Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

Articles

Studia Iuridica Lublinensia vol. 32, 2, 2023
DOI: 10.17951/sil.2023.32.2.173-188

Juelda Lamçe
European University of Tirana, Albania
ORCID: 0000-0001-8995-3681
juelda.lamce@uet.edu.al

Renata Kau
European University of Tirana, Albania
ORCID: 0000-0002-8781-0473
renata.kau@uet.edu.al

Contesting Marital Presumption of Paternity – Biological Father's Legal Position. Comparative Overview in Albania and the Western Balkan Countries

Zaprzeczenie domniemania pochodzenia dziecka od męża matki – pozycja prawna ojca biologicznego. Analiza prawno-porównawcza na przykładzie Albanii i państw Zachodnich Bałkanów

ABSTRACT

This scientific article is focused on the possibility for the biological father to challenge the marital presumption of paternity. Academic studies show that there is an enlargement of legal actions towards the establishment of biological evidence and that non-marital parents have enforceable legal rights. In the Albanian legislation (and in some others as well), there is a different treatment reserved for children born within and out of wedlock. While the biological father is entitled to contest the paternity of a child born out of wedlock, he is not when it comes to children born within wedlock. Thus, the aim of the research is to critically analyse the Albanian legislation on presumed paternity contestation, focusing on the legal position of the biological father of the child. It takes into consideration relevant

CORRESPONDENCE ADDRESS: Juelda Lamçe, Associate Professor, Dean of the Faculty of Law, Political Sciences and International Relations, European University of Tirana, "Xhanfize Keko" Street, Nd. 56, Albania; Renata Kau, PhD, Lecturer, European University of Tirana, Faculty of Law, Political Sciences and International Relations, "Xhanfize Keko" Street, Nd. 56.ć

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

doctrine, the jurisprudence of the European Court of Human Rights, and comparative legislation in the Western Balkan countries. The main thesis of this paper is that, when contesting the marital presumption of paternity, a fair balancing of competing rights and interests at stake is not reached if the biological father is excluded from the category of persons entitled to contest the presumed paternity.

Keywords: presumed paternity; paternity contestation; biological father; child

INTRODUCTION

Statistics all over the world show a high rate of paternity fraud in the world[1] and there is an enlargement of legal actions towards the establishment of biological evidence. The multidimensional implications of contesting presumed paternity are related not only to the child's social identity, but also to his/her legal status, including economic consequences deriving from inheritance rights. In the impossibility to undergo to an in-depth analysis of all consequences, this article focuses only on the legal implications of contesting the presumed paternity. Thus, the purpose of this paper is to critically analyse Albanian legislation on the presumed paternity contestation, focusing on the legal position of the biological father of the child. It takes into consideration relevant doctrine, the jurisprudence of the European Court of Human Rights (the ECtHR), and comparative legislation in the Western Balkan countries. Considering the positive obligations for Contracting States of the European Convention on Human Rights (ECHR), we address the following questions: To what extent can the rights of biological fathers be exercised to contest the presumed paternity of children born within wedlock? When contesting the presumed paternity, from the best interest of child prospective, is it legitimate to differentiate between children born within and out of wedlock? Our main thesis is that when contesting the marital presumption of paternity, fair balancing of competing rights and interests at stake is not reached if the biological father is excluded from the category of persons entitled to contest the presumed paternity.

As different solutions diverge on how to guarantee the best interest of the child – through traditional, protective and conservative approach, privileging marriage or the evolutive, non-discriminative and balanced one (permitting to the biological father, under specific conditions and within short time limits to contest the presumed paternity of the child) – our recommendation would be for the latter solution, not scarifying but limiting the rights of the biological father.

[1] Vanguard, *Nigeria has the 2nd highest rate of paternity fraud in the world after Jamaica*, 10.1.2021, https://www.vanguardngr.com/2021/01/nigeria-ranks-2nd-highest-in-paternity-fraud-in-the-world (access: 8.9.2022).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

METHODOLOGY

Qualitative and quantitative methods are used for this purpose, examining relevant international doctrinal debate, ECtHR's jurisprudence, statistics on lawsuits for paternity contest in Albania for the period 2011–2021, and related regulations in the Western Balkan countries (Albania, Bosnia and Herzegovina, Montenegro, Kosovo, North Macedonia, Serbia) as the group of countries targeted by the European Union enlargement policy.

Analytic reasoning emphasizes the importance of legislative amendments to overcome some traditional provisions, the need for an evolutive interpretation of domestic laws in compliance with the latest ECtHR's jurisprudence, the relevance of some Constitutional Courts' decisions with regard to the legitimacy of the biological father to contest the presumed paternity and relevant time-limited to be applied in the specific case.

Based on the *ratio legis* of the related provisions in a comparative overview, this article concludes basically for the need to include the biological father of the child among the legitimates entitled to contest the marital presumed paternity of the child, including a determined time-frame for his legal action. Thus, specific amendments are recommended accordingly in the Albanian legislation as well.

