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This factsheet is not exhaustive and does not bind the Court

Gestational surrogacy

Cases concerning gestational surrogacy arrangements raise issues mainly under **Article 8 (right to respect for private and family life) of the [European Convention on Human Rights](#)**, which states:

"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 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."

In order to determine whether the interference by the authorities with the applicants' private and family life was necessary in a democratic society and a fair balance was struck between the different interests involved, the European Court of Human Rights examines whether the interference was in accordance with the law, pursued a legitimate aim or aims and was proportionate to the aim(s) pursued.

Judgments and decisions of the Court

[Mennesson v. France and Labassee v. France](#)

26 June 2014 (Chamber judgments)

These cases concerned the refusal to grant legal recognition in France to parent-child relationships that had been legally established in the United States between children born as a result of surrogacy treatment and the couples who had had the treatment. In both cases the applicants complained in particular of the fact that, to the detriment of the children's best interests, they were unable to obtain recognition in France of parent-child relationships that had been legally established abroad.

The European Court of Human Rights firstly noted that in the present cases Article 8 (right to respect for private and family life) of the European Convention on Human Rights was applicable in both its "family life" aspect and its "private life" aspect. On the one hand, there was indeed no doubt that the applicants had cared for the children as parents since the children's birth and they lived together in a way that was indistinguishable from "family life" in the accepted sense of the term. On the other hand, the right to identity was an integral part of the concept of private life and there was a direct link between the private life of children born following surrogacy treatment and the legal determination of their parentage. The Court then noted that the interference with the applicants' right to respect for their private and family life resulting from the French authorities' refusal to recognise the legal parent-child relationship had been "in accordance with the law" within the meaning of Article 8 of the Convention. The Court also accepted that the interference in question had pursued two of the legitimate aims listed in Article 8, namely the "protection of health" and the "protection of the rights and freedoms of others". It observed in this regard that the refusal of the French authorities to recognise the legal relationship between children born as a result of surrogacy treatment abroad and the couples who had the treatment stemmed from a wish to discourage French nationals from having recourse outside France to a reproductive



technique that was prohibited in that country with the aim, as the authorities saw it, of protecting the children and the surrogate mother. Lastly, examining whether the interference had been “necessary in a democratic society”, the Court stressed that a wide margin of appreciation had to be left to States in making decisions relating to surrogacy, in view of the difficult ethical issues involved and the lack of consensus on these matters in Europe. Nevertheless, that margin of appreciation was narrow when it came to parentage, which involved a key aspect of individuals’ identity. The Court also had to ascertain whether a fair balance had been struck between the interests of the State and those of the individuals directly concerned, with particular reference to the fundamental principle according to which, whenever children were involved, their best interests must prevail. In both cases the Court held that there had been **no violation of Article 8** of the Convention **concerning the applicants’ right to respect for their family life** and a **violation of Article 8** of the Convention **concerning the children’s right to respect for their private life**. The Court observed in particular that the French authorities, despite being aware that the children had been identified in the United States as the children of Mr and Mrs Mennesson and Mr and Mrs Labassee, had nevertheless denied them that status under French law. It considered that this contradiction undermined the children’s identity within French society. The Court further noted that the case-law completely precluded the establishment of a legal relationship between children born as a result of – lawful – surrogacy treatment abroad and their biological father. This overstepped the wide margin of appreciation left to States in the sphere of decisions relating to surrogacy.

Similar cases in which, relying on its judgments in *Mennesson* and *Labassee*, the Court held that there had been no violation of Article 8 of the Convention as regards the applicants’ right to respect for their family life and a violation of Article 8 as regards the right to respect for private life of the children concerned: [Foulon and Bouvet v. France](#), judgment (Chamber) of 21 July 2016; [Laborie v. France](#), judgment (Committee) of 19 January 2017.

