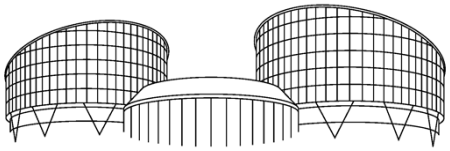

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF G.T.B. v. SPAIN

(Application no. 3041/19)

JUDGMENT

Art 8 • Positive obligations • Domestic authorities' failure to comply with obligation to act with due diligence to assist a vulnerable minor, a Spanish national born abroad, to obtain birth registration not secured by his available parent, and consequently identity documents • Right to respect for private life including, in principle, an individual right to have one's birth registered and to have access to other identity documents • Importance of "birth registration" for the respect of children's human rights • Important public interests at stake in the process of birth registration justifying strict registration procedures, in particular, when birth took place outside the concerned State's territory • Wide margin of appreciation covering legal substantive and procedural requirements imposed on the individual seeking to obtain a birth certificate and, on its basis, other identity documents • Adaptability in the standard procedures for the delivery of identity documents might be required when the circumstances made that imperative • Incumbent on the authorities to act in the child's best interest to compensate for mother's failings and prevent it from being left unregistered • Two-tier test developed: (i) At what point in time could it be said the authorities were sufficiently aware of the particular situation and could have reasonably expected to take active measures? (ii) Did the authorities take sufficiently adequate and timely action to assist the applicant? • Positive obligation to assist the applicant arose when it became clear that his only available parent would not be able to produce other documents • Authorities' failure to take sufficiently adequate and timely action in discharging their obligation to act with due diligence resulting in important repercussions on the applicant

STRASBOURG

16 November 2023

In the case of G.T.B. v. Spain,

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

Georges Ravarani*, President*,
Carlo Ranzoni,
Mārtiņš Mits,
María Elósegui,
Mattias Guyomar,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 3041/19) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Spanish national, Mr G.T.B. ("the applicant"), on 21 December 2018;

the decision to give notice to the Spanish Government ("the Government") of the complaints concerning Articles 3 and 8 of the Convention and Article 2 of Protocol No. 1 to the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

the decision to grant the applicant anonymity of its own motion under Rule 47 § 4 of the Rules of Court;

Having deliberated in private on 5 September and 17 October 2023,

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

INTRODUCTION

1. The case concerns the delay by the public authorities in processing the applicant's mother's request to register his birth, which was made several years after the applicant was born. Not having a birth certificate also prevented the applicant from having a national ID card, which he only obtained when he was twenty-one years old. The lack of identification documents had, in the applicant's view, an impact on his psychological well-being, which violated his right under Article 3, on his private and family life, which violated his right under Article 8 § 1 of the Convention, and on his right to education under Article 2 of Protocol No. 1, as he complained that he had not been able to enrol in school and obtain diplomas because of this.

THE FACTS

2. The applicant was born in 1985 and lives in Santa Cruz de Tenerife. He was represented by Mr J.C. Vázquez Fernández, a lawyer practising in Madrid.

3. The Government were represented by Mr L. Vacas Chalfoun, co-Agent of Spain to the European Court of Human Rights.

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

I. THE APPLICANT'S BACKGROUND AND EDUCATION

5. The applicant was born on 15 August 1985 in Mexico, to a Spanish mother who had been born in Venezuela ("Ms X"). His birth was never registered with the Civil Registry in the Spanish Consulate in Mexico.

6. Shortly after the applicant was born, an earthquake caused significant damage in Mexico. In October 1985 Ms X applied to be repatriated from Mexico with her sons (her elder son, then three years old, and the applicant, who was then two months old), at the expense of the Relief and Repatriation Fund of the Spanish Ministry of Foreign Affairs. The children were included in their mother's passport. The family took up residence in San Cristóbal de la Laguna, Tenerife (Spain).

7. Ever since their repatriation, the applicant and his family have resided in Tenerife. Upon his arrival there, the applicant was not registered as having been born in Mexico.

8. From 29 December 1989 until 15 January 1991 the applicant and his older brother lived in a children's foster centre under the care of the public authorities after they had been voluntarily given up by Ms X, who claimed to be ill, to have insufficient economic means and to be unable to take care of them. They were released on 15 January 1991 after their mother had stated that she wanted to take them back to live with her. There was no judicial intervention in respect of that decision.

9. The applicant started using illicit substances (hashish) in 1992, at the age of seven.

10. According to the applicant, he was enrolled in a primary school ("school A") from 22 October 1993 to November 1993. He submitted to the Court a certificate issued by that primary school, according to which he had been enrolled on those dates, but he was unable to provide any academic report confirming that he had ever attended the school. He claimed that his mother had tried to enrol him in another primary school, but had been unable to do so owing to the lack of requisite documents.

11. In 1994, when the applicant was nine years old, he was enrolled in and began attending another public school ("school B") in Tenerife. According to his school reports, he did not know how to read or write at that age.

12. In March 1995 the applicant was transferred to another public school ("school C"), also in Tenerife. During the 1995/96 academic year he was enrolled in the fourth grade of primary school. In the 1996/97 academic year, the applicant was enrolled in the fifth grade of primary school. He was also enrolled for three hours a week in a public supplementary education

programme, in order to receive remedial teaching to compensate for his lack of previous academic education. A report from that year stated as follows:

> "Taking into account his numerous absences and the little interest shown, no progress has been observed in his attitude towards school, either in his behaviour or as regards the curricular content".

13. The applicant started manifesting psychological disorders in 1996, at the age of eleven.

14. In the 1997/98 academic year the applicant was transferred back to school B, where he was enrolled in the sixth grade of primary school. His individualised assessment report of November 1997 contained the following observation:

> "... continuous absences from class make it impossible to follow a rhythm of work with the student. [He shows] little interest in his work, which may be due to the [developmental] delay he suffers from. He receives remedial teaching three hours a week, with better performance than in the classroom."

The applicant did not finish his studies that year. The school issued a report according to which the applicant and his sister did not have identity documents, had missed classes frequently without justification, and had often arrived at school poorly dressed, without any attention having been paid to their personal hygiene, and without having had breakfast; in addition, Ms X had caused problematic situations with the teachers both at schools B and C, as well as with representatives of the social security authorities and of a non-governmental organisation.

15. In the 1998/99 academic year, the applicant was enrolled in the first grade of secondary education. He did not attend classes during the entire year, but he was enrolled in the second grade for the 1999/2000 academic year.

16. In 1998, at the age of 13, according to the applicant, he began indiscriminate consumption of toxic substances. In 1999, at the age of 14, he participated in robberies and started using cocaine.

II. THE APPLICANT'S JUVENILE RECORD

17. From December 2001 (when the applicant was 16 years old), several correctional measures were imposed on him by the Santa Cruz de Tenerife Juvenile Court ("the Juvenile Court").

18. On 22 January 2002 the measure of attending a day centre for one year was imposed on the applicant. According to the documents submitted by the applicant, the workers of the day centre offered to help Ms X in the proceedings aimed at registering the applicant's birth and at obtaining an ID card for him, but she refused. By a judgment of 5 July 2002, following a plea bargain with his lawyer, the applicant was sentenced to detention in a semi - open regime for ten months. In November 2002 he escaped from the detention centre and was sentenced to six months in a semi-open regime in a judgment of 10 June 2003. On 31 May 2003, while he was still serving the

sentence imposed by the judgment of 5 July 2002, he pretended to suffer an epileptic fit and, taking advantage of being transferred to hospital, pushed past a nurse and fled; he was arrested on 1 June 2003 after breaking into two cars. On 15 June 2004 (by which time the applicant was already an adult) he was convicted and sentenced to detention in a semi-open regime for six months. In April 2003 he resisted the execution of an interim measure, causing injuries to the officers who were escorting him, and was sentenced on 14 September 2005 to six months under probation. On 29 September 2003 he was sentenced to nine months of semi-open detention for a further offence. The applicant completed a measure of detention in a closed regime for eight months between 2 June 2003 and 27 January 2004. From 27 January 2004 to 26 May 2004 he served another measure of semi-open detention in a centre where he took part in several activities: academic courses, sports, social activities and professional training. From 21 January 2005 he served a further measure of seven months under probation. During that time he took part in courses in emergencies and catastrophes, water lifeguard training and land rescue, in all of which he obtained certificates.

III. THE INVESTIGATION BY THE MINORS SERVICE

19. Owing to the applicant's lack of attendance, the school issued a notice to the Prevention and Protection Programme of the Minors Service of the Government of the Canary Islands.

20. The Minors Service initiated an inquiry on 18 February 2002. The inquiry established that the applicant had not attended school and had not undergone medical check-ups. The Minors Service noted in a report of 26 June 2021 that, according to their records, Ms X had not allowed any professionals to have access to her children, that they had received numerous appointment letters and summonses but had not responded, and that both the Minors Service and the police had repeatedly tried to locate them at their home but, even though they had been known to be inside, they had deliberately ignored calls, knocks at the door and letters slipped under the door. Because the applicant was already serving a supervisory measure, no protection order was made for his abandonment. The investigation was terminated when the applicant reached the age of eighteen in 2003.

IV. THE APPLICANT'S EDUCATIONAL AND MEDICAL SITUATION AND PLACEMENT IN DETENTION CENTRES

21. Between 2001 and 2006, while he was serving correctional measures, the applicant completed training in marquetry, food handling and dog training. According to the applicant, he could not continue his professional training on account of his lack of an ID card. According to the psychological and follow-up reports from the correctional centres he stayed in, he started

other courses that he did not finish, and the centres repeatedly offered to help Ms X to obtain his ID, but she refused and did not show any interest in the matter.