DOCTRINAL DEBATE ON MARITAL PRESUMED PATERNITY CONTESTATION

The discovery of the DNA test revolutionized the whole family system. The presumption of paternity became rebuttable under the clear evidence of the DNA test's result, but not an exclusive and definitive one to establish the legal paternity of a child. Nonetheless, that legal certainty attained through the DNA test leads to other disputing questions related to the rights of biological fathers to contest the presumed paternity and the fair balancing of competing rights and interests at stake. The existence of a biological link *per se*, lacking a *de facto* relationship between the child and his/her father, is insufficient for this purpose. Social parentage, considered the willingness of the parents to take care of the child and their actual relationship, became predominant to biological links in order to establish legal parentage. In addition, the competing interests at stake – public and private ones such as the best interest of the child to have stability in his/her family relations, the right of the biological father to be recognized as such, the equal treatment of children born within and out of wedlock, the family stability, etc. – require "a fair balance, that should be guaranteed not only through the case-by-case jurisprudence but also in the statutory regulation in each country".[2]

[2] Judgment of the ECtHR of 28 November 1984, *Rasmussen v Denmark*, application no. 8777/79.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

Some authors argue on the reasons for the social father to be considered as a legal father, affirming that the social father is more effective at defending the child's interests.[3] Others recommend obligatory genetic testing at birth or shortly thereafter to obviate paternity disestablishment proceedings.[4] According to S.H. Williams "the children themselves, when they grow up, and not the State, should resolve the DNA dilemma. The state can and should yield its monopoly over the definition of legal parentage and allow each adult-child to resolve this deeply personal dilemma for herself".[5]

The ECHR imposes positive obligations on contracting states, including the establishment of frameworks that allow the balancing of competing interests of the parties involved. Legislation depriving the biological father of the possibility of having his status of biological father established, because of the lack of positive regulations with this regard (Albanian legislation included), risks to contravene Article 8 (1) ECHR. As A. Buechler and H. Keller argue, "rigid obstacles to the contestation of paternity, conversely, to which no exceptions are permitted, and which are applied regardless of the parties' awareness of the biological reality involved, do violate Article 8 ECHR".[6] Even though the ECtHR has decided for the equal between children born within and out of wedlock since 1979,[7] not all discriminatory laws against non-marital children have been eliminated.[8]

Substantive family law is considered part of the national legislation and the impact of international/European institutions and organizations is limited compared to other areas of law. However, the ECtHR decisions have a direct impact in the family law issues for contracting states. The ECtHR, on the other side, has a lesser and indirect impact, such as in equal treatment and non-discrimination issues, considering the obligations for EU Member States to have their legislation in compliance with the EU law. It should be underlined that EU law does not regulate the contest of presumed paternity, falling into the private international law of each Member State.

[3] J. Kristi, K. Tanel, *European Dilemmas of the Biological versus Social Father: The Case of Estonia*, "Baltic Journal of Law and Politics" 2016, vol. 9(2), p. 38.

[4] V. Browne-Barbour, *"Mama's Baby, Papa's Maybe": Disestablishment of Paternity*, "Akron Law Review" 2015, vol. 48(2), p. 274.

[5] S.H. Williams, *DNA Dilemmas*, "Yale Law and Policy Review" 2021, p. 536.

[6] A. Buechler, H. Keller, *Family Forms and Parenthood: Theory and Practice of Article 8 ECHR in Europe*, Cambridge–Antwerp–Portland 2016, p. 39.

[7] Judgment of the ECtHR of 13 June 1979, *Marckx v Belgium*, application no. 6833/74.

[8] W. Statsky, *Family Law*, Boston 2020, p. 522.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

CONTESTING MARITAL PRESUMED PATERNITY IN THE ALBANIAN LEGISLATION

The equality of children born within and out of wedlock is sanctioned in the Albanian Constitution (Article 54/2). The Albanian Family Code[9] protects and considers a priority the best interest of the child. The State's obligation to revise, when required, domestic legislation and other sources of law is implied by the child's right to have his/her best interests prioritized. The obligations of the parents to take care of their children are established without distinction of their status, whether they are born within or out of wedlock (Article 3 AFC). There are three different ways of establishing paternity in Albanian legislation: by presumption, voluntary declaration, and court order. The regulation for contesting paternity is different for children born within and out of wedlock.

1. Contest of paternity for children born within wedlock

The ancient Roman presumption of marital paternity – which remains the main criteria to establish paternity for children born within and out of wedlock – seems to be a reminiscence from the past. There are other provisions as well in Albanian legislation which reflect the past, such as the probative value of the "promise of the father to get married to the child's mother", used to attest through a court order the paternity of a child born out of wedlock (Article 189 AFC).[10] According to Albanian legislation (Articles 184–186 AFC), the biological father of the minor is not entitled to contest the paternity of a child to whom applies the presumption of paternity. Article 180 AFC states the paternity presumption principle for children born within wedlock. In the specific, the persons entitled to challenge the presumed paternity are: a) the man who is presumed to be the father, as the husband of the mother's child (within one year from the day he learns about the child's birth); b) his/her mother (within one year from the child's birth); c) the child when he/she becomes adult (at any time). With regard to the reinstatement lawsuit concerning the time-frame of one year for the contestation of the marital presumed paternity, a first court decision in Albania[11] concluded that the one-year limit can be overcome, if the defendant does not contest the related request of the plaintiff.[12]

---

[9] Albanian Family Code, Law No. 9062/2003 (Official Gazette of the Republic of Albania No. 49, 20.6.2003, as amended), hereinafter: AFC.

