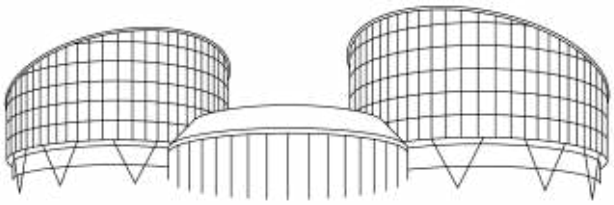

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 4523/04
by Tigran ALAVERDYAN
against Armenia

The European Court of Human Rights (Third Section), sitting on 24 August 2010 as a Chamber composed of:

Josep Casadevall, *President,*
Elisabet Fura,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele, *judges,*

and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 14 January 2004,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Tigran Alaverdyan, is an Armenian national who was born in 1964 and lives in Delray Beach, USA. He was represented before the Court by Mr A. Grigoryan, a lawyer practising in Yerevan. The respondent Government were represented by their Agent, Mr G. Kostanyan,

Representative of the Republic of Armenia at the European Court of Human Rights.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. The applicant was born out of wedlock on 28 November 1964. He bore his mother's surname.

4. In 2002 the applicant instituted special (non-contentious) proceedings (*հատուկ վարույթ*) under Article 189 of the Code of Civil Procedure (CCP), seeking to establish a fact of legal significance (*իրավաբանական նշանակություն ունեցող փաստ*), namely paternity with his alleged deceased father, Alexander A. (hereafter, A.A.). The applicant claimed that his mother and A.A. were in a common-law marriage, as a result of which he was born. Their marriage was not formally registered which was why he bore his mother's surname. A.A. had always accepted him as his son, had provided care and brought him up. In 1988 A.A. had moved from Armenia to France, where he died on 28 March 1998. The applicant further claimed that it was necessary to establish the fact of paternity in order for him to assert his rights to A.A.'s inheritance.

5. On 6 May 2002 the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*) granted the applicant's application and established the fact of paternity. The court based its judgment on the applicant's birth certificate, in which his patronymic name was indicated as Alexander, and a number of witness statements, including those of the applicant's mother and A.A.'s sister. According to the written statement of the applicant's mother, since 1963 she and A.A. had been in a common-law marriage, as a result of which the applicant was born in 1964. She and A.A. had together provided care to and brought up the applicant, until A.A. moved to France in 1988. A.A.'s sister stated that she had known the applicant since his birth and confirmed that he was A.A.'s son.

6. No appeal was lodged against this judgment so it entered into force.

7. On 27 March 2003 a specially-licensed advocate lodged an application with the Court of Cassation (*ՀՀ վճռաբեկ դատարան*), seeking to reopen the case on the ground of newly discovered circumstances. The advocate claimed that the court judgment had been unfounded because in reality A.A. had been formally married since 1953 to a third person, M.S., with whom he had had a child, L.A., on 31 December 1964. The advocate further claimed that this was already the second paternity claim filed in respect of A.A., in which A.A.'s sister acted as the main witness. The court, however, had not been aware of the fact that

A.A.'s sister had previously laid claims to A.A.'s inheritance which had been rejected by the courts. Only after such rejections did A.A.'s two supposed children emerge, including the applicant.

8. On 25 April 2003 the Court of Cassation decided to quash the judgment of 6 May 2002 and to remit the case to the Civil Court of Appeal (*ՀՀ քաղաքացիական գործերով վերաքննիչ դատարան*) for a new examination. In doing so, the Court of Cassation found that:

> "...[M.S.] is the wife of [A.A.].
>
> According to the birth certificate issued on 25 July 1974, [the applicant] was born on 28 November 1964. His patronymic name is registered as "Alexander", [while] there is no entry concerning the father in the "Parents" section...
>
> According to [L.A.'s] birth certificate and [A.A.'s and M.S.'s] marriage certificate, [L.A.] was born on 31 December 1964, while her parents' marriage was registered on 11 March 1970[. T]hus, within the same period when [the applicant] was born (1964) [A.A.] was in a formal marriage with [M.S.].
>
> In such circumstances, the application lodged on the ground of newly discovered circumstances is founded, because the above-mentioned facts are newly discovered circumstances, which have a vital importance for the case...
>
> Furthermore, Article 189 of the Code of Civil Procedure contains an exhaustive list of facts of legal significance to be examined in special proceedings which does not include the establishment of a fact of paternity."