22. In March 2000 the social authorities requested Ms X to provide the ID numbers of her children who had reached the age of sixteen years old to ensure that she remained entitled to receive social benefits. Ms X was informed that without that information she would no longer be eligible to benefits. The applicant and his brother did not hold an ID card at that time.

23. A certificate from the Canary Islands education authorities of 26 June 2002 stated that the applicant had been pre-enrolled in an educational programme but he had never been able to formalise the enrolment because he did not have an ID card or any other form of identification.

24. In September 2002 the applicant signed up for the tests to obtain the School Leaving Certificate, held at an adult education centre. In the certificate issued by that centre, the marks obtained in all subjects are recorded as "NA" (not attended): the applicant did not take the tests.

25. In 2003 the applicant turned eighteen. Until that time, his mother was his legal representative. During the time he was detained, several reports indicated that his psychologists had encouraged him to focus on obtaining his ID by himself (from the moment he turned eighteen) and to obtain help from the public authorities, in the light of his mother's inaction in that regard. Some reports also referred to Ms X's difficult and problematic attitude, which had prevented proper dialogue with her son and with the various detention centres. Some reports noted in addition that it was impossible for him to integrate into the labour market without first obtaining his ID card. They pointed out that he could not register in public job-search programmes because he did not have an ID number, and that some job offers could not materialise in the form of contracts because of that situation. Occasionally he took some jobs, in particular, in building maintenance and construction.

26. On 5 February 2008, a foundation responsible for the training and vocational integration of minors within the criminal justice system in the Canary Islands issued a certificate stating that the applicant had been supervised by technicians of that foundation between 26 May 2004 and 17 April 2006, during which time he had not had an ID card, which had prevented him from attending official training courses and from integrating into the job market. The applicant had also had issues when trying to enrol in a gym although he had eventually succeeded.

27. According to numerous psychological and follow-up reports issued between 2001-06, the applicant was constantly frustrated and anxious because of his lack of identifying documents and its effect on his prospects of having a stable job.

28. According to several medical reports, the applicant, diagnosed in 2002 with various conditions, including paranoid schizophrenia, suffered from

anxiety caused by the lack of an ID card and the ensuing inability to undergo training or to be employed, which aggravated his mental condition.

29. In July 2011 the applicant was granted a disability pension of a non-contributory nature owing to his severe psychiatric and psychological disorders, including paranoid schizophrenia and chronic post-traumatic disorder.

30. According to a forensic medical report requested during the judicial proceedings from 4 November 2016, the applicant has post-traumatic stress and continued to be under psychiatric follow-up, but this did not impair him from appearing before a court and making a judicial statement.

V. THE APPLICANT'S MOTHER'S REQUESTS FOR HIM TO OBTAIN A BIRTH CERTIFICATE

A. From 1997 to 1998

31. On 3 September 1997, when the applicant was 12 years old, his mother appeared at the La Laguna Civil Registry and requested late registration of the birth of her two sons, including the applicant. Ms X included their address in the application.

32. In the course of the proceedings, the applicant's mother was asked to appear with two witnesses in order to be able to register her sons, first by a summons sent on 9 September 1997 and, following the absence of a response, by a second summons sent in January 1998. The two witnesses were heard on 25 and 27 August 1998 and confirmed the mother-son relationship between the applicant and his brother and Ms X.

33. On 10 September 1998 the judge at the La Laguna Civil Registry considered that no further documents or evidence were needed and requested the public prosecutor's office, which deals with matters concerning minors, to report whether the late registration was justified. On the same date the public prosecutor's office issued a report, according to which it had been sufficiently proved that the applicant and his brother were sons of Ms X as she had claimed, and their birth could therefore be registered. The judge at the La Laguna Civil Registry immediately decided, on the very same day, that the birth of the applicant and his brother could be registered.

B. From 1998 to 2002

34. On 16 December 1998 the Central Civil Registry, the body competent to register births of Spanish nationals outside Spanish territory, asked Ms X to submit her own birth certificate and birth certificates proving the birth of her children in Mexico before it could proceed with the birth registration.

35. On 3 March 1999 Ms X presented her birth certificate and her passport but claimed that she lacked any official documents to prove her children's births as they had been born at home in Mexico.

36. On 31 March 1999 the Central Civil Registry issued a request to the Tenerife Civil Registry to summon Ms X and her children for the purpose of "recognition" of the minor children by their mother, and to initiate proceedings to grant Spanish nationality to the applicant's elder brother. The Central Civil Registry instructed the Tenerife Civil Registry to publish the corresponding decrees and to have Ms X, the applicant and his brother examined by a forensic doctor. Lastly, it requested a report on the possibility to proceed to registering their birth from the public prosecutor's office.

37. The request could not be executed because it proved impossible to summon Ms X, who could not be found and notified at the address she had indicated for those purposes in her application.

38. The procedure was suspended for several years.

39. On 26 December 2001 the police issued a report stating that an ID card in respect of the applicant's brother could not be issued pending submission of outstanding documents.

C. From 2002 to 2006

40. On 16 May 2002 Ms X appeared at the La Laguna Civil Registry and requested the late registration of the births of her children, stating that she had not provided the requested certificates because in her opinion the children should have been registered at the Spanish embassy when they had been repatriated, that the documents must have been destroyed by the earthquake in Mexico, and that she only had documents concerning herself but that the children had been included in her passport in order to proceed with the repatriation in 1985.

41. On 5 August 2002 the Central Civil Registry instituted a new procedure for the late registration of the births in respect of the applicant and his brother. Ms X was asked to present the Mexican birth certificates for her sons, which she was instructed to request from the Consular Affairs Directorate of the Ministry of Foreign Affairs.

42. On 23 October 2002 Ms X appeared at the La Laguna Civil Registry and stated that she did not have any birth certificates and that the children had not been registered in their country of birth, Mexico, as she had already explained on 16 May 2002.

43. On 5 February 2003 the Ministry of Foreign Affairs of Spain informed Ms X that she needed to indicate at least the municipality and the date on which her sons had been born in Mexico so that it could ask the Spanish consulate in Mexico to search for their birth certificates in that country.

44. On 15 January 2004 the La Laguna Civil Registry requested the Consular Affairs Directorate of the Ministry of Foreign Affairs to search for

the birth certificates of the applicant and his brother in Mexico. The request was transferred to the Consul General of Spain in Mexico on 6 February 2004.

45. On 13 May 2004 the Consul General of Spain in Mexico replied that in the absence of further information about when the applicant and his brother had been initially registered in Mexico and further specific information about that registration, it had not been possible to find any documents.

46. On 21 October 2004 the judge at the Central Civil Registry requested Ms X to provide the birth certificates and all documentation available to her relating to her children (for example, medical or school-related documents) to prove their mother-son relationship.

47. On 11 January 2005 Ms X and her sons appeared at the La Laguna Civil Registry. She requested the urgent processing of the registration of her children's births, alleging again that she had been unable to provide birth certificates since the documents relating to the births had been destroyed by the earthquake which had devastated Mexico and had led to their being repatriated on 20 October 1985. She explained that she had already submitted:

(i) her own birth certificate;

(ii) her passport, in which her children were included;

(iii) a certificate of residence issued by the municipality;

(iv) her social security card, on which the children were included;

(v) a copy of the administrative file on the request for their birth registration; and

(vi) several requests to the Central Civil Registry for registration of her sons.

The La Laguna Civil Registry referred the request to the Central Civil Registry, which then forwarded it to the public prosecutor's office, which on 26 January 2005 objected to the aforementioned registrations as the details of the births had not been proved.

48. As a result, in order to complete the evidence in the file, the Central Civil Registry agreed that the mother's express recognition of the children should be given before a judge.

49. The applicant appeared at the public prosecutor's office and the La Laguna Civil Registry in February and April 2005 to enquire about the proceedings for him to be able to obtain a birth certificate. The public prosecutor's office sent two requests to the Central Civil Registry, in April and September 2005, to obtain information about the reasons for the delay.

50. On 13 May 2005, following the request from the Central Civil Registry, Ms X recognised her children at a hearing before a judge, and repeated that she did not have further documents. The applicant's sister also attested to their relationship. The applicant and his brother consented to their recognition by their mother and their birth registration. They were all examined by a forensic doctor, who ratified their biological age, and decrees were published to make the recognition official.

51. On 6 June 2005 the applicant lodged a complaint with the Central Civil Registry about the delay in the proceedings to register his birth. He lodged a further complaint with the Santa Cruz de Tenerife public prosecutor's office in September 2005. The public prosecutor's office sent various requests for information about the proceedings to the Central Civil Registry.

52. On 28 October 2005 the Central Civil Registry asked Ms X to submit certificates of the studies pursued by her sons. She replied that although her sons had been enrolled in various schools and high schools, she had not been able to obtain any certificates because of their lack of an ID number. In view of the statement by Ms X that she was unable to submit any additional documents, on 8 March 2006 the public prosecutor issued a report in favour of the late registration of the applicant's and his brother's births.

53. On 13 March 2006 the judge at the Central Civil Registry gave a decision in which, in the light of the documents submitted, as well as the report by the forensic doctor, the witnesses' statements, and the recognition given by the applicant's mother and sister, the relationship between the applicant and Ms X was considered to have been proved. As a consequence, the judge approved the late registration of the births of the applicant and his older brother.

54. On 5 April 2006 the births were registered.

55. Following the birth registration, on 24 May 2006 the applicant, then twenty-one years old, was issued with an ID card.

VI. ADMINISTRATIVE PROCEEDINGS FOR STATE LIABILITY

56. On 22 December 2014 the applicant lodged a complaint with the Ministry of the Interior of Spain, which he described as a "claim prior to bringing administrative proceedings". He sought compensation for pecuniary and non-pecuniary damage, which he did not quantify. The complaint did not meet formal legal requirements.