[10] According to Article 189 AFC "the paternity of a child can be attested through a court decision, if during this process can be proved that (…) the father had promised to the mother of the child to get married".

[11] Decision No. 66 of the First Instance Court of Krujë of 5 May 2022,

[12] In the specific, the plaintiff did not dispute paternity within the time-frame of one year, even though he was fully aware of the fact that he was not the biological father of the child. The judge

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

2. Contest of paternity for children born out of wedlock

The establishment of paternity creates the same rights and obligations, retroactively, as per children born within and out of wedlock (Article 170 AFC). The category of subjects entitled to contest the recognition of paternity (or maternity) for a child born out of wedlock is much wider than the one for children born within wedlock. It includes anyone (the public prosecutor as well) who has a legitimate interest and is informed of the fact that the recognition is not true (Article 173 AFC). In the specific, the biological father – who is not entitled to contest the paternity of the child born within wedlock, because of the marital presumption – can conversely contest the fact that another man has recognized a child born out of wedlock. The time limit for this purpose is one year from the registration of the child's paternity (Article 188 AFC). The limited term of one year is considered sufficient from the child's perspective to create stable relations with his/her parents, thus protecting his/her paramount interest to have undisturbed family relations with his/her parents.

As indicated in Table 1, Albanian statistics of paternity contest lawsuits show a low number, compared to the related overall number of family lawsuits, for the period 2011–2021 (rating between 0.36% and 1%). It cannot be excluded that, one of the factors determining the low percentage of lawsuits for paternity contest compared to the total of family lawsuits, is the fact that the biological father of the child is not entitled to bring a lawsuit for contesting presumed paternity to the court. It can be also noted that there is an increasing trend in the last ten years in Albania in the number of lawsuits for paternity contest. The increasing number of lawsuits for paternity contest – for the period 2011–2021 from 0.36% to 1% – shows that the interest to paternity contest has increased among family members. It may be related to the interest to know the truth about proper family ties or even to patrimonial interests (inheritance), considering the increasing number of non-traditional families and the "modernization" of family unions.

In 2011 the number of lawsuits for recognition of paternity is almost double compared to the number of lawsuits for a contest of paternity. In 2020, on the contrary, the figures show an opposite trend, as the lawsuits for contest of paternity is almost double compared to the lawsuit for recognition of paternity.

rejected the request of reinstatement and recommended to the parties to proceed by filing a lawsuit concerning the contestation of paternity, arguing that "in a civil trial, unlike in a trial aimed at restoring the right to file a civil lawsuit, the statute of limitations cannot be taken into consideration *ex ufficio* by the court, but only as per the parties request".

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

Table 1. Statistics on paternity establishment in Albania

Year	Lawsuits for recognition of paternity	Lawsuits for paternity contest	Total of family lawsuits	Percentage of lawsuits for paternity contest compared to the total of family lawsuits (%)
2011	61	30	8,281	0.36
2012	61	36	8,594	0.41
2013	66	28	8,844	0.31
2014	72	42	9,633	0.44
2015	83	48	10,084	0.47
2016	79	61	10,807	0.56
2017	77	75	11,522	0.65
2018	60	48	8,711	0.55
2019	70	110	13,667	0.80
2020	65	135	12,042	1.12
2021	151	164	15,572	1.00

Source: Authors' own elaboration based on data from https://drejtesia.gov.al/statistika (access: 24.9.2022).

3. Different treatment in contesting paternity for children born within and out of wedlock

Contest of paternity and maternity of the child are treated differently. According to Article 178 AFC – in case of children born within and out of wedlock – the woman who claims to be the child's mother can challenge maternity, while the man who considers himself the father of the child is not entitled to.

A different treatment is reserved as well for the category of subjects entitled to contest paternity recognition (children born within and out of wedlock), including "everyone who has a legitimate interest and knows about the truth and the public prosecutor" (Article 173 AFC). This category is wider than a category of subjects entitled to contest presumed paternity for children born within wedlock (only the mother and the child once he is grown up). Thus, as far as the biological father is willing to recognize his child, his exclusion from the category of the subjects entitled to contest the alleged paternity seems not to be legally justified.