9. On 25 August 2003, during the new examination of the case in the Civil Court of Appeal, the applicant requested the court to order a forensic genetic examination (*դատագենետիկական փորձաքննություն*) in order to have the alleged paternity established. In support of his request, the applicant submitted a paper from a State non-commercial organisation "Scientific-Practical Centre for Forensic Medicine" (*«Դատաբժշկական գիտա-գործնական կենտրոն» պետական ոչ առևտրային կազմակերպություն*) which stated that theoretically it was possible to establish paternity even if the alleged father was dead. This could be done either by using tissue from the deceased's body, depending on its state of preservation, or by restoring the alleged father's genetic characteristics through examination of his close relatives. However, in neither case could a wholly conclusive result be guaranteed.

10. On the same date the Civil Court of Appeal, having examined the applicant's request, refused to order a forensic genetic examination and decided to reject his application on the merits. In doing so, the Court of Appeal recapitulated the findings of the Court of Cassation and concluded that the application was unfounded and that the applicant had failed to substantiate his request.

11. On 9 September 2003 the applicant lodged an appeal on points of law which he then supplemented on 29 September 2003. In the supplement to his appeal the applicant alleged a violation of the procedural rules,

arguing that the Court of Appeal, by refusing his request for a forensic genetic examination, had placed the applicant at a significant disadvantage vis-à-vis his opponent since he was thus deprived of the possibility to submit evidence in support of his application. The lawyer invoked, *inter alia*, Article 6 of the Convention.

12. On 24 October 2003 the Court of Cassation dismissed the appeal. In doing so, the Court of Cassation found that:

> "The Court of Appeal, having examined the [relevant] circumstances and having stated that 'during the same period when [the applicant] was born (1964) [A.A.] was in a formal marriage with [M.S.]' and 'the application is unfounded and the applicant has failed to substantiate his request', has justly dismissed the application.
>
> In such circumstances, the allegation of a procedural violation is unfounded because paternity can be established only in contentious proceedings [(*հայցային վարույթ*)] and there is no such institute as establishment of paternity as a fact of legal significance. ..."

B. Relevant domestic law

1. The Code of Civil Procedure

(a) Contentious proceedings

13. The Code prescribes the rules for instituting and examining civil disputes between contending parties. An application submitted to the court under these rules must contain, *inter alia*, the names and addresses of other parties.

(b) Establishment of a fact of legal significance

14. Section 3(2) of the Code, as one of the exceptions to the above procedure, prescribes the rules for examining cases in special proceedings such as, for instance, the establishment of a fact of legal significance. Article 189 provides that the courts establish such facts which are necessary for the creation, modification or cessation of private and property rights of individuals and legal persons. The courts when establishing facts of legal significance examine cases related to (a) family relationships between persons; (b) custody of a person; (c) registration of birth, adoption, marriage, divorce and death; (d) death of a person; (e) acceptance of inheritance; (f) accidents; (g) ownership of legal documents; (h) disposal of property; and (i) existence of *force majeure*.

15. According to Article 191, the application seeking to establish a fact of legal significance must indicate the reason why it is necessary for the applicant to have a particular fact established, as well as containing evidence substantiating the inability of the applicant to obtain proper documents or to restore lost documents.

16. According to Article 192, the court establishes a fact of legal significance only when it is impossible for the applicant to receive proper documents certifying that fact or to restore lost documents in another procedure.

17. According to Article 193 § 2, the court judgment establishing a fact of legal significance serves as a basis for registering that fact with the relevant authorities or formalising the rights arising from the established fact.