D. and Others v. Belgium (no. 29176/13)

8 July 2014 (Chamber decision – partly struck out of the list of cases; partly inadmissible)

This case concerned the Belgian authorities’ initial refusal to authorise the arrival on its national territory of a child who had been born in Ukraine from a surrogate pregnancy, as resorted to by the applicants, two Belgian nationals. The applicants alleged in particular that their effective separation from the child, on account of the Belgian authorities’ refusal to issue a travel document, had severed the relationship between a baby (aged only a few weeks) and his parents, which was contrary to the best interests of the child and in breach of their right to respect for family life. They also considered that this separation had subjected all three of them, parents and child, to treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

Noting firstly that, even if the applicants had been separated from the child during the period under consideration, it was not disputed that they had wished to look after the child, as his parents, from his birth, and that they had taken steps in order to allow for an effective family life (quite apart from the fact that all three had been living together since the child arrived in Belgium), the Court considered that the situation complained of fell within the scope of Article 8 of the Convention. It however declared **inadmissible**, as being manifestly ill-founded, the applicants’ complaints concerning the temporary separation of them and the child, finding that the Belgian authorities had not breached the Convention in carrying out checks before allowing the child to enter Belgium. In this respect, the Court observed that the refusal to authorise the arrival of the child on national territory, maintained until the applicants had submitted sufficient evidence to permit confirmation of a family relationship with the child, had admittedly resulted in the child effectively being separated from the applicants, and amounted to interference in their right to respect for their family life. Nonetheless, Belgium had acted within its broad discretion (“wide margin of appreciation”) to decide on such matters. While acknowledging that the situation must have been difficult for the applicants, the

Court considered for example that neither the urgent proceedings nor the period of the applicants' actual separation from the child could be considered as unreasonably long. The Convention could indeed not oblige the States to authorise entry to their territory of children born to a surrogate mother without the national authorities having a prior opportunity to conduct certain legal checks. In addition, the Court took the view that the applicants could reasonably have foreseen the procedure to be followed in order to have the family relationship recognised and to take the child to Belgium, especially as they had been advised by a Belgian lawyer and a Ukrainian lawyer. Lastly, the time taken to obtain the laissez-passer had, at least in part, been attributable to the applicants themselves, in that they had not submitted sufficient evidence at first instance to demonstrate their biological ties to the child. The Court also considered that there was no reason to conclude that the child had been subjected to treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) of the Convention during the period of his separation from the applicants. Lastly, in view of developments in the case since the application had been lodged, namely the granting of a laissez-passer for the child and his arrival in Belgium, where he had since lived with the applicants, the Court considered this part of the dispute to be resolved and **decided to strike out of its list**, pursuant to Article 37 (striking out applications) of the Convention, the applicants' complaint concerning the Belgian authorities' refusal to issue travel documents for the child.

Paradiso and Campanelli v. Italy

24 January 2017 (Grand Chamber judgment)

This case concerned the placement in social-service care of a nine-month-old child who had been born in Russia following a gestational surrogacy contract entered into with a Russian woman by an Italian couple (the applicants); it subsequently transpired that they had no biological relationship with the child. The applicants complained, in particular, about the child's removal from them, and about the refusal to acknowledge the parent-child relationship established abroad by registering the child's birth certificate in Italy.

The Grand Chamber found, by eleven votes to six, that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention in the applicants' case. Having regard to the absence of any biological tie between the child and the applicants, the short duration of their relationship with the child and the uncertainty of the ties between them from a legal perspective, and in spite of the existence of a parental project and the quality of the emotional bonds, the Grand Chamber held that a family life did not exist between the applicants and the child. It found, however, that the contested measures fell within the scope of the applicants' private life. The Grand Chamber further considered that the contested measures had pursued the legitimate aims of preventing disorder and protecting the rights and freedoms of others. On this last point, it regarded as legitimate the Italian authorities' wish to reaffirm the State's exclusive competence to recognise a legal parent-child relationship – and this solely in the case of a biological tie or lawful adoption – with a view to protecting children. The Grand Chamber also accepted that the Italian courts, having concluded in particular that the child would not suffer grave or irreparable harm as a result of the separation, had struck a fair balance between the different interests at stake, while remaining within the room for manoeuvre ("margin of appreciation") available to them.

C and E v. France (nos. 1462/18 and 17348/18)

19 November 2019 (Committee decision on the admissibility)

This case concerned the French authorities' refusal to enter in the French register of births, marriages and deaths the full details of the birth certificates of children born abroad through a gestational surrogacy arrangement and conceived using the gametes of the intended father and a third-party donor, in so far as the birth certificates designated the intended mother as the legal mother.