4. Contest of paternity and inheritance

Contesting paternity is fundamental for both the child and the father, not only in social and moral terms, but also in patrimonial terms, as far as inheritance rights depend on this status. The Albanian High Court in decision No. 86 of 16 March 2016 refers to inheritance rights pretended by the alleged daughter of *de cuius*, whose paternity was not recognized by the Albanian Court of First Instance. In this case, the daughter, a Swedish citizen, pretended half of the patrimony inherited from her alleged Albanian biological father, bringing evidence from Swedish au-

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

thorities to the Albanian Court of First Instance. The Albanian Court rejected her request, arguing that the plaintiff's evidence was insufficient to prove the formal voluntary recognition of paternity.

THE EUROPEAN COURT HUMAN RIGHTS JURISPRUDENCE

Affiliation and the interest to know the truth about proper origins are considered as fundamental aspects of one's personal identity (*Mennesson v France* and *Çapın v Turkey*),[13] falling within Article 8 ECHR. The presumption of paternity is rebutted, among other procedures, by allowing the biological father to contest the presumed paternity.[14]

The debate on paternity establishment has led to many ethical and legal questions, especially with the increasing use of Medically Assisted Reproduction Techniques (MART).

The measures regarding paternal establishment adopted by the States are different, depending on their political, social, and cultural traditions. For this reason, each individual situation is examined under its specific circumstances. The below cases are only some examples of the ECtHR's tentative to balance the importance of legal presumption to the biological truth and the interest of the biological father to be recognized as the legal father of the child.

In the recent Bulgarian case (*Koychev v. Bulgarie*),[15] the ECtHR concluded that, despite the State's margin of appreciation in such matters, the right of the applicant had not been upheld.

1. Evaluation of best interest of child and biological father's right

In the *Mikulić v Croatia* case,[16] the applicant, a Croatian child born out of wedlock, claimed the State's lack of action in a paternity establishment dispute, in breach of Article 8 ECHR. Her father refused for more than three years to undergo the DNA test, as per Court order and the local legislation did not provide for any means to obligate him to undergo that test. The only way for the applicant to establish paternity was through judicial proceedings, which took too long. The ECtHR argued that the child's interest to have his paternity established did not trump the father's right to contest

[13] Judgment of the ECtHR of 26 June 2014, *Mennesson v France*, application no. 65192/11, para. 96.

[14] L. Mandija, *European Court of Human Rights: Challenging Paternity under Case Law of the European Court of Human Rights*, [in:] *International Survey of Family Law*, ed. M. Brinig, Luxembourg 2020, p. 99.

[15] Judgment of the ECtHR of 13 January 2021, *Koychev v Bulgarie*, application no. 32495/15.

[16] Judgment of the ECtHR of 7 February 2002, *Mikulić v Croatia*, application no. 53176/99.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

his paternity. It concluded that alternative means should have been provided for by Croatian legislation, so that paternity claims could have been determined without delays. The paramount interest of a child implies the States' obligation to examine and, if required, revise domestic law and other sources of law.[17]

2. Fair balancing of competing interests

In interpreting the provisions of the ECHR, the ECtHR considers the fair balance of the interests at stake (*Kroon v Netherlands*).[18] In the *Mifsud v Malta* case,[19] the applicant was ordered by local authorities to take a DNA test, mandatory in paternity procedures, as provided for by domestic legislation. The ECtHR concluded that a reasonable balance was struck by domestic courts in evaluating competing interests (those of the father contesting paternity) and those of his daughter to uncover the truth on her identity. On the contrary, despite the State's "margin of appreciation", in the *Boljević v Serbia* case,[20] the ECtHR found that the Serbian Court had not weighed up the interests at stake.

According to the doctrine of "margin of appreciation", the States enjoy a certain margin of appreciation in regulating paternal filiation, given their diverse cultural and legal traditions (*Chavdarov v Bulgaria*).[21] In the specific, there is no obligation on the States to grant the biological father the right to contest another man's paternity.

3. Time-limit to contest marital presumed paternity

Besides the general principle of "juridical relations certainty", time limits to contest presumed paternity guarantee the best interest of child to stable and undisturbed family relations. Thus, both the mother and her husband can challenge the presumed paternity of the child within short-term periods (generally within six months up to three years). In *Fatma Yildirim v Austria*, the husband of the wife couldn't contest the presumed paternity after one year of their marriage. Even the public prosecutor's initiative to contest the paternity of the child should be motivated by a public interest or the best interest of the child.

The time-limit to contest marital presumed paternity and its starting moment is different among countries. With this regard, in *Shofman v Russia* the ECtHR argued that the one-year term from the child's birth was not always because the individual

[17] See UN Convention on the Rights of the Child – General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3 para. 1), CRC/C/GC/14.

[18] Judgment of the ECtHR of 27 October 1994, *Kroon and others v Netherlands*, application no. 18535/91, para. 87.

[19] Judgment of the ECtHR of 29 January 2019, *Mifsud v Malta*, application no. 62257/15.

[20] Judgment of the ECtHR of 16 June 2020, *Boljević v Serbia*, application no. 47443/14.