(c) Reopening of proceedings

18. Former Articles 222-225, 228 and 236 of the CCP allowed final judgments of the courts of first instance and the appeal courts to be reopened on various grounds, including newly discovered circumstances. Applications for reopening could be brought either by the General Prosecutor and his deputies or advocates holding a special licence and registered at the Court of Cassation. Such applications were examined by the Court of Cassation which could either dismiss them, or decide to quash the judgment in full or in part and remit the case to the appeal court, or terminate the proceedings.

2. The Marriage and Family Code of 1969 (in force at the material time)

19. According to Article 54, if a child is born out of wedlock and there is no joint application by the parents, the issue of paternity may be established in court, on the basis of an application by one of the child's parents or his guardian, or the child himself when he becomes an adult. In determining the issue of paternity the court takes into account the fact that the child's mother and the defendant were living together and were leading a common household prior to the child's birth, or their shared upbringing of and care for the child, or other evidence pointing at the acceptance of paternity by the defendant.

20. According to Article 56, if the parents are not married, the child's mother shall be registered on the basis of her application, and the child's father shall be registered on the basis of a joint application by the child's mother and father or in accordance with a court decision.

21. According to Article 57, if an unmarried mother gives birth to a child, in the absence of a joint application by the parents or a court decision determining the paternity, the registration of the child's father in the birth register is done by entering the mother's family name, and the name of the child's father and the child's patronymic name are registered according to the mother's instructions.

COMPLAINTS

22. The applicant raised the following complaints.

(a) Under Article 6 § 1 of the Convention he alleged that the dismissal by the Civil Court of Appeal of his request for a forensic genetic examination placed him at a significant disadvantage vis-à-vis his opponent because he was thus unable to rebut the arguments raised by the specially-licensed advocate in his application to reopen the case. In particular, he was thus not able to present the only new piece of evidence which could have allowed him to rebut the submissions made by his opponent and to prove his case.

(b) Under Article 8 of the Convention he alleged that the dismissal of his application unlawfully interfered with his private life. He submitted that, even if mainly concerning inheritance issues, the establishment of the parental link with A.A. was also of moral importance for him.

THE LAW

A. Article 6 § 1 of the Convention

23. The applicant complained of a violation of the principle of equality of arms and invoked Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

1. The parties' submissions

24. The Government claimed that the applicant had failed to exhaust domestic remedies. In particular, he had failed to lodge a separate appeal with the Court of Cassation against the ruling of the Civil Court of Appeal by which his request for a forensic genetic examination was dismissed.

25. The Government further claimed that Article 6 was not applicable to the special proceedings instituted by the applicant. Firstly, the proceedings in question concerned a request by the applicant to establish a fact of legal significance, namely A.A.'s paternity, but not the inheritance issue itself, even if the applicant's final goal was to use this fact later for inheritance purposes. Thus, what was at stake during the special proceedings instituted by the applicant was not a civil right but merely a request by the applicant to establish a fact.

26. Secondly, the proceedings in question did not involve a dispute as they were special non-contentious proceedings. The question of inheritance, however, could be decided only through contentious proceedings involving

two parties. The applicant, who was aware of this fact, carefully avoided mentioning the question of inheritance following the reopening of the case since, if he had done so, a dispute would then have arisen and the courts would have been obliged to stop the proceedings and to advise him to institute contentious proceedings.

27. Finally, the proceedings in question were not directly decisive for the applicant's civil rights, which in the present case meant the right to inheritance, since the establishment of paternity would not have automatically granted him that right. The Government, in support of their submissions, referred to a decision of the Supreme Court of USSR of March 1982 which stated that cases on paternity were to be heard through contentious proceedings and could be examined through special proceedings only when they did not involve a dispute.

28. The applicant claimed that, in accordance with the civil procedure rules, the Court of Appeal's ruling on his request for a forensic genetic examination was not subject to appeal through any separate appeal procedure. The Government's claim as to non-exhaustion was therefore ill-founded.