The Court declared the two applications **inadmissible** as being manifestly ill-founded. It considered in particular that the refusal of the French authorities was not disproportionate, as domestic law afforded a possibility of recognising the parent-child relationship between the applicant children and their intended mother by means of adoption of the other spouse's child. The Court also noted that the average waiting time for a decision was only 4.1 months in the case of full adoption and 4.7 months in the case of simple adoption.

D v. France (n° 11288/18)

16 juillet 2020

This case concerned the refusal to record in the French register of births, marriages and deaths the details of the birth certificate of a child born abroad through a gestational surrogacy arrangement in so far as the certificate designated the intended mother, who was also the child's genetic mother, as the mother. The child, the third applicant in the case, was born in Ukraine in 2012. Her birth certificate, issued in Kyiv, named the first applicant as the mother and the second applicant as the father, without mentioning the woman who had given birth to the child. The two first applicants, husband and wife, and the child complained of a violation of the child's right to respect for her private life, and of discrimination on the grounds of "birth" in her enjoyment of that right.

The Court held that there had been **no violation of Article 8** (right to respect for family life) of the Convention, finding that, in refusing to record the details of the third applicant's Ukrainian birth certificate in the French register of births in so far as it designated the first applicant as the child's mother, France had not overstepped its margin of appreciation in the circumstances of the present case. It also held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 8**, accepting that the difference in treatment of which the applicants complained with regard to the means of recognition of the legal relationship between such children and their genetic mother had an objective and reasonable justification. In its judgment, the Court noted in particular that it had previously ruled on the issue of the legal parent-child relationship between a child and its intended father where the latter was the biological father, in its judgments in *Menesson* and *Labassee* (see above). According to its case-law, the existence of a genetic link did not mean that the child's right to respect for his or her private life required the legal relationship with the intended father to be established specifically by means of the recording of the details of the foreign birth certificate. The Court saw no reason in the circumstances of the present case to reach a different decision regarding recognition of the legal relationship with the intended mother, who was the child's genetic mother. The Court also pointed to its finding in advisory opinion no. P16-2018-001 (see below) that adoption produced similar effects to registration of the foreign birth details when it came to recognising the legal relationship between the child and the intended mother.

Valdís Fjölnisdóttir and Others v. Iceland

18 May 2021

This case concerned the non-recognition of a parental link between the first two applicants and the third applicant, who was born to them via a surrogate mother in the United States. The first and second applicants were the third applicant's intended parents, but neither of them was biologically related to him. They had not been recognised as the child's parents in Iceland, where surrogacy is illegal. The applicants complained, in particular, that the refusal by the authorities to register the first and second applicants as the third applicant's parents had amounted to an interference with their rights.

The Court held that there had been **no violation of Article 8** (right to respect for family life) of the Convention. It considered, in particular, that despite the lack of a biological link between the applicants, there had been "family life" in the applicants' relationship. However, the Court found that the decision not to recognise the first two applicants as the child's parents had had a sufficient basis in domestic law and, taking note of the

efforts on the parts of the authorities to maintain that “family life”, ultimately adjudged that Iceland had acted within its discretion in the present case.

S.-H. v. Poland (nos. 56846/15 and 56849/15)

16 November 2021 (decision on the admissibility)

The parents of the applicants - twin brothers who were dual Israeli and United States nationals and lived in Israel- were a same-sex couple, who in 2010 had the children conceived via a surrogacy agreement. The applicants were confirmed as children of their parents by the Superior Court of California. The case concerned their application for Polish citizenship (one of their parents was a Polish national). They complained in particular of the refusal by the Polish authorities to recognise their relationship with their biological father, which they alleged had been because their parents were a same-sex couple.