57. On 20 April 2015 the applicant submitted an amended complaint claiming damages caused by the undue delay in issuing his ID card. The applicant argued that his lack of an ID card for many years had prevented him from accessing the job market, obtaining a driving licence, or completing his education. He quantified his claim for compensation at 825,546.70 euros (EUR), which he later increased to EUR 930,081.36. The amount was broken down into "days in which he could not work", "job-related pecuniary damage (before and after obtaining the ID card)", "after-effects", and an additional 10% as a "corrective factor". Although he mentioned the lack of access to education, he did not quantify the amount claimed under that head. The complaint made no reference to a breach by the competent authorities of their duties relating to the care of minors.

58. The Council of State (*Consejo de Estado*) was consulted for a mandatory report on the complaint lodged. In its report of 23 July 2015, the Council of State observed that the complaint resulted from the alleged malfunctioning of public services belonging not only to the Ministry of the Interior but also to the Ministry of Foreign Affairs and Cooperation and the Ministry of Justice. Accordingly, the decision on potential State liability needed to be taken by the Ministry of the Presidency.

59. On 24 November 2015 the Ministry of the Presidency asked the Ministry of Justice and the Ministry of Foreign Affairs and Cooperation to submit observations on whether they considered themselves competent to respond to the State liability claim and, if appropriate, to submit their decision. In response, the Ministry of Justice submitted a draft decision dismissing the complaint on account of the lack of a causal link between the delay in issuing an ID card and the damage allegedly suffered by the applicant. The Ministry of Foreign Affairs stated that it was not competent, because its only intervention had been the repatriation from Mexico when the applicant had been two months old and the request to the Consul General in Mexico to search for any birth certificates there, which in its view had been merely procedural steps without any impact on the applicant's State liability complaint.

60. The applicant received the observations of the Ministries but he did not submit any observations.

61. On 29 December 2015 the Ministry of Justice requested the judge at the Central Civil Registry to provide the relevant information to decide on the applicant's State liability complaint. On 8 January 2016 the judge provided information about the steps that the applicant and his mother had taken in order to obtain his late birth registration and then an ID card, and concluded that, in the light of the facts, the delays in obtaining the documents in question had been justified. The judge also noted that consideration should be given to the possibility of the State liability claim against the public authorities being time-barred, since the limitation period of one year started counting from the point at which he could have lodged the complaint. In the opinion of the judge, the period had started running on 9 April 2013, when the applicant had been sent a full copy of the file on the proceedings at his own request. The complaint had been lodged on 20 April 2015.

62. In opinion no. 529/2016 of 7 July 2016, the Council of State found that it was appropriate to reject the State liability claim brought by the applicant in respect of the damage allegedly suffered as a consequence of the delay in obtaining the ID card, for two main reasons: (i) the applicant was affected by a psychiatric disorder which could not be causally linked to the acts or omissions of the public authorities; and (ii) the delay in obtaining the ID card had been a consequence of the impossibility of registering the birth at the Central Civil Registry, which was a prior and necessary procedure. In the Council of State's view, although there had been some delays in some of

the procedures for registering the applicant's birth with the Central Civil Registry, the fact was that all the procedures that had been initiated since 1997 could not be processed at some point because of Ms X's inactivity, or the absence of documents that should have been in her possession, or the impossibility to find her at the address she had indicated for that purpose. In the Council of State's view, the delays caused by such circumstances could not be attributed to the public authorities. The Council of State emphasised that the procedure for late birth registration had been initiated for the last time in May 2002. After the failure of the Spanish Consular Registry in Mexico to find any birth certificates and the applicant's mother's acknowledgment that she had never registered him there, the procedure had been resolved by means of a certificate of recognition of the children by Ms X, after which their birth registration had finally been approved on 13 March 2006 and the registration had been carried out on the following 5 April 2006. In short, the delay could not be attributable to the Ministry of Justice, since the delays in conducting the procedure were the result of actions or omissions by Ms X or the impossibility to provide documentation the loss or the lack of which was not attributable to the public authorities.

63. On 20 July 2006 the Ministry of the Presidency, in accordance with the proposal of the Ministries of the Interior and Justice and with the opinion issued by the Council of State, decided to reject the applicant's claim for State liability. The decision stated, in particular, the following:

> "[D]espite all the references contained in the medical reports on the effects that the failure to obtain an ID card has had on the applicant's mental health, it should be pointed out that no objection can be made to the only action of the Ministry of the Interior identified in the complaint, which was to issue an ID card of the interested party, given that this was carried out without any delay and in compliance with the requisite standards once the interested party met the requirements for obtaining the card and had proved this. The fact that it was impossible for [the applicant] to obtain the ID card was only the inevitable consequence of not being in possession of the necessary birth certificate as he had not been registered at birth, and therefore no liability can be attributed to the services of the Ministry of the Interior as the damage alleged by the applicant are not causally linked to the actions of those services.
>
> ...
>
> The applicant claims that the lack of documentation proving his identity is the cause of the very serious illness from which he suffers, arguing that this has had repercussions on his physical and mental health since, lacking a national ID card and family record book, he was unable to attend school properly and could not access the level of education corresponding to his age, which led to his social isolation and was, in turn, the cause of various criminal behaviours, making it impossible for him to achieve a stable life. However, although he did not provide the report which allegedly diagnosed him with paranoid schizophrenia, according to the forensic medical report of 23 May 2014, the applicant's pathological history includes behavioural disorders since the age of 11 and cannabinoid use in adolescence and, according to the report of 29 November 2014 of the General Psychiatry Service of the University Hospital of the Canary Islands in La Laguna, a maternal uncle suffering from paranoid schizophrenia as part of the family psychiatric history. It is clear from the foregoing that it cannot be concluded that

the lack of documentation certifying his identity is the cause of the applicant's neuronal pathology, which apparently affects him, and therefore it is not possible to establish State liability as claimed."

VII. JUDICIAL PROCEEDINGS FOR STATE LIABILITY

64. On 27 January 2016 the applicant brought judicial administrative proceedings, appealing against the implied rejection of his claim for State liability. His appeal was subsequently extended to cover the express rejection in accordance with the aforementioned decision of 7 July 2016. On 6 September 2016, the applicant increased the amount claimed to EUR 1,288,088.41, which included damage to his professional life in 2015 and 2016, as well as "damage caused by the non-compliance of the public authorities with their guardianship duties" (the latter amounted to EUR 358,051.60, without any further detail given as to how he had calculated it).

65. On 22 May 2017 the *Audiencia Nacional* declared the applicant's appeal inadmissible in a judgment that noted the conditions that had to be met in order for a claim for State liability to be successful in accordance with the regulations in force: (i) real, economically quantifiable and individualised damage had been sustained by a person who had no legal duty to bear it; (ii) the damage had to be the result of the normal or abnormal operation of public services, and not caused by *force majeure*; (iii) there had to be a causal link between the functioning of the public service concerned and the damage or injury – it therefore had to be determined whether there was a causal link between the functioning of the public service and the damage or injury alleged, that is, whether it was attributable to the public authorities; and (iv) a period of one year had not elapsed between the occurrence of the damage and the time when the action for damages had been brought.

66. Next, the *Audiencia Nacional* assessed whether the burden of proving economically quantifiable and individualised damage had been met by the applicant. It found that this had not been duly proved, on the basis that the applicant had merely quantified the damage he had allegedly suffered (for the time spent without an ID card, his mental illnesses, the education certificates he had been unable to obtain, or the jobs he had been unable to find) but had not provided any explanation as to how he had come up with that amount. The *Audiencia National* considered that the applicant was confusing pecuniary damage (allegedly caused by his losing or being unable to start certain jobs) and non-pecuniary damage (based on his suffering) but had not explained any of the amounts he had claimed.

67. Moreover, it observed that in his initial administrative complaint (the applicant had not raised any allegations of non-compliance by the public authorities with their duties of protection while he had been under their watch (while serving the criminal measures imposed on him), and that he therefore

could not make any claims on that issue in the present context (in his judicial complaint).

68. The *Audiencia Nacional* concluded that a causal link could not be established between the actions and omissions of the public authorities and the alleged damage suffered by the applicant. Moreover, it considered that Ms X had been negligent in registering the birth of her children. The *Audiencia Nacional* stated as follows:

> "... In the present case, it cannot be said that it is possible to speak of the existence or non-existence of a clear and clean causal relationship between the activity of the public authorities and the result known to have been produced, but rather that, as we shall see, there is a multitude of concurrent circumstances, some voluntary, others forced by reality, others beyond the full control of those intervening in this event, and in the background there is a set of negative circumstances which in one way or another have influenced the final result.
>
> In the present case, the actions of the public authorities, in terms of their obligation to comply with their duty to protect minors, have been somewhat less than impressive, not to say non-existent, as it is a minor who was fully under their protection and in respect of whom there was a specific problem, namely the lack of legal identification, owing to the failure to register his birth with a Spanish civil registry.
>
> ...
>
> [I]n the absence of proof of the decisive influence in the development of the illness suffered by [the applicant], given his childhood and family history and the congenital origin of the illness from which he suffers, the lack of activity on the part of the mother, who bore primary responsibility for ensuring the late registration of the birth of her children but who took more than twelve years to initiate the procedure, and the failure to follow up the procedure initiated for that purpose, mean that the sole direct causal link between the possible harm suffered by [the applicant] and any potential lack of diligence on the part of the public authorities is broken, leading to the conclusion that any harm that may have been caused is not considered to be unlawful and therefore, it is not appropriate to declare the State liable."