29. Relying on the judgments in the cases of *W. v. the United Kingdom* (8 July 1987, Series A no. 121), *Olsson v. Sweden (no. 1)* (24 March 1988, Series A no. 130) and *Keegan v. Ireland* (26 May 1994, Series A no. 290), the applicant further claimed that Article 6 was applicable to cases concerning rights and obligations in the field of family law, including the relationship between parents and children. The proceedings instituted by him involved a dispute between him and M.S. which, while being of moral importance for him, was in essence related to the question of inheritance. M.S. did all that was possible to quash the established paternity in order to deprive him, as an heir, of the possibility to obtain a part of A.A.'s property. In sum, the proceedings in question determined his “civil rights and obligations”.

2. The Court's assessment

30. The Court notes at the outset that the parties disagreed as to whether the applicant had exhausted the domestic remedies in respect of his complaint under Article 6 § 1. The Court, however, does not find it necessary to rule on the above disagreement since the relevant complaint is, in any event, inadmissible for the following reasons.

31. The Court reiterates that for Article 6 § 1 to be applicable the first condition is that there must be a “contestation” (a dispute) over (civil) “rights and obligations” which can be said, at least on arguable grounds, to be recognised under domestic law (see, among other authorities, *H. v. Belgium*, 30 November 1987, § 40, Series A no. 127-B). The Court observes that it was not in dispute between the parties that a right to have paternity established was recognised under Armenian law. Nor does the Court see any

reason to doubt the existence of such a right under Armenian law, especially when it appears to derive from Article 54 of the Marriage and Family Code as in force at the material time.

32. The Court further reiterates that Article 6 § 1 will not be applicable unless two further conditions are satisfied: the right at issue must be "civil" and must have been the object of a "contestation" (dispute) (see *W. v. the United Kingdom*, cited above, § 78).

33. As regards the character of the right, the Court does not share the Government's opinion that only the right to inheritance can be considered as a "civil" right and not the right to have one's paternity recognised. The Court has held on numerous occasions that Article 6 was applicable to such non-pecuniary rights as the right to respect for family and private life (see, for example, *Golder v. the United Kingdom*, 21 February 1975, § 27, Series A no. 18; *W. v. the United Kingdom*, cited above, § 79; *Olsson*, cited above, §§ 88-91; *Keegan*, cited above, § 57; *Eriksson v. Sweden*, 22 June 1989, §§ 73-82, Series A no. 156; *Helmers v. Sweden*, 29 October 1991, § 27, Series A no. 212-A; and *Mustafa v. France*, no. 63056/00, § 14, 17 June 2003). The Court observes that the right to know one's ascendants falls within the scope of the concept of "private life" (see *Odièvre v. France* [GC], no. 42326/98, § 29, ECHR 2003-III, and *Jäggi v. Switzerland*, no. 58757/00, § 25, ECHR 2006-...). The Court therefore concludes that the right to have paternity established is a "civil right" within the meaning of Article 6.

34. As regards the existence of a "contestation", the Court reiterates that this word should not be construed too technically and that it should be given a substantive rather than a formal meaning, especially that it has no counterpart in the English text of Article 6 § 1. The use of the French word *contestation* in that provision, nevertheless, implies the existence of a disagreement (see *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 45, Series A no. 43, and *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 27, ECHR 2009-...). In other words, there must be a question of law and/or of fact in dispute between two opposing parties, whether two private persons or a private person and the State (see, *mutatis mutandis*, *Ringeisen v. Austria*, 16 July 1971, § 94, Series A no. 13; and *Albert and Le Compte v. Belgium*, 10 February 1983, § 27, Series A no. 58).

35. In the present case, the Court notes that the applicant sought the establishment of paternity as a fact of legal significance by initiating a procedure under Article 189 of the CCP referred to under the domestic law as "special" proceedings. However, this was a non-contentious and unilateral procedure which did not involve opposing parties and was applicable only to cases where there was no dispute over rights. The applicant availed himself of this "special" procedure, despite the fact that the issues raised in his application to the courts involved such a dispute and attracted conflicting interests, including pecuniary ones, since a question of

inheritance was at stake. This became the reason why the judgment of the Kentron and Nork-Marash District Court of Yerevan, by which his application had been granted, was quashed and the case was reopened by the Court of Cassation (see paragraph 8 above).

