection of private and public law, aiming to safeguard personal freedoms while providing necessary legal intervention in intimate spheres of life. It is an area that can never be finally settled. It is dynamic, it changes with society, and it constantly sits at the crossroads of national civil law, morality, and human rights. This is why the question remains whether family law can ever truly be codified. But one thing is certain: North Macedonia needs reforms that will take it out of the 'waiting room' and make it genuinely aligned with European and international standards, as well as with the needs of its citizens in their everyday lives.

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U „ČEKAONICI" REFORME: URAVNOTEŽIVANJE AUTONOMIJE I ZAŠTITE U OBITELJSKOM PRAVU SJEVERNE MAKEDONIJE S FOKUSOM NA PRESUDE USTAVNOG SUDA U VEZI S PRAVOM DJETETA DA ZNA SVOJE PODRIJETLO

Sažetak

Makedonski Obiteljski zakon, donesen 1992. godine nakon stjecanja neovisnosti, nastojao je uspostaviti nacionalni identitet, istodobno zadržavajući elemente jugoslavenske pravne tradicije. Unatoč brojnim izmjenama kojima se željelo prilagoditi društvenim i obiteljskim promjenama, reforme su bile parcijalne, zbog čega je cjelokupan okvir zastario u svojoj biti, strukturi i koherentnosti. Komisija već gotovo 15 godina radi na izradi novog građanskog zakona, uključujući i obiteljski zakon. Inicijative nevladinih organizacija i građana bavile su se pojedinim pitanjima, poput priznavanja prava posvojene djece da saznaju svoje podrijetlo ili uvođenja zajedničke roditeljske skrbi nakon razvoda. Vlada je suočena s nekoliko nepovoljnih presuda Europskog suda za ljudska prava u predmetima koji se odnose na skrbništvo nad djecom i izvršenje odluka nakon razvoda ili razdvajanja, pravo posvojenih osoba na poštovanje privatnog života te prava transrodnih osoba na pravno priznanje. Unatoč tome, sveobuhvatna reforma i dalje ostaje „u čekaonici". U iščekivanju zakonodavne reforme, u radu se analiziraju ključna pitanja makedonskog obiteljskog prava. Razmotrena su prava djeteta kroz Konvenciju UN-a o pravima djeteta, prava ranjivih odraslih osoba kroz Konvenciju UN-a o pravima osoba s invaliditetom te šira zaštita privatnog i obiteljskog života kroz Europsku konvenciju za zaštitu ljudskih prava i temeljnih sloboda. Pri tome, analizira se i odluka Ustavnog suda Sjeverne Makedonije koja se odnosi na važno pravo djeteta – pravo da zna svoje podrijetlo – te se procjenjuje hoće li budući građanski zakon zadovoljiti međunarodne standarde zaštite ljudskih prava. Zaključuje se da sudovi – Ustavni, prvostupanjski, drugostupanjskih te Vrhovni sud, imaju potencijal potaknuti reforme u području obiteljskog prava, pod uvjetom da dosljedno primjenjuju ne samo domaće zakonodavstvo, nego i međunarodne standarde na koje se država obvezala ratifikacijom međunarodnih instrumenata te pozornim tumačenjem sudske prakse Europskog suda za ljudska prava.

Ključne riječi: *Sjeverna Makedonija, zastarjelo obiteljsko pravo, autonomija, zaštita, prava djece, javno pravo, privatno pravo*