69. On 26 June 2017 the applicant's lawyer lodged an appeal on points of law (*recurso de casación*) against the aforementioned judgment given by the *Audiencia Nacional*. He complained of a breach of the public authorities' duties to take care of a minor under their guardianship, and of his right to fair proceedings because of the incorrect assessment of the evidence. On 10 November 2017 the Supreme Court declared the appeal inadmissible based on it being unsubstantiated: the Supreme Court considered that the applicant had not sufficiently justified the existence of an objective interest for the purposes of an appeal on points of law (*interés casacional objetivo*) as required under domestic law.

70. The applicant lodged an *amparo* appeal with the Constitutional Court, complaining of a violation of his right not to be discriminated against taken together with his right to education, of his right to physical and psychological integrity, and of his right to fair proceedings. The appeal was declared inadmissible on 21 June 2018 based on the lack of constitutional relevance

which is required for the Constitutional Court to declare *amparo* appeals admissible.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

71. The relevant provisions of the Spanish Constitution of 1978 read as follows:

Article 15

"Everyone shall have the right to life and to physical and psychological integrity, and under no circumstances may anyone be subjected to torture or to inhuman or degrading punishment or treatment. The death penalty is hereby abolished, except as provided by military criminal law in times of war."

Article 18 § 1

"The right to honour, to personal and family privacy and to one's own image is guaranteed."

Article 27

"1. Everyone has the right to education. Freedom of teaching is recognised.

2. Education shall be aimed at the full development of the human character with due respect for the democratic principles of coexistence and for fundamental rights and freedoms.

...

4. Elementary education shall be compulsory and free of charge."

72. The relevant provisions of the Spanish Law on the Civil Register of 8 June 1957, as in force at the material time, read as follows:

Section 2

"The Civil Register shall constitute proof of the registered facts. Only in cases of lack of registration or where it is not possible to certify the entry shall other means of proof be accepted; but in the former situation, it shall be an essential requirement for their acceptance that, previously or simultaneously, the registration that has been omitted or the reconstitution of the entry has been requested."

Section 15

"The Register shall record the events subject to registration that concern Spaniards and those that occur in Spanish territory, even if they concern foreigners.

In any case, events that occurred outside Spain shall be registered where the corresponding registrations are to serve as a basis for registrations required by Spanish law."

Section 24

"The following shall be obliged to initiate registration without delay:

First: those designated in each case by law;

Second: those to whom the event subject to registration refers, or their heirs;

Third: the public prosecutor's office.

The authorities and civil servants not enumerated above to whom, by virtue of their positions, unregistered facts are known shall be obliged to notify the public prosecutor's office of them."

Section 42

"Registration shall be effected by means of a declaration by the person who has knowledge of the birth. The declaration shall be made between twenty-four hours and eight days after the birth, except in cases where the Regulations specify a longer period."

Section 43

"The following shall be obliged to initiate the registration [of a birth] by the corresponding declaration:

First: the father;

Second: the mother;

Third: the next of kin or, failing that, any person of legal age present at the place of birth at the time of its being verified;

Fourth: the head of the establishment or the head of the family of the house in which the birth took place;

Fifth: in the case of abandoned newborn children, the person who has taken them in."

Section 49

"Recognition may be effected by the means laid down in the Civil Code or by a declaration of the father or mother, at any time, before the registrar, entered in the margin and signed by them. In the latter case there must also be the consent of the child or the approval of the court, as provided for in the Civil Code.

Natural parentage may be registered by means of a procedure approved by the first-instance judge, provided that there is no objection from the public prosecutor's office or from the interested party, who must have been notified personally, if any of the following circumstances are applicable:

First: when the father or the mother unambiguously and expressly recognises parentage in writing;

Second: when the child is in continuous possession of the status of natural child of the father or mother, as attested by direct declarations of the father himself or of his family;

Three: in respect of the mother, provided that the fact of birth and the identity of the child are fully proved.

In the event of an objection, the registration of parentage can only be obtained through the ordinary procedure."

73. The relevant provisions of the Decree of 14 November 1958 approving the Regulations on the Law on the Civil Registry read as follows:

Article 167

"In the birth report, in addition to the name, surname, status and association number of the person signing it, it shall be clearly stated that the registration requires the date, time and place of birth, the sex of the new born child and a reference to the identity of the mother, indicating whether it is known with certainty to [the person signing the report] or has been certified, and in the latter case, official documents that have been examined or a reference to the identity of the person confirming the data, who, with the mother, shall sign the report, unless she is unable to do so or objects, which shall then also be reported.

A report or declaration by professionals and personnel of health establishments that have a duty of confidentiality shall not refer to the mother against her will."

Article 311

"In a request for registration submitted after the expiry of the relevant deadline, it shall be stated that, after having carried out the appropriate investigation, no birth registration was found, or the corresponding negative certification shall be presented."

Article 313

"In case of doubt about the sex or age of the child, the Civil Registry's forensic doctor or his or her substitute shall issue an expert opinion.

To determine the year and locality of the birth, the information of two people who are aware of it by their own knowledge or by common knowledge shall suffice; however, to further specify the time and place that have been certified by common knowledge, efforts shall be made to provide further evidence."

Article 315 (as in force as of October 1986)

"As long as it does not produce a delay of more than thirty days, the following must be included in the file:

(1) the record of the birth, signed by a doctor, midwife or technical health assistant or, failing that, the baptismal or similar certificate of the corresponding religion;

(2) the marriage certificate of the parents or, should this not be possible, the ecclesiastical certificate; and

(3) where appropriate, certification or an official record of the registration, even provisionally, of the nullity or dissolution of the marriage or the legal separation, or of the husband's death, or a declaration of the husband's absence or death.

This shall be without prejudice to any further steps that may be taken, such as the joining to the file of the registration certificate, the inclusion or extension of witness evidence or others."

74. The relevant provisions of Decree no. 196/1976 of 6 February 1976 regulating the national identity document (in force until December 2005) read as follows:

Article 1 (in force in July 1985)

"The national identity document is the public document that certifies the authentic personality of its holder, constituting complete proof of the identity of the person.

This document shall be essential to justify by itself and officially the identity of its owner, attesting, unless proved otherwise, to the personal data contained therein.

..."

Article 12 (in force from 1979)

"The national identity document shall be issued only to Spaniards, and all persons over fourteen years of age residing in Spain and those of the same age who, while residing abroad, move to Spain for a period of no less than six months shall be obliged to obtain it; those who in each of the preceding circumstances do not possess it shall be considered undocumented for all purposes.

By way of exception, minors under this age may obtain the document voluntarily with the authorisation of their parents or guardians.

..."

Article 14

"Those who apply for the national identity document for the first time shall be required to submit a certified extract of the holder's birth certificate.

..."

75. The relevant provisions of Royal Decree no. 1553/2005 of 23 December 2005 regulating the national identity document state as follows:

Article 2. Right and obligation to obtain a national identity document.

"1. All Spaniards shall have the right to be issued with a national identity document, and it shall be compulsory for those over fourteen years of age residing in Spain and for those of the same age who, while residing abroad, move to Spain for a period of no less than six months ..."

Article 5. Requirements for obtaining a national identity document

"1. In order to apply to be issued with a national identity document, the physical presence of the person to whom it is to be issued, payment of the fee established by law at the relevant time and presentation of the following documents shall be essential:

(a) a birth certificate issued by the corresponding Civil Registry; for this purpose, only certificates issued no more than three months prior to the date of submission of the application for issuing of the national identity document shall be accepted;

..."

76. The relevant provisions of the Spanish Civil Code (as established by the Royal Decree of 24 July 1889) read as follows:

Article 172 (as in force in the period including 1989-1991)

"1. The public entity entrusted with the protection of minors in the respective territory shall, by operation of the law, have guardianship of those who are in a situation of helplessness. A situation of helplessness is considered to be that which occurs *de facto* as a result of the non-fulfilment, or the impossible or inadequate exercise of the duties of protection established by the law for the guardianship of minors, when they are deprived of the necessary moral or material assistance.

2. The public entity shall assume guardianship only for such time as is necessary, when those who have authority over the minor so request on the grounds that they are unable to care for him or her owing to illness or other serious circumstances, or, in legally established cases, when so agreed by the judge."

Article 172 (as in force during the period from 2000 to 2006)

"1. The public entity entrusted with the protection of minors in the respective territory, when it finds that a minor is in a situation of helplessness, shall, by operation of the law, have guardianship of the minor and shall adopt the necessary protective measures for the minor's care, informing the public prosecutor's office and notifying the parents, legal guardians or caregivers, within a period of forty-eight hours. ...

A situation of helplessness is considered to be that which occurs *de facto* as a result of the non-fulfilment, or the impossible or inadequate exercise of the duties of protection established by the law for the guardianship of minors, when they are deprived of the necessary moral or material assistance.

The transfer of guardianship to the public entity shall entail the suspension of parental authority or ordinary guardianship. However, acts of a financial nature carried out by the parents or legal guardians on behalf of the minor which are beneficial to him or her shall be deemed valid.

2. When the parents or legal guardians, on account of serious circumstances, are unable to care for the minor, they may request the competent public body to take the minor into its care for such time as is necessary.

... Likewise, guardianship shall be assumed by the public entity when so agreed by the judge in the cases in which this is legally prescribed."

77. Section 1 of Organic Law 8/1985 of 3 July 1985 regulating the right to education reads:

"1. All Spaniards shall have the right to a basic education that allows them to develop their own personality and carry out an activity useful to society. Such education shall be compulsory and free at the basic general education level and, where appropriate, in the first grade of professional training, as well as at the other levels established by law.

2. Everyone shall also have the right to access higher levels of education, depending on their aptitudes and vocation, without in any case the exercise of this right being subject to discrimination due to the student's economic capacity, social status or place of residence.