36. The Court further notes that the application seeking the reopening of the case was filed by a specially-licensed advocate who was entitled under the law to request a reopening of a final judgment on the grounds of newly discovered circumstances. Even if, in doing so, the advocate appears to have represented the interests of A.A.'s widow, nevertheless, it cannot be said that she acted as a party to the proceedings, but rather as a third person whose rights were affected by the judgment of the District Court and who sought to have a judicial error corrected. This is also evident from the fact that A.A.'s widow was never engaged as a party to the proceedings following the reopening of the case. Indeed, the only question examined by the courts after the reopening was whether the applicant's application seeking the establishment of a fact of legal significance through special proceedings met the required legal criteria to be granted. In dismissing his application the courts took into account the very fact that the issues raised in it involved conflicting rights and were therefore to be dismissed and to be resolved through contentious proceedings. It was open to the applicant to institute such proceedings and to argue his case, which he never did. In such circumstances, the Court concludes that the proceedings instituted by the applicant did not involve a dispute and consequently did not determine the applicant's civil rights and obligations within the meaning of Article 6.

37. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

B. Article 8 of the Convention

38. The applicant complained of a violation of his right to respect for private life and invoked Article 8 of the Convention which, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for his private ... life...
>
> 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."

1. The parties' submissions

39. The Government claimed that the applicant had failed to exhaust domestic remedies. In particular, under Armenian law appeals on points of law lodged with the Court of Cassation could be brought on the ground of a

violation of the party's substantive and/or procedural rights. The applicant, however, in his appeal and its supplement lodged with the Court of Cassation on 9 and 29 September 2003 respectively, alleged only a violation of his procedural rights, namely of his right to equality of arms, and did not claim a substantive violation of his right to respect for private life.

40. The Government further claimed, relying on the Court's position in the case of *Haas v. the Netherlands* (no. 36983/97, § 43, ECHR 2004-I), that Article 8 was not applicable to the applicant's case. There was no issue of private life at stake, since the aim which the applicant sought to achieve through the recognition of paternity was to obtain inheritance. Moreover, the applicant was able, and is still able, to have the question of paternity resolved through contentious proceedings, an opportunity of which he has not availed himself.

41. The applicant claimed that the fact that his appeal on points of law did not contain any reference to the norms of substantive law made no difference. What was important was that his appeal pursued the aim of having a forensic genetic examination carried out in order to establish the fact of paternity, which was an issue falling within the scope of Article 8.

42. The applicant further claimed that the relationship between parents and children constituted "private life" within the meaning of Article 8.

2. The Court's assessment

43. The Court notes at the outset that the Government has raised two objections, one concerning non-exhaustion and another one concerning incompatibility of Article 8. The Court, however, does not find it necessary to rule on these objections, since this complaint is, in any event, inadmissible for the following reasons.

44. The Court observes that, in seeking to have the paternity recognised, the applicant appears not to have instituted the proper type of proceedings (see, in particular, the findings of the Court of Cassation in paragraphs 8 and 12 above). In particular, as already indicated above, the applicant sought to have the paternity recognised as a fact of legal significance by instituting "special" non-contentious proceedings under Article 189 of the CCP. However, as noted by the Court of Cassation, paternity could be established only through contentious proceedings. Furthermore, as already indicated above, A.A. had a lawfully recognised wife and child. Thus, the recognition of paternity attracted conflicting rights, including pecuniary ones, having a direct bearing on the question of A.A.'s inheritance, and could not be established through the procedure initiated by the applicant. This judicial error was corrected by the Court of Cassation which quashed the judgment of the Kentron and Nork-Marash District Court of Yerevan and reopened the proceedings on the ground of newly discovered circumstances. The applicant had the opportunity to institute contentious proceedings against A.A.'s lawful heirs, including by laying inheritance claims, and to seek the

recognition of paternity in the context of such proceedings, which he failed to do. In such circumstances, the dismissal by the courts of his application seeking the establishment of a fact of legal significance does not appear arbitrary or unreasonable.

45. It follows that this complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President