[21] Judgment of the ECtHR of 21 March 2011, *Chavdarov v Bulgarie*, application no. 3465/03.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

in question was unaware of the biological reality.[22] Some of them haven't included it in their legislation and others have limited it in half-year, one-year or even two-years, starting from the moment of the registration of paternity in the civil status register (*Rasmussen v Denmark* and *Mizzi v Malta*).[23] The problem in this case is that the time-limit of one year cannot guarantee the right of the biological father to contest the previous recognition of paternity, if he is not informed of this fact.

With regard to the time-limit, in *Paulik v Slovakia* the ECtHR decided that setting a one-year time limit from the child's birth without any exceptions was not always appropriate, especially when the individual in question was unaware of the biological reality.[24]

4. DNA testing: its admissibility and limits

The common instrument to prove the biological ties between the parents and the child through a court order is the DNA. Regarding the place to be granted to genetic identification in civil proceedings, there is a considerable diversity not only in European legislation but also in its role given by national courts as well as the ECtHR. According to the ECtHR jurisprudence, although DNA testing of potential fathers is not required by States, the legal system must still offer other ways for an independent authority to quickly decide a paternity claim.[25]

COMPARATIVE OVERVIEW

In 1999, comparative studies on legal problems related to parentage concluded that "it would be unreasonable to deny to the unmarried fathers a priori – unconditionally and without taking into account the particular circumstances of the single case – every opportunity of seeking a court determination of affiliation".[26]

---

[22] Judgment of the ECtHR of 24 November 2005, *Shofman v Russia*, application no. 74826/01. See also European Court of Human Rights, *Guide on Article 8 of the European Convention on Human Rights: Right to Respect for Private and Family Life, Home and Correspondence*, updated on 31 August 2022, https://www.echr.coe.int/documents/guide_art_8_eng.pdf (access: 15.10.2022), p. 85.

[23] Judgment of the ECtHR of 28 November 1984, *Rasmussen v Denmark*, application no. 8777/79; judgment of the ECtHR of 12 January 2006, *Mizzi v Malta*, application no. 26111/02; See also ECOVIS, *Legal Aspects of Denial of Paternity*, https://www.ecovislegal.cz/en/czech-legal-news/family-law-and-divorce/legal-aspects-of-denial-of-paternity (access: 1.9.2022).

[24] Judgment of the ECtHR of 10 January 2007, *Paulik v Slovakia*, application no. 10699/2005.

[25] European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Law Relating to the Rights of the Child*, 2015, https://fra.europa.eu/en/publication/2015/handbook-european-law-relating-rights-child (access: 18.10.2022), p. 66.

[26] Council of Europe, *Legal Problems Relating to Parentage – Proceedings*, 27th Colloquy on European Law Foundation for International Studies, Valletta (Malta), 15–17.9.1997, Strasbourg 1999, p. 95.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

In the European context, in 2003 the German Federal Constitutional Court decided on the unconstitutionally of § 1600 of the Civil Code, which "excludes the natural father who is not the legal father of a child from challenging paternity, with no exceptions".[27] The Court also argues that "when setting time limits for the exercise of the right of challenge, it must ensure that the biological fathers for whom challenge has been impossible are also put in a position to rely on the right of challenge".[28]

Referring to the *Koychev v Bulgarie* case, the Italian doctrine has argued that "the lack of means in the Bulgarian legislation for the biological father to contest the marital presumed paternity could be applied to the Italian legislation one as well".[29] The impossibility for the biological father to contest the presumed marital paternity has been subject to constitutional scrutiny of the Romanian Constitutional Court,[30] stating that "by enshrining monopoly of married spouses and children in promoting an action to contest the presumed paternity, the legal text does not meet the requirements of Article 26 (1) of the Constitution to protect the intimate, family and private life, but rather reveals interference in it, restricting drastically the possibility of conferring legal significance to a biological reality".

Comparative studies in German, Swiss, and Polish legislation, conclude on the recommendation for the biological father to be entitled in Swiss and Polish legislation to the challenge of paternity in the prenatal and postnatal periods.[31] The same recommendations are valid for Serbian law, following a comparative approach between German, French, Montenegrin, and Croatian law.[32]

In the Western Balkan countries, only Albania (as argued above) and North Macedonia[33] do not provide the possibility for the biological father to contest the

---

[27] Order of 9 April 2003 of the German Federal Constitutional Court, 1 BvR 1493/96, para. 124 (available at https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2003/04/rs20030409_1bvr149396en.html, access: 9.10.2022).

[28] *Ibidem*.

[29] C. Benanti, *La Corte EDU riconosce il diritto del padre biologico del minore a contestare il riconoscimento di paternità effettuato da un altro uomo*, 2020, https://www.rivistafamilia.it/2020/11/03/la-corte-edu-riconosce-diritto-del-padre-biologico-del-minore-contestare-riconoscimento-paternita-effettuato-un-altro-uomo (access: 8.9.2022).

[30] S.M. Mircea, A.M. Georoceanu, *A Few Relevant Aspects from the Constitutional Court's Jurisprudence Regarding the Protection of Children*, "Fiat Iustitia" 2017, vol. 11(1), p. 212.