3. Foreigners residing in Spain shall also have the right to receive the education referred to in subsections one and two of this section."

78. The relevant provisions of Law no. 29/1998 on judicial administrative proceedings read as follows:

Section 29(1)

"When the public authorities, by virtue of a general provision that does not require implementing provisions or by virtue of an act, contract or administrative agreement, are obliged to carry out a specific service in favour of one or several specified persons who are entitled to it, those persons may request that the authorities fulfil that obligation. If, within three months from the date of the request, the authorities have not complied with the request or have not reached an agreement with the interested parties, the latter may lodge an administrative appeal against the inactivity of the authorities."

II. RELEVANT INTERNATIONAL MATERIAL

79. The importance of birth registration for the respect of children's human rights has been reflected in several reports from international bodies, including UNICEF, the Committee on the Rights of the Child, or the United Nations High Commissioner for Human Rights, among other. A report from UNICEF titled "Every Child's Birth Right: Inequities and trends in birth registration" of 2013 referred to birth registration as "a passport to protection of children".

80. On 17 June 2014, the Office of the United Nations High Commissioner for Human Rights issued a report on "Birth registration and the right of everyone to recognition everywhere as a person before the law". The report defined birth registration as "the continuous, permanent and universal recording within the civil registry of the occurrence and characteristics of birth, in accordance with the national legal requirements. It establishes the existence of a person under law, and lays the foundation for safeguarding civil, political, economic, social and cultural rights. As such, it is a fundamental means of protecting the human rights of the individual." The report particularly emphasised how "the fulfilment of the right to be registered at birth is closely linked to the realization of many other rights; socioeconomic rights, such as the right to health and the right to education, are at particular risk where birth registration is not systematically carried out, and the protection of children is jeopardized." Some relevant extracts of the report read as follows:

II. Birth registration: overview

...

"5. On a procedural level, birth registration involves three interrelated processes. First, there must be the declaration of the occurrence of the birth to civil registrars. Second, once notified, civil registrars officially record the birth. Registration should include the individual's name, date and place of birth, as well as, where possible, the name, age or date of birth, place of usual residence and nationality of both parents. Third, the State issues a birth certificate, a personal document to attest birth registration and the most visible evidence of the State's legal recognition of the child. Whether this procedure is followed automatically after registration or requires another application depends on the country; it is vital, however, that this document is accessible easily and provided free of charge.

III. International legal framework

12. The importance of birth registration in a child's life and the impact of non-registration on the enjoyment of the rights of the child are acknowledged regularly by the Committee on the Rights of the Child, in its general comments No. 3 (HIV/AIDS), No. 6 (treatment of unaccompanied and separated children), No. 7 (early childhood), No. 9 (children with disabilities), No. 10 (juvenile justice), No. 11 (indigenous children), No. 13 (right to freedom from all forms of violence) and No. 15 (right of the child to health).

13. As described by the Committee on the Rights of the Child in its general comment No. 7, children who are not registered may be denied basic rights, such as health, education and social welfare. It therefore recommended that States take all necessary measures to ensure that all children are registered at birth, which can be achieved through a universal, well-managed registration system that is accessible to all and free of charge. The Committee added that an effective system must be flexible and responsive to the circumstances of families, and reminded States of the importance of facilitating late registration of birth and ensuring that children who have not been registered have equal access to health care, protection, education and other social services. In its general comment No. 13, the Committee adopted a progressive view, clearly indicating that the lack of birth registration can be a form of neglect and of negligent treatment when those responsible for the child's care have the means, knowledge and access to services to do so.

IV. Impact of non-registration on human rights

17. The right to birth registration is not only a right of the child but of all human beings. Birth registration, and more especially a birth certificate, is a life-long passport for the recognition of rights, which may be necessary to, *inter alia*, vote, marry or secure formal employment. In some countries, it may be needed to obtain a driver's licence, to open a bank account, to have access to social security or a pension, to obtain insurance or a line of credit, and, significantly, to be able to register one's own children. It is also vitally important for securing inheritance and property rights, particularly for women and within families. A recent country-specific study suggests that further research is needed to evaluate fully the link between access to services and birth registration.

18. The right to birth registration is closely linked to the realization of many other rights, and has profound consequences for children's enjoyment of their rights with regard to protection, nationality, access to social and health services, and education. In particular, inequality in birth registration rates may compound inequalities in access to basic services, besides heightening discrimination and vulnerability. An effective civil registration and statistics system is therefore an important first step to ensuring the protection of children.

A. Right to education

19. Birth registration can have a fundamental impact on the right to education for children. ... Furthermore, in some countries, while children are permitted to attend primary school without evidence of birth registration, a certificate is required to be able to take the final school examinations and thus to receive relevant academic qualifications or to progress to secondary school.

...

D. Child labour

...

26. In some countries, a birth certificate is required to obtain a social security number necessary for working in the formal sector, meaning that all individuals – whether adults or children – without birth registration or access to a birth certificate are marginalized to the informal sector, where there is less scrutiny and a greater risk of exploitation and hazardous work.

V. Good governance

37. The security of the civil registration and vital statistics system, and of the birth certificate that is issued as proof of registration, is also vital. The birth certificate is often a "breeder" document for other forms of identification, including identity papers, passports, driver's licences and voter registration cards. Unlike these documents, however, it is not tied to the individual by a photograph or biometric data. The use of fraudulent birth certificates to obtain genuine identification documents under a false name or age is increasing, and poses a threat to national and international security.

38. While birth registration within such a system is a fundamental human right, its impact goes beyond the individual to have vital importance for the State, and a profound effect on governance at the national and international levels in improving services and ensuring accountability.

81. The relevant provisions of the United Nations Convention on the Rights of the Child of 20 November 1989 read as follows:

Article 3

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

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

Article 7

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

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

Article 16

"1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks."

Article 35

"States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."

THE LAW

I. THE APPLICANT'S COMPLAINTS AND THEIR LEGAL CLASSIFICATION

82. The applicant complained of the suffering and the other consequences, including in the educational and private sphere, of having been undocumented for many years in Spain.

83. He relied on Article 8 of the Convention, which established the right to respect for private life, on account of the delay and the difficulties in having his birth registered and later his ID card issued. He also relied on Article 3 of the Convention on account of the psychological and physical suffering he was still enduring as a consequence of having been undocumented for years. The Court notes that the substantive aspect of these two complaints is in fact rather similar; the applicant's suffering was allegedly a consequence of his lack of documents. The Court has already established that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity depends on all the circumstances of the case. Where a measure falls short of the treatment proscribed by Article 3 treatment, it may still, however, fall foul of Article 8 of the Convention, which, *inter alia*, provides protection of physical and psychological integrity under the "respect for private life" head (see *Wainwright v. the United Kingdom*, no. 12350/04, § 43, ECHR 2006-X). The Court considers that in the present case the applicant has not provided any evidence other than the severity of his current psychiatric and psychological diagnosis to substantiate that the treatment he received from the public authorities handling his request to have his birth registered attained the minimum level of severity to reach the threshold established under Article 3 of the Convention. However, the Court considers that the complaint can be examined under Article 8 of the Convention, which protects the right to respect for private life.

84. The applicant also relied on Article 2 of Protocol No. 1 to the Convention, concerning the difficulties in enrolling in certain educational courses as well as in obtaining the corresponding diplomas and certificates because of his lack of an ID card. The Court has already recognised that the right to respect for private life protected by Article 8 encompasses both a right to personal development and a right to a "private social life", which consists

of the possibility for each individual to approach others in order to establish and develop relationships with them and with the outside world (see *Bărbulescu v. Romania* [GC], no. 61496/08, § 71, 5 September 2017, and *Botta v. Italy*, 24 February 1998, § 32, *Reports of Judgments and Decisions* 1998-I). The Court has already recognised that measures taken in the field of education may, in certain circumstances, affect the right to respect for private life (see *F.O. v. Croatia*, no. 29555/13, § 81, 22 April 2021).

85. The Court observes that the applicant was able to enrol in various educational institutions and that the legislation provides for free and equal access to primary and secondary education. His complaint relates to the issues he had in obtaining certificates or in enrolling in further training courses while he was serving sentences as a juvenile offender. The Court acknowledges that obtaining birth registration is closely linked not only to the right to private life, but also to the potential realization of other rights, and that it can have profound consequences for children's enjoyment of their rights with regard to protection, nationality, access to social and health services, and education (see paragraphs 79 and 80 above). Notwithstanding the above, by virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). Accordingly, the Court considers it appropriate to analyse the complaints concerning the applicant's access to education as just one aspect of his more general complaint under Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

86. The applicant complained that the delay and the obstacles faced in the procedure to have his birth registered to be able to obtain an ID card had amounted to a violation of his right to respect for his private life, provided in Article 8 of the Convention, which reads as follows:

Article 8. Right to respect for private and family life

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' submissions

(a) Non-exhaustion of domestic remedies

87. The Government submitted that the applicant had not exhausted domestic remedies. He had confined himself to bringing an action for State liability but had never brought any other type of legal proceedings aimed at redressing the allegedly infringed right (for example, against the public authorities which allegedly should have initiated the procedure for registering the applicant's birth of their own motion, or against the administrative authorities which had allegedly delayed the procedure for him to have his birth registered). Moreover, in the Government's view, the exorbitant amount of money the applicant was seeking by way of just satisfaction clearly demonstrated that the only reason he had lodged an application with the Court was to obtain money that he had been unable to obtain in Spain, not to remedy or redress the alleged violations of his substantive rights.

88. The applicant submitted that proceedings to establish liability on the part of the public authorities were the most appropriate means of remedying the violation of his right to respect for his private life.