The Court declared the applications **inadmissible**, finding that there was no factual basis for concluding that there had been an interference with the right to respect for private and family life in the present case. While it acknowledged, in particular, that the applicants would not have Polish and European citizenship as a result of those decisions, it pointed out that they would still enjoy free movement in Europe. For the Court, they had not put forward any claims of hardship they had suffered as a result of the decisions, either before the Court or the domestic authorities. In particular, the parent-child link in this case, although not recognised by the Polish authorities, was recognised in the State where the applicants resided. Legal recognition in the United States had meant that the applicants had not been left in a legal vacuum both as to their citizenship and as to the recognition of the legal parent-child relationship with their biological father.

A.L. v. France (no. 13344/20)

7 April 2022

This case concerned the compatibility with the right to respect for private life of the domestic courts’ refusal to legally establish the applicant’s paternity *vis-à-vis* his biological son – who had been born in the framework of a gestational surrogacy contract in France – after the surrogate mother had entrusted the child to a third couple. The applicant submitted that the dismissal of his application to establish his paternity in respect of his biological son amounted to a disproportionate interference with his right to respect for his private life, lacking any legal basis.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, on account of the French State’s failure to honour its duty of exceptional diligence in the particular circumstances of the case. It emphasised, however, that the finding of a violation should not be interpreted as questioning the Court of Appeal’s assessment of the child’s best interests or its decision to dismiss the applicant’s requests, as upheld by the Court of Cassation. In the present case, the Court noted, in particular, that the Court of Appeal, backed up by the Court of Cassation, had duly prioritised the best interests of the child, which it had been careful to characterise in practical terms having regard to the biological reality of the paternity claimed by the applicant. In balancing the applicant’s right to respect for his private life, on the one hand, with his son’s right to respect for his private and family life, which required compliance with the principle of prioritising the child’s best interests, the Court considered that the grounds set out by the domestic courts to justify the impugned interference had been relevant and sufficient for the purposes of Article 8 § 2 of the Convention. Nevertheless, the Court noted that the proceedings had taken a total of six years and about one month, which was incompatible with the requisite duty of exceptional diligence. The child had been about four months old when the case had gone to court, and six-and-a-half years old when the domestic proceedings had ended. In cases involving a relationship between a person and his or her child, the lapse of a considerable amount of time could lead to the legal issue being determined on the basis of a *fait accompli*.

D.B. and Others v. Switzerland (nos. 58817/15 and 58252/15)

22 November 2022

This case concerned a same-sex couple who were registered partners and had entered into a gestational surrogacy contract in the United States under which the third applicant had been born. The applicants complained in particular that the Swiss authorities had refused to recognise the parent child relationship established by a US court between the intended father (the first applicant) and the child born through surrogacy (the third applicant). The Swiss authorities had recognised the parent child relationship between the genetic father (the second applicant) and the child.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention in respect of the applicant child and **no violation of Article 8** (right to respect for family life) in respect of the intended father and the genetic father. Regarding the child, it noted in particular that, at the time he was born, domestic law had afforded the applicants no possibility of recognition of the parent-child relationship between the intended parent and the child. Adoption had been open to married couples only, to the exclusion of those in registered partnerships. Not until 1 January 2018 had it become possible to adopt the child of a registered partner. Thus, for nearly seven years and eight months, the applicants had had no possibility of securing definitive recognition of the parent child relationship. The Court therefore held that for the Swiss authorities to withhold recognition of the lawfully issued foreign birth certificate in so far as it concerned the parent-child relationship between the intended father and the child born through surrogacy in the United States, without providing for alternative means of recognising that relationship, had not been in the best interests of the child. In other words the general and absolute impossibility, for a significant period of time, of obtaining recognition of the relationship between the child and the first applicant had amounted to a disproportionate interference with the third applicant's right to respect for private life. Switzerland had therefore overstepped its margin of appreciation by not making timely legislative provision for such a possibility. Regarding, on the other hand, the first and second applicants, the Court first observed that the surrogacy arrangement which they had used to start a family had been contrary to Swiss public policy. It went on to hold that the practical difficulties they might encounter in their family life absent recognition under Swiss law of the relationship between the first and third applicants were within the limits of compliance with Article 8 of the Convention.