[31] A. Wudarski, *Zaskarżenie domniemania ojcostwa w Szwajcarii – ujęcie komparatystyczne*, "Studia Iuridica" 2021, vol. 89, p. 458.

[32] M. Milošević, *The Concept of Marital Paternity Presumption in Modern Family Law*, "Civitas" 2021, vol. 11(2), p. 194.

[33] E. Ignovska, *Marital Presumption as a Legal Obstacle for Gaining Legal Status of Children Lost in Administrative and Judicial Labyrinths in North Macedonia and in the European Court of Human Rights' Case-Law*, 2021, https://repository.ukim.mk/bitstream/20.500.12188/20742/1/Marital%20presumtion....pdf (access: 19.11.2022), p. 4. The author argues that "the law omits to include the genetic progenitor (if different from the husband) as an active party able to initiate court litigation to rebut paternity based on the ground of presumption (as a first step towards establishing his own fatherhood)".

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

marital presumed paternity. The rest of the Western Balkan countries – Bosnia and Herzegovina,[34] Montenegro,[35] Kosovo,[36] and Serbia[37] – consent it under specific conditions as synthetized in Table 2.

Table 2. Legislation of the Western Balkan countries on the possibility of the biological father to contest the marital presumed paternity

Western Balkan countries	Can the biological father contest the marital presumed paternity?	Time-frame
Albania	No	Not applicable
North Macedonia	No	Not applicable
Bosnia and Herzegovina	Yes, on condition that the person submitting the request asks for his own paternity to be determined at the same time	Within one year after the initial paternity is recorded in the birth register
Montenegro	Yes, provided the same complaint is accompanied by the request for his paternity to be determined	Within one year from the birth of the child

[34] See Article 87 of the Family Law of the Federation of Bosnia and Herzegovina (Official Gazette 35/2005, 41/2005, 31/2014, as amended); Article 132 of the Family Law of Republika Srpska (Official Gazette of Republika Srpska 54/2002, 41/2008, 63/2014, 56/2019, as amended); Article 72 of the Family Law of Brcko District of Bosnia and Herzegovina (Official Gazette of Brcko District of Bosnia and Herzegovina, 23/2007, as amended).

[35] See Family Law of Montenegro (Official Gazette of the Republic of Montenegro No. 001, 9.1.2007; No. 053/16, 11.8.2016). Article 117 of the Family Law provides that "the person who considers himself to be the father of a child born within wedlock may dispute paternity to the person regarded as the father of the child in the eyes of the law, provided the same complaint is accompanied by the request for his paternity to be determined. Petition for contesting paternity in the case referred to in para. 1 above may be filed within one year from the birth of the child" (English consolidated version of the Law is available at https://www.ecoi.net/en/file/local/2052464/60af7d434.pdf, access: 19.11.2022).

[36] See Family Law of Kosovo, Law No. 2004/32 (Official Gazette of the Provisional Institutions of Self-Government Kosovo/Prishtina: Year I, No. 4/01, September 2006), of which Article 116 "Rejection of Paternity of a third Person for an Extra Marital Child" establishes that "(1) the person considering himself to be the father of an extra marital child may claim invalidity of the paternity of the other person who has registered the child as his own, provided that with the same claim he requests the verification of his own paternity. (2) The claim may be submitted within a period of one year from the date of registration of the rejected paternity in the register of births" (English version of the Law is available at http://jafbase.fr/docEstEurope/Kosovo/LoiFamille.htm, access: 19.11.2022".

[37] See Serbian Family Act (Official Gazette of RS, No. 18/2005, as amended), of which Article 58 (2) establishes that "the right to contest paternity shall pertain to: child, mother, mother's husband and the man claiming to be the child's father, if, by the same action, he requests the establishment of his paternity", and Article 252 (4) which establishes that "a man claiming to be a child's father may initiate action to contest paternity of the man considered to be the child's father under this Act within one year from the day of learning that he is the child's father, and no later than ten years from the birth of the child" (English version of the Act is available at http://azil.rs/en/wp-content/uploads/2017/04/family-act-serbia.pdf, access: 19.11.2022).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

Western Balkan countries	Can the biological father contest the marital presumed paternity?	Time-frame
Kosovo	Yes, provided that he requests verification of his own paternity	Within one year from the date of the rejected paternity's registration in the birth register
Serbia	Yes, if, by the same action, he requests the establishment of his paternity	Within one year from the day of learning that he is the child's father, and no later than ten years from the birth of the child

Source: Authors' own elaboration.

As indicated in Table 2, the Western Balkan countries which provide the possibility for the biological father to contest the marital presumed paternity, condition it on the biological father's consequential request for his own paternity to be determined. The time frame for this purpose is within one year, except for Serbian legislation (not specified). The starting moment various from on country to another, depending on the birth registration of the child, registration of the rejected paternity in the register of births.

CONCLUSIONS

As argued in this paper, considering the continuing developments of the society (social, economic, technological), the legislator is called to align the provisions on paternity establishment (and related contest of presumed paternity) to the new social reality. The increasing number of claims related to paternity (as in the case of Albanian; see Table 1) demonstrates the need to ascertain a parent-child relationship because of social, moral, health, patrimonial, or other reasons.