(b) Lack of victim status

89. The Government stated that it was crucial to emphasise that the person who had had the responsibility for registering the applicant's birth without delay was his mother. In particular, pursuant to the Spanish Law on the Civil Registry as in force at the time (see paragraph 72 above), the mother was obliged to request the registration between twenty-four hours and eight days following the child's birth. Instead, it had taken Ms X more than twelve years to appear at the Civil Registry to request the registration of the applicant's birth in Mexico in 1985. Registration at a time closer to the birth would have facilitated the bureaucratic procedure, and the applicant would have already been registered and identified at the time of his expatriation to Spain from Mexico. The Government argued that the twelve-year delay in complying with that obligation had had a significant impact on the processing of the registration, by increasing the difficulty of proving the circumstances in which the birth had taken place given the time that had elapsed and the distance. They submitted that, had Ms X complied with her obligation to request the registration within the legal time-limit, the subsequent difficulties and the consequent delay in the registration would not have occurred. Furthermore, the processing of the case had been at a standstill from March 1999, as it had been impossible to summon Ms X because she was unknown at the address provided for that purpose, until 16 May 2002, when she had again applied to the La Laguna Civil Registry to register the birth of her children. In that connection, the Government argued that the applicant could

not claim the status of victim, given that the events which he was complaining about were largely due to the behaviour of his then legal representative (his mother).

90. The applicant contended that it had not been Ms X's behaviour that had impeded his registration for years, but the obstacles put in place by the public authorities. He claimed to be a victim of a violation of his right and hence to have victim status.

2. The Court's assessment

91. Concerning the exhaustion of domestic remedies, the Court notes that in his *amparo* appeal the applicant complained of all the consequences he suffered as a result of the impugned events and thus raised in substance the complaint now brought before the Court.

92. The Court therefore dismisses the Government's objection concerning non-exhaustion of domestic remedies.

93. Concerning the Government's objection about victim status, the Court considers that the question whether the delay and the problems in registering the applicant's birth and issuing his ID card were imputable to the public authorities' acts and omissions or to the applicant's and/or his mother's behaviour is in reality a submission on the merits of the case. Consequently, it should be examined as part of the Court's analysis on the merits of the case.

B. Merits

1. The parties' submissions

(a) The applicant

94. The applicant's complaint was twofold. Firstly, he complained that the public authorities had never initiated or pursued the procedure for him to have his birth registered when they should have done so, given that he had been a minor and under the public authorities' guardianship during certain periods. Secondly, he argued that the delay in having his birth registered had been caused by the constant and unnecessary obstacles created by the public authorities in requesting documents and information known to be unavailable.

95. As to the first part of his complaint, the applicant submitted that from 29 December 1989 until 15 January 1991, when he had been left in a children's foster centre in the care of the public authorities after being voluntary given up by his mother, it had been the Canary Islands' public authorities that had exercised guardianship over him, and they had not taken any steps to initiate the registration of his birth or to issue him with an ID card. He also observed that from 2000 until 2006, during the different periods in which he had been serving correctional measures following his criminal convictions by the juvenile courts, the Directorate General for Protection of

Minors, Childhood and Family of the Government of the Canary Islands had also assumed legal guardianship over him. In his view, the public authorities had been ultimately responsible for him and should have assisted with the registration of his birth so that he could obtain an ID card. The applicant complained that the various centres in which he had served the correctional measures had been aware of his problem concerning the lack of documents yet had done nothing to solve it.

96. As to the second part of his complaint, the applicant emphasised that nine years had elapsed between 3 September 1997, when Ms X had first initiated the procedure for the late registration of her sons' birth, and 13 March 2006, when the procedure had ended. He contended that since March 1999 the public authorities had been aware that Ms X did not have any documents to prove the births of her sons in Mexico, in spite of which she had been asked to submit documents over and over again until 2005, when they had finally decided that she would have to "recognise" her sons in court to make up for the lack of documentary evidence.

97. The applicant submitted that the section 24 of the Spanish Law on the Civil Registry as in force at the material time (see paragraph 72 above) had not only placed on his mother an obligation to ensure his registration, but also, in the absence of any steps taken by the parents or other legal guardians, it had placed that obligation on the public prosecutor's office. In his view, while he was underage, the public authorities should have taken his best interests into consideration as the primary criterion, which should have resulted in them taking responsibility for initiating his late birth registration. In the applicant's view, the public authorities should have therefore taken over the mother's responsibilities in dealing with his situation. In particular, he argued that the public authorities should have compensated for a minor's difficulties in the educational sphere and/or declared a situation of risk after hearing the mother.

98. Concerning the damage suffered as a result of the above issues, the applicant explained that he had been diagnosed with chronic post-traumatic stress disorder in relation to his lack of identity documents for many years, as shown by the many psychiatric and psychological reports. According to a forensic medical report from 4 November 2016, "his speech is centred on the 'serious problems' caused by his lack of an ID, which he blames on negligence on the part of the authorities" (see paragraph 30 above). The applicant insisted that he had spent 70% of his life undocumented and unidentified during the sensitive periods of his childhood and teenage years. He had had to fight a difficult battle against the public authorities, while opportunities for development and vocational integration had been denied to him because of his irregular situation. He pointed to many reports in which the psychologists and other specialists who had been working towards his rehabilitation and integration into the job market had stated that his irregular situation made it very difficult for him to find a job, which had made it hard

for him to pursue his life goals. The reports stated that he had had a proactive attitude and had been motivated to work but the situation had prevented him from doing so. Moreover, Ms X had lost social benefits because neither he nor his brother had an ID card.

99. The applicant argued that having to change schools so often had been due to the fact that neither he nor his brother had an ID number, which had also given rise to his anxiety and his later criminal activity. The applicant also alleged that the situation which he had endured for many years had caused him very substantial physical and psychological damage.

100. The applicant argued that the interference with his right under Article 8 of the Convention was not covered by Article 8 § 2, since it had not been in accordance with the law and constituted a measure which had not been necessary in a democratic society.

(b) The Government

101. The Government considered it important to clarify that the applicant's lack of identification documents (namely, an ID card) was a direct consequence of his not having a birth certificate. In other words, he could not be issued with an ID card without having his birth registered prior to that. They further maintained that all the problems which had made it difficult for the applicant to be registered as a teenager and adult had simply been aggravated because of his mother's behaviour. The Government asserted that Ms X had never attempted to register him either in Mexico or upon their arrival in Spain. She had only started the procedure when the applicant had been twelve years old, which had created enormous difficulties for the processing of the request because of the lack of any evidentiary documents to support her claim. The Government also pointed out that none of the above was directly related to a person's nationality, and that the two aspects should not be mixed up. The applicant had not obtained an alternative ID card (which was issued to non-Spanish citizens) because his nationality had never been called into question.

102. That having been said, the Government submitted that the issue to be assessed under Article 8 of the Convention was whether the applicant's right to respect for his private life could have been violated because his birth had not been registered for several years.

103. The Government argued that there was no interference by the Spanish authorities with the applicant's right under Article 8. The applicant's identity had never been denied by the public authorities, and no objection had made to issuing him with an ID card once the prerequisites had been fulfilled. The Spanish Government had repatriated the applicant in 1985 with Ms X without any doubt about his name, the fact that he was his mother's son, or his Spanish nationality. The alleged psychological damage he claimed to have suffered as a consequence of not having an ID card many years later could

not be considered an interference by the national authorities with his right to private life.

104. Concerning the issue of guardianship in respect of the applicant, the Government submitted that, under the applicable law, Ms X had never lost it and had been the only person responsible for her son's administrative situation. According to a certificate from the Directorate General for Protection of Minors, Childhood and Family of the Government of the Canary Islands, that institution (or any other institution of the Canary Islands) had never had guardianship in respect of the applicant, and nor had he ever been in any centre for the protection of minors. The Government also explained that it had not been compulsory for the applicant to have an ID card until he was fourteen years old, and that, by the time he had reached that age, his mother had already requested his birth registration, so the procedure had already been under way. Therefore, no obligation could be derived for the public authorities to take steps to initiate the applicant's birth registration when his own mother had taken no such steps.

105. Concerning the main aspect of the complaint under Article 8, that is, the length of the proceedings for the applicant to obtain his birth certificate and subsequently an ID card, the Government submitted that, even if the procedure to register the applicant's birth could be considered an interference with his rights under Article 8 § 1 of the Convention, it would have been justified by the requirements set out in Article 8 § 2. First, it was undisputed that the authorities had simply followed the existing regulations in order to be able to register the applicant's birth many years after he had been born. It had been necessary to comply with several requirements in order to guarantee that any birth registration accurately reflected the true situation, and it had therefore been necessary to carefully assess whether he was who Ms X was claiming. A person could not be registered as somebody's son simply by a declaration of that other person and without any documentary support or other evidence. In particular, the Government argued that the Spanish authorities had followed the Law on the Civil Registry as in force, as well as the applicable Regulations. They also maintained that the requirements had pursued a legitimate aim, which was simply to be rigorous in the registration of any Spanish nationals and to avoid any potential damage to Spanish citizens caused by misrepresentations of reality. A reckless practice of birth registrations could lead to baby trafficking or other issues which would undoubtedly have serious consequences. Lastly, the Government submitted that it had been necessary in a democratic society to take the necessary steps (i) to check whether the applicant's birth had already been registered in Mexico; (ii) to check whether any information on the birth had existed, which would have been crucial for any subsequent registration; (iii) in the absence of the above, to obtain any other documents concerning the existence of a mother-son relationship; and (iv) in the absence of any direct documentary evidence, to obtain any other information through witness statements in

accordance with the law. The delays, which had occurred because of the nature of the procedure and of the attitude of Ms X as a person responsible for requesting the registration, could not be attributed to the authorities.