K.K. and Others v. Denmark (no. 25212/21)

6 December 2022

This case concerned the refusal to allow the first applicant to adopt the two other applicants, who were twins, as a "stepmother" in Denmark. The twins were born to a surrogate mother in Ukraine who had been paid for her service under a contract concluded with the first applicant and her partner, the biological father of the children. Under Danish law, adoption was not permitted in cases where payment had been made to the person who had to consent to the adoption.

The Court held that in the present case there had been **no violation of Article 8** (right to respect for family life) of the Convention, finding that there had been no damage to the family life of the applicants, who lived together with the children's father unproblematically. It also held that there had been **no violation of Article 8** (right to respect for private life) of the Convention as regards the mother's right to respect for her private life as the domestic authorities had been correct in ruling so, in order to protect the public interest in controlling paid surrogacy, over the first applicant's right to respect for private life. The Court held, however, that there had been a **violation of Article 8** as regards the right to respect for the private lives of the two applicant children, finding that the Danish authorities had failed to strike a balance between their interests and the societal interests in limiting the negative effects of commercial surrogacy, in particular as regards their legal situation and legal relationship to the first applicant.

C v. Italy (no. 47196/21)

31 August 2023¹

This case concerned the Italian authorities' refusal to recognise the legal parent-child relationship established by a Ukrainian birth certificate between the applicant, a child born through a gestational surrogacy arrangement abroad, and her biological father and intended mother.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention with regard to the establishment of a legal parent-child relationship between the applicant and her biological father, and **no violation of Article 8** of the Convention with regard to the establishment of a legal parent-child relationship between the applicant and her intended mother. The Court recalled in particular that, as it had found in previous cases, under Article 8 of the Convention, domestic law had to provide a possibility of recognition of the legal relationship between a child born through a surrogacy arrangement abroad and the intended father where he was the biological father. Concerning, firstly, legal parent-child relationship between the applicant and her biological father, the Court noted that in the present case the domestic courts had been unable to take a swift decision to protect the applicant's interest in having her legal relationship with her biological father established. The applicant, aged four, had been kept since birth in a state of protracted uncertainty as to her personal identity and, as she had no legally established parentage, was considered a stateless person in Italy. The Court therefore held that, despite the margin of appreciation afforded to the State, the Italian authorities had failed to fulfil their positive obligation to ensure the applicant's right to respect for her private life under the Convention. As to legal parent-child relationship between the applicant and her intended mother, the Court found that while Italian law did not allow for the details of the birth certificate to be registered concerning the intended mother, it nevertheless afforded her the possibility of legally recognising the child by means of adoption. By refusing to enter the details of the applicant's Ukrainian birth certificate in the relevant Italian civil register in so far as it designated the intended mother as her mother, the respondent State had thus not exceeded its margin of appreciation.

See also, recently:

A.M. v. Norway (no. 30254/18)

24 March 2022

Bonzano and Others v. Italy, Modanese v. Italy and Nuti and Others c. Italy

30 May 2023 (decisions on the admissibility – Committee)

Advisory opinion

Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, requested by the French Court of Cassation (Request No. P16-2018-001)

10 April 2019 (Grand Chamber)

This case concerned the possibility of recognition in domestic law of a legal parent-child relationship between a child born abroad through a gestational surrogacy arrangement and the intended mother, designated in the birth certificate legally established abroad as the "legal mother", in a situation where the child was conceived using the eggs of a third-party donor and where the legal parent-child relationship with the intended father has been recognised in domestic law.

The Court found that States were not required to register the details of the birth certificate of a child born through gestational surrogacy abroad in order to establish the

¹. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

legal parent-child relationship with the intended mother, as adoption may also serve as a means of recognising that relationship.

It held in particular that, in a situation where a child was born abroad through a gestational surrogacy arrangement and was conceived using the gametes of the intended father and a third-party donor, and where the legal parent-child relationship with the intended father has been recognised in domestic law,

1. the child's right to respect for private life within the meaning of Article 8 of the Convention requires that domestic law provide a possibility of recognition of a legal parent-child relationship with the intended mother, designated in the birth certificate legally established abroad as the "legal mother";

2. the child's right to respect for private life does not require such recognition to take the form of entry in the register of births, marriages and deaths of the details of the birth certificate legally established abroad; another means, such as adoption of the child by the intended mother, may be used.

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