The impossibility for the biological father to contest the presumed paternity raises questions about compliance with international obligations and constitutional provision on parental responsibility. Under the ECtHR' positive obligations that derives from the states and the analysed jurisprudence, respect for private and family life should be guaranteed by providing a balanced legal regulation between the different interests at stake. Restrictions would need a valid justification and proportionality, that would be justified only in cases when the contest of paternity would jeopardize affective ties between the child and his/her legal father and a stable family life.

In our opinion, in case of contestation of marital presumed paternity, Albanian legislation (but not only) poses a risk of failing to strike a reasonable balance between competing interests. In the specific, the measures undertaken by the Albanian legislation do not seem to satisfy the criteria of proportionality. In fact, marital relations have been preferred to non-marital ones, establishing discriminatory regulations for children born within and out of wedlock. As far as the biological

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

father can contest only the paternity of children born within and out of wedlock, but not the marital presumed paternity, the inequality in terms of legal treatment is threefold: a) from the perspective of the best interest of the child (born within and out of wedlock); b) from the perspective of their biological father (who was not informed of the birth of the child and intends to establish affiliation); c) from a gender perspective (mothers can while fathers cannot).

For these reasons, the recommendation for the legislator would be not to exclude *a priori* the biological father of the child from the subjects entitled to contest marital presumed paternity, providing that the contestation can be withdrawn within a determined time-limit. Regarding the *dies a quo*, the recommendation would be to consider it from the moment the biological father is informed on the facts that make him believe to be the biological father of the child. If a fair balance should be guaranteed, not only through the case-by-case jurisprudence, but also in the statutory regulation in each country, as recommended by the ECtHR's jurisprudence, the legislator would need to offer a remedy, giving the opportunity to the biological father to contest the presumed paternity.

A case-by-case court's assessment of the circumstances, particularly in light of the presumed father's close personal relationship with the child, would then guarantee proportionality of the measures undertaken by the States to strike a balance between the different interests involved. This way, the best interest of the child, the rights of the biological and the rights of the presumed father would be granted a fair balance.

REFERENCES

Literature

Browne-Barbour V., *"Mama's Baby, Papa's Maybe": Disestablishment of Paternity*, "Akron Law Review" 2015, vol. 48(2).

Buechler A., Keller H., *Family Forms and Parenthood: Theory and Practice of Article 8 ECHR in Europe*, Cambridge–Antwerp–Portland 2016.

Kristi J., Tanel K., *European Dilemmas of the Biological versus Social Father: The Case of Estonia*, "Baltic Journal of Law and Politics" 2016, vol. 9(2), **DOI: https://doi.org/10.1515/bjlp-2016-0010**.

Mandija L., *European Court of Human Rights: Challenging Paternity under Case Law of the European Court of Human Rights*, [in:] *International Survey of Family Law*, ed. M. Brinig, Luxembourg 2020, **DOI: https://doi.org/10.1017/9781839700910.007**.

Milošević M., *The Concept of Marital Paternity Presumption in Modern Family Law*, "Civitas" 2021, vol. 11(2).

Mircea M.S., Georoceanu A.M., *A Few Relevant Aspects from the Constitutional Court's Jurisprudence Regarding the Protection of Children*, "Fiat Iustitia" 2017, vol. 11(1).

Statsky W.P., *Family Law*, Boston 2020.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

Williams S.H., *DNA Dilemmas*, "Yale Law and Policy Review" 2021, **DOI: http://dx.doi.org/10.2139/ssrn.3846271**.

Wudarski A., *Zaskarżenie domniemania ojcostwa w Szwajcarii – ujęcie komparatystyczne*, "Studia Iuridica" 2021, vol. 89.

Miscellaneous

Council of Europe, *Legal Problems Relating to Parentage – Proceedings*, 27th Colloquy on European Law Foundation for International Studies, Valletta (Malta), 15–17.9.1997, Strasbourg 1999.

Online sources

Benanti C., *La Corte EDU riconosce il diritto del padre biologico del minore a contestare il riconoscimento di paternità effettuato da un altro uomo*, 2020, https://www.rivistafamilia.it/2020/11/03/la-corte-edu-riconosce-diritto-del-padre-biologico-del-minore-contestare-riconoscimento-paternita-effettuato-un-altro-uomo (access: 8.9.2022).

ECOVIS, *Legal Aspects of Denial of Paternity*, https://www.ecovislegal.cz/en/czech-legal-news/family-law-and-divorce/legal-aspects-of-denial-of-paternity (access: 1.9.2022).

European Court of Human Rights, *Guide on Article 8 of the European Convention on Human Rights: Right to Respect for Private and Family Life, Home and Correspondence*, updated on 31 August 2022, https://www.echr.coe.int/documents/guide_art_8_eng.pdf (access: 15.10.2022).

European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Law Relating to the Rights of the Child*, 2015, https://fra.europa.eu/en/publication/2015/handbook-european-law-relating-rights-child (access: 18.10.2022).