106. In any event, the Government emphasised that the public prosecutor's office had made several requests for information to the civil registries in order to find out the status of the procedure. The authorities had asked Ms X to submit many documents or other proof of the relationship between them, had carried out an investigation, and had tried to obtain evidence through the Mexican consulate.

107. The Government argued that the public authorities could not be asked to do more than they had done in order to expedite the procedure for the applicant to obtain his papers, and that no violation of his right to private life could be found in the present case.

108. The Government also argued that the applicant's right to an education had never been compromised, and that the public authorities, far from preventing him from studying, had provided support and allowed him to enrol each time he had wished to do so in different schools, even if he subsequently had not attended.

109. As for damage, the Government did not dispute that the applicant had developed a psychological condition but argued that it could not be attributed to the acts or omissions of the Spanish public authorities. His own actions, such as drug consumption from the age of seven, as well as his family context, notably his mother's behaviour and the family's medical history had had a fundamental impact on his situation.

110. The Government also emphasised that the forensic and medical reports submitted by the applicant did not disclose the existence of a direct causal link between his lack of identity documents and his psychological suffering; they merely indicated that he blamed his problems on that lack of identification. In the Government's view, the *Audiencia Nacional* had been very clear in its reasoning as to why the applicant's psychological condition could not be attributed to the authorities.

111. In the Government's view, the applicant was presenting a very biased and incomplete version of the assessment of the evidence. The domestic judgments, in particular that of the *Audiencia Nacional* of 22 May 2017, had been neither arbitrary nor manifestly incorrect.

2. The Court's assessment

(a) General principles

112. The Court reiterates that the concept of private life covers the physical and psychological integrity of a person and may embrace multiple aspects of the person's physical and social identity (see *Denisov v. Ukraine* [GC], no. 76639/11, § 95, 25 September 2018, and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 66, ECHR

2008). The notion of private life is not limited to an "inner circle" in which the individual may live his own personal life as he chooses and exclude the outside world (see *Denisov*, cited above, § 96). Article 8 secures to individuals a sphere within which they can freely pursue the development and fulfilment of their personality (see *Brüggemann and Scheuten v. Germany*, no. 6959/75, Commission decision of 19 May 1976, Decisions and Reports 5, p. 103, and *A.-M.V. v. Finland*, no. 53251/13, § 76, 23 March 2017). The notion of personal autonomy is an important principle underlying the interpretation of Article 8 (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 90, ECHR 2002-VI, and *Jivan v. Romania*, no. 62250/19, § 30, 8 February 2022). The Court has generally acknowledged the importance of privacy and the values to which it relates, including psychological well-being and dignity (see *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 117, 14 January 2020), personality development (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 95, ECHR 2012), physical and psychological integrity (see *Söderman v. Sweden* [GC], no. 5786/08, § 80, ECHR 2013, and *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 261, 8 April 2021), or the right to self-determination (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III).

113. The Court has also held that respect for private life requires that everyone should be able to establish details of their identity as individual human beings (see *Mennesson v. France*, no. 65192/11, § 96, ECHR 2014 (extracts)). It has also acknowledged the important repercussions that the regulation on birth registration and access to identity documents can have on personal autonomy (see, *mutatis mutandis*, *Christine Goodwin*, cited above, § 91).

114. The Court reiterates that although the object of Article 8 is essentially that of protecting an individual against an arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference. In addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private and family life (see *Lozovyye v. Russia*, no. 4587/09, § 36, 24 April 2018, and the case-law cited therein).

115. The principles applicable to assessing a State's positive and negative obligations under the Convention are similar. Regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, the aims in the second paragraph of Article 8 being of a certain relevance (see *Hämäläinen v. Finland* [GC], no. 37359/09, § 65, ECHR 2014, and the case-law cited therein). The notion of "respect" is not clear cut, especially as far as positive obligations are concerned: having regard to the diversity of the practices followed and the situations obtaining in the Contracting States, the notion's requirements will vary considerably from case to case (see *Hämäläinen*, cited above, § 66; see

also *Christine Goodwin*, cited above, § 72). Nonetheless, certain factors have been considered relevant for the assessment of the content of those positive obligations on States. Some of them relate to the applicant. They concern the importance of the interest at stake and whether "fundamental values" or "essential aspects" of private life are in issue (see *Hämäläinen*, cited above, § 66; and *X and Y v. the Netherlands*, 26 March 1985, § 27, Series A no. 91), or the impact on an applicant of a discordance between the social reality and the law, the coherence of the administrative and legal practices within the domestic system being regarded as an important factor in the assessment carried out under Article 8 (see *Hämäläinen*, § 66; and *Christine Goodwin*, §§ 77-78, both cited above). Other factors relate to the impact of the alleged positive obligation at stake on the State concerned. The question here is whether the alleged obligation is narrow and precise or broad and indeterminate (see *Hämäläinen*, cited above, § 66), or about the extent of any burden the obligation would impose on the State (ibid., § 66). In choosing how to comply with their positive obligations, States enjoy a broad margin of appreciation (see *Lozovyye v. Russia*, cited above, § 36). Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will be restricted (see, for example, *X and Y v. the Netherlands*, cited above, §§ 24 and 27, and *Christine Goodwin*, cited above, § 90).

116. In this respect, the Court notes that, as pointed out by the Office of the United Nations High Commissioner for Human Rights (see paragraph 80 above), birth registration involves not only the declaration of the occurrence of the birth to civil registrars and the official recording of the birth by civil registrars, but also the effective issuing of a birth certificate, the document which constitutes evidence of the State's legal recognition of the child.

117. According to well-established case-law, in all decisions concerning children their best interests are of paramount importance (see *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 287, 8 April 2021; see also *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 96, ECHR 2010; and *X v. Latvia* [GC], no. 27853/09, § 96, ECHR 2013). This reflects the broad consensus on this matter, expressed notably in Article 3 of the UN Convention on the Rights of the Child (see paragraph 81 above).

(b) Application of the above principles to the present case

118. The Court would start by noting that, as evidenced in its case-law cited above, obstacles in obtaining birth registration and lack of access to identity documents resulting from those obstacles can have a serious impact on a persons' sense of identity as an individual human being. In addition, the lack of birth registration and valid identity documents can cause significant problems in a person's daily life, in particular at the administrative level (see *M. v. Switzerland*, no. 41199/06, § 57, 26 April 2011; see also, *mutatis mutandis*, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 96, ECHR

2003-IX (extracts), see also paragraph 113 above) and educational level. Not being able to establish details of a person's identity thus interferes with personal autonomy and is directly related to the right to respect for private life as established under Article 8 of the Convention. The importance of obtaining birth registration and, as a consequence, other valid identity documents has also been underlined by other international bodies. In its General comment No. 13 (2011) on "The right of the child to freedom from all forms of violence", the UN Committee on the Rights of the Child clearly indicated that the lack of birth registration can be a form of neglect and of negligent treatment when those responsible for the child's care have the means, knowledge and access to services to do so (see paragraph 80 above). In the light of the above, the Court concludes that the right to respect for private life under Article 8 of the Convention should be seen as including, in principle, an individual right to have one's birth registered and as a consequence, where relevant, to have access to other identity documents.

119. The right to obtain a birth certificate and, on its basis, other identity documents from the relevant State authorities for persons under their jurisdiction is of course subject to the individual concerned fulfilling a number of substantive and procedural requirements provided for by domestic law. Such requirements may naturally include a rule that the issuance of identity documents must be requested by the person concerned, his/her legal representatives, or any other person or institution designated by law. The Court is of the view that safeguarding the consistency and reliability of civil registries and, more broadly, legal certainty, is an important goal in the general interest and justifies, as a matter of principle, strict procedures to register birth, in particular, when it has taken place outside the concerned State's territory. For the Court, States enjoy a wide margin of appreciation concerning the appropriate means of securing the enjoyment of the right to birth registration and access to identity documents flowing from Article 8 of the Convention, but as long as the relevant legal requirements are met, the State is under an obligation to issue birth certificates and access to other related identity documents in order to preserve the right to respect for private life.

120. In the present case, there is no doubt that under Spanish law, the legal procedure to register a persons' birth and, subsequently, to obtain identity documents was clear and foreseeable (see paragraphs 72–75 above). The Court also observes that, under Spanish law, in normal circumstances the primary responsibility for undertaking the necessary administrative steps for registration of birth and obtaining identity documents of a child lie on the parents (see paragraph 72 above).

121. The applicant does not appear to contest the justification for and the foreseeability of the Spanish legal requirements for the registration of births, but considers that in his specific situation their strict application without

regard to the consequences for his right to respect for his private life was unjustified.

122. The Court considers that some adaptability in the standard procedures for the delivery of identity documents may be required when the circumstances make that imperative in order to safeguard important interests protected under Article 8 of the Convention, such as an individual's right to have his birth registered and obtain, on that basis, access to identity documents. The Court observes that the substance of the applicant's complaint in the present case is not that the State acted in a certain way infringing his rights but that it failed to act where, according to him, it should have (see *Airey v. Ireland*, 9 October 1979, § 32, Series A no. 32). In particular, having regard to the essence of his grievances and the manner in which he has worded them (see paragraphs 94 - 100 above) the applicant complains about the alleged failure by the authorities to observe their positive obligations under Article 8 of the Convention in a situation where, as a minor, his right to respect for his private life was in jeopardy. The issue before the Court is not whether the procedure to register the applicant's birth as such was adequate, but whether the public authorities had a positive obligation to ensure that a fair balance between the competing interests involved was struck, and in particular, ensure that the applicant's right to have a recognised identity under Article 8 was not being violated.