Ignovska E., *Marital Presumption as a Legal Obstacle for Gaining Legal Status of Children Lost in Administrative and Judicial Labyrinths in North Macedonia and in the European Court of Human Rights' Case-Law*, 2021, https://repository.ukim.mk/bitstream/20.500.12188/20742/1/Marital%20presumtion....pdf (access: 19.11.2022).

Vanguard, *Nigeria has the 2nd highest rate of paternity fraud in the world after Jamaica*, 10.1.2021, https://www.vanguardngr.com/2021/01/nigeria-ranks-2nd-highest-in-paternity-fraud-in-the-world (access: 8.9.2022).

Legal acts

Albanian Family Code, Law No. 9062/2003 (Official Gazette of the Republic of Albania No. 49, 20.6.2003, as amended).

European Convention on Human Rights, as amended by Protocols Nos. 11, 14 and 15 supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16.

Family Law of Brcko District of Bosnia and Herzegovina (Official Gazette of Brcko District of Bosnia and Herzegovina, 23/2007, as amended).

Family Law of Kosovo, Law No. 2004/32 (Official Gazette of the Provisional Institutions of Self-Government Kosovo/Prishtina: Year I, No. 4/01, September 2006).

Family Law of Montenegro (Official Gazette of the Republic of Montenegro No. 001, 9.1.2007; No. 053/16, 11.8.2016).

Family Law of Republika Srpska (Official Gazette of Republika Srpska 54/2002, 41/2008, 63/2014, 56/2019, as amended).

Family Law of the Federation of Bosnia and Herzegovina (Official Gazette 35/2005, 41/2005, 31/2014, as amended).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:40:53

Serbian Family Act (Official Gazette of RS, No. 18/2005, as amended).
UN Convention on the Rights of the Child – General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3 para. 1), CRC/C/GC/14.

Case law

Decision No. 86 of the Albanian High Court of 16 March 2016.
Decision No. 66 of the First Instance Court of Krujë of 5 May 2022.
Judgment of the ECtHR of 13 June 1979, *Marckx v Belgium*, application no. 6833/74.
Judgment of the ECtHR of 28 November 1984, *Rasmussen v Denmark*, application no. 8777/79.
Judgment of the ECtHR of 27 October 1994, *Kroon and others v Netherlands*, application no. 18535/91.
Judgment of the ECtHR of 7 February 2002, *Mikulić v Croatia*, application no. 53176/99.
Judgment of the ECtHR of 24 November 2005, *Shofman v Russia*, application no. 74826/01.
Judgment of the ECtHR of 12 January 2006, *Mizzi v Malta*, application no. 26111/02.
Judgment of the ECtHR of 10 January 2007, *Paulik v Slovakia*, application no. 10699/2005.
Judgment of the ECtHR of 21 March 2011, *Chavdarov v Bulgarie*, application no. 3465/03.
Judgment of the ECtHR of 26 June 2014, *Mennesson v France*, application no. 65192/11.
Judgment of the ECtHR of 29 January 2019, *Mifsud v Malta*, application no. 62257/15.
Judgment of the ECtHR of 16 June 2020, *Boljević v Serbia*, application no. 47443/14.
Judgment of the ECtHR of 13 January 2021, *Koychev v Bulgarie*, application no. 32495/15.
Order of 9 April 2003 of the German Federal Constitutional Court, 1 BvR 1493/96.

ABSTRAKT

Niniejszy artykuł dotyczy możliwości zaprzeczenia ojcostwa wynikającego z domniemania pochodzenia dziecka od męża matki. Badania wskazują na wzrost liczby wniosków o powołanie dowodów biologicznych na posiadanie praw, które mogą być dochodzone przez rodziców niepozostających w małżeństwie. W przepisach prawa albańskiego (oraz prawa niektórych innych państw) dzieci urodzone w małżeństwie i poza małżeństwem są traktowane w różny sposób. O ile ojciec biologiczny ma prawo do zaprzeczenia ojcostwa dziecka pozamałżeńskiego, o tyle nie ma takiego prawa w przypadku dziecka urodzonego w małżeństwie. Celem opracowania jest krytyczna analiza prawa albańskiego w przedmiocie kwestionowania domniemanego ojcostwa, koncentrując się na pozycji prawnej biologicznego ojca dziecka. Autorzy analizują wypowiedzi doktryny, orzecznictwo Europejskiego Trybunału Praw Człowieka i porównawczo systemy prawne państw Zachodnich Bałkanów. Główną tezą artykułu jest twierdzenie, że przy zaprzeczaniu ojcostwa wynikającego z domniemania nie dochodzi do sprawiedliwego wyważenia konkurencyjnych praw i interesów, jeżeli ojciec biologiczny jest wyłączony z kręgu osób uprawnionych do podważenia domniemanego ojcostwa.

Słowa kluczowe: domniemane ojcostwo; zaprzeczenie ojcostwa; ojciec biologiczny; dobro dziecka