123. The Court noted above the important repercussions that the lack of birth registration and consequent lack of access to identity documents can have for any person. In addition, the Court notes that the present case concerns a minor who started manifesting psychological disorders in 1996, at the age of eleven (see paragraph 13 above), and was diagnosed with various psychiatric conditions in 2002 (see paragraph 28 above), and whose only available parent failed to act diligently in securing the registration of his birth. Also, the applicant's lack of identity documents had, to at least some extent, an impact on his ability to pursue academic studies and training; it also made him unable to secure stable job contracts, which affected his ability to organise his private and family life; and it contributed to increasing his feelings of anxiety and distress.

124. On the basis of the above, the Court considers that in the present case it was incumbent on the authorities to act in the best interests of the child whose birth registration was being sought in order to compensate for the mother's failings and to prevent the child from being left unregistered and hence, without identity documents. The authorities were thus under a positive obligation stemming from Article 8 to act with due diligence in order to assist the applicant to obtain his birth certificate and his identity documents, to ensure effective respect for his private life (see, *mutatis mutandis*, *Paketova and Others v. Bulgaria*, nos. 17808/19 and 36972/19, § 163, 4 October 2022). The Court agrees with the Government concerning the need to ensure that the information provided was reliable before proceeding with the registration of

the applicant's birth. However, the protection of public order in that regard was not incompatible with assisting a person such as the applicant, in view of the particular vulnerability resulting from health and social factors, so as to protect a particularly important facet of the applicant's identity (see paragraph 115 above).

125. The existence of a positive obligation being established, the Court will examine, therefore, first, at what point in time it can be said that the authorities were sufficiently aware of the particular situation for their positive obligation to arise, and, second, whether they took adequate action in discharging it.

126. Concerning, in the first place, at what point in time the authorities became aware of the need to take action in the face of the applicant's mother's inactivity in order to protect the applicant's right to private life, the Court observes that various public authorities were appraised of his vulnerable situation for most of his life: when he was enrolled in public schools but did not attend school, which was even reported by the Minors Service of the Government of the Canary Islands (see paragraphs 10 - 15 and 19 - 20 above); as a teenager, when he committed several offences and was imposed correctional measures (see paragraphs 17 - 18 above); when he tried unsuccessfully to enrol or complete academic or professional training (see paragraphs 23, 25 - 27 above); when he was diagnosed with severe psychiatric and psychological disorders (see paragraphs 13 and 28 above).

127. However, the question before the Court is solely about the moment when the relevant authorities could have reasonably been expected to take active measures to secure the issuance of identity documents for the applicant. In this regard, it can be considered that the civil registration authorities became aware of the applicant's difficulties to have his birth registered and as a consequence, to obtain an ID card at some point in mid-1999, when the procedure had to be suspended because of the impossibility to summon his mother (see paragraphs 37 - 38 above). At all events, not later as from May 2002, when it became clear that the applicant's mother would not be able to produce documents other than those she had submitted (see paragraphs 40 - 42 above), it must have been plainly obvious for the relevant authorities that positive action was needed to ensure that the applicant did not remain without a registered identity. In the light of the above, the Court considers that the public authorities' and, in particular, the Central Civil Registry's positive obligation to assist the applicant in registering his birth and to act with due diligence in this respect, arose as from May 2002.

128. The Court must now assess whether the public authorities took adequate action in discharging their positive obligation. In this regard, it notes that in October 2002 the Central Civil Registry insisted on Ms X undertaking further steps at the Consular Affairs Directorate of the Ministry of Foreign Affairs despite the clear indication that she did not act with full diligence in the related administrative matters in the past and that the applicant, a minor

and a vulnerable person, risked as a consequence to remain without identity documents for a significant further period of time (see paragraph 41 above). It was not before January 2004 when the Civil Registry decided to take some active steps by contacting directly the Consular Affairs Directorate of the Ministry of Foreign Affairs (see paragraph 44 above). On 11 January 2005 Ms X and her sons appeared at the Civil Registry of La Laguna requesting the urgent processing of the registration of her children's birth, alleging once again that she had been unable to provide birth certificates and that she had already submitted everything in her possession, that is, her own birth certificate, her passport and social security card, both bearing the names of her children, the certificate of residence of all three of them, a copy of the administrative file on the request for their late birth registration, and her repeated requests to the Central Civil Registry (see paragraph 47 above).

129. The Court notes that only after all the above endeavours had proved to be unsuccessful, a decision was taken to set a new date for Ms X's "recognition" of her sons (as had already taken place in 1999; see paragraph 36 above) at the court in La Laguna. This took place on 13 May 2005: Ms X recognised her children at a hearing with the judge, the applicant's sister also attested to their relationship, and the applicant and his brother consented to their recognition by their mother and their birth registration. They were all examined by the forensic doctor, who verified their biological age, and decrees were published to make the recognition official (see paragraph 50 above). Despite the above, Ms X was again asked several months later to submit the certificates of the studies pursued by her sons, which she claimed she could not produce. In view of this, the late birth registration was eventually agreed upon and the applicant's birth was registered in 2006. In sum, four years elapsed between the moment when it became apparent to the public authorities that the applicant's mother could not facilitate any further documents to register her son's birth, and its actual registration. The Court considers that there was no justification to delay until May 2005 the "recognition", which seemed to be the only way to prove the mother-son relationship and, hence, to proceed with the issuing a birth certificate for the applicant, in the absence of any relevant Mexican documents. Hence, for the Court, the public authorities did not take sufficiently adequate and timely action in discharging their positive obligation to assist the applicant in his obtention of a birth certificate and connected identity documents when it was clear, from 2002, that he required such assistance; they merely insisted on the applicant's mother responsibility to comply with all the legally established criteria, notwithstanding their awareness that no further documents concerning the applicant´s birth in Mexico would be found and disregarding the particular vulnerability of the applicant.

130. It is not for the Court to examine the question of which concrete measures the public authorities could have put in place in order to assist the

applicant in obtaining identity documents. However, in the particular case at hand, the Court considers that the authorities failed in their positive obligation to act with due diligence in order to assist the applicant to have his birth registered and, as a consequence, to have his identity documents obtained.

131. In view of the above considerations, the Court finds that there has been a violation of the authorities' positive obligations in securing enjoyment of the applicant's right to respect for his private life under Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. Article 41 of the Convention provides:

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

A. Damage

1. The parties' submissions

133. The applicant claimed 1,288,088,41 euros (EUR) in respect of non-pecuniary damage, based on the physical and especially mental suffering he had been through during the more than twenty years when he had been unable to obtain his identity documents. He based the amount on the mental disorders established in the various reports he submitted.

134. The Government maintained that the applicant had not justified the amount claimed in respect of non-pecuniary damage, or demonstrated the causal link between such damage and any actions or omissions of the domestic public authorities. However, they opposed the amount on several grounds.

(i) The applicant could not claim to have sustained damage on account of his lack of an ID card from when he had been born until he had obtained an ID card at the age of 21, because an ID card was only mandatory from the age of 14.

(ii) The applicant could not claim to have sustained damage on account of a lack of access to education when he had had access to the education system.

(iii) The amount of EUR 825,546.70 which the applicant had claimed in his administrative complaint corresponded to his estimate of the damage resulting from his lack of access to the job market, but there was no mention of the right to education or a breach of the public authorities' duty of care.

(iv) The total amount of EUR 1,288,088.41 which the applicant had claimed in his first judicial complaint appeared to result from supplementing the previously mentioned amount by EUR 75,730 for "failure to comply with the objectives of the Canary Islands' comprehensive plan" and EUR 282,320

for "failure to comply with the Ombudsman's report, expulsion from schools ...", of which the applicant had never complained before.

(v) In his second claim the applicant had again asked for EUR 1,288,088.41 but the items had been broken down differently, with no mention of "failure to comply with the objectives of the Canary Islands' comprehensive plan" or "failure to comply with the Ombudsman's report, expulsion from schools ...", and with the addition of "job-related damage in 2015 and job-related damage in 2016" and "damage arising from failure to comply with the duties of the public authorities". This change, in the Government's view, demonstrated the unfoundedness of the applicant's claim.

2. The Court's assessment

135. The Court recalls, firstly, that it has found a failure by the Spanish authorities to discharge their positive obligation to act with due diligence in order to assist the applicant to obtain the registration of his birth (and, as a consequence, his identity documents) from May 2002 only. The applicant's birth was registered in April 2006. Therefore, moral damages corresponding to an earlier period cannot be awarded, despite the applicant's claims that he endured physical and mental suffering for more than twenty years. The Court also observes that the applicant has failed to establish a clear causal link between the violation found and any non-pecuniary damage allegedly caused by difficulties in him having access to education and the job market. In addition, the Court agrees with the Government's argument that the applicant never complained about the "failure to comply with the objectives of the Canary Islands' comprehensive plan" or the "failure to comply with the Ombudsman's report, expulsion from schools ..." with the domestic courts.

136. However, there is no doubt that there is a direct causal link between the violation found and the fact that the applicant's sense of identity as an individual was adversely affected at least for several years. In addition, the lack of birth registration and valid identity documents must have inevitably caused him certain difficulties in his daily life.

137. In the light of the above, making its assessment on equitable basis, the Court awards the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

1. The parties' submissions

138. The applicant also claimed EUR 11,253 in respect of the costs and expenses incurred before the domestic courts and the Court.

139. The Government opposed reimbursing the applicant the amounts claimed in each of the documents. They contended that it had not been proved

that the invoices had been paid, and noted that several of the invoices had been issued by different lawyers from the ones who had actually appeared in the domestic proceedings and the *amparo* proceedings. They also maintained that some of the invoices were duplicates.

2. The Court's assessment

140. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 4,840 for the proceedings before it, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts]:
      (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,840 (four thousand eight hundred and forty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Georges Ravarani President