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ECtHR - Mennesson v. France

The case concerns 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. The Court found that totally prohibiting the establishment of a relationship between a father and his biological children born following surrogacy arrangements abroad was a violation of Article 8 concerning the children's right to respect for their private life, under Article 8.

Case status: Decided
Case number: 65192/11
Date of decision: 26/09/2014
State: France
Court / UN Treaty Body: European Court of Human Rights (Fifth Section)
Language(s) the decision is available in: English, French
Applicant's country of birth: France
Applicant's country of residence: France
Legal instruments: European Convention on Human Rights (ECHR)
Key aspects: Acquisition of nationality and naturalisation, Birth registration, Childhood statelessness, Respect for private and family life, Surrogacy & reproductive technology
Relevant Legislative Provisions:

Article(s) 8, 8-1, 8-2, 35 and 41

Facts

The applicants in the first case are husband and wife Dominique and Sylvie Mennesson, French nationals born in 1955 and 1965 respectively, and Valentina Mennesson and Fiorella Mennesson, twin American nationals born in 2000. They live in Maisons-Alfort (France).

The applicants have been unable to secure recognition under French law of the legal parent-child relationship established between them in the United States, as the French authorities maintain that the surrogacy agreements entered into by Mr and Mrs Mennesson are unlawful.

Relying on Article 8 (right to respect for private and family life) of the Convention, the applicants complained 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 applicants in the Mennesson case further alleged, in particular, a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8, arguing that their inability to obtain recognition placed the children in a discriminatory legal situation compared with other children when it came to exercising their right to respect for their family life.

Legal arguments by the applicant

68. The applicants also observed that the measure in question had "grossly disproportionate consequences" for the situation of the third and fourth applicants: without recognition of a legal parent-child relationship with the first two applicants, they did not have French nationality, did not have a French passport, had no valid residence permit (even if, as minors, they could not be deported), and might find it impossible to obtain French nationality and thus be ineligible to vote and ineligible for unconditional leave to remain in France; they could also be prevented from inheriting under the first two applicants' estate. Furthermore, in the event of the first applicant's death or should the first two applicants separate, the second applicant would be deprived of any rights in respect of the children, to their and her own detriment. In order to carry out administrative tasks for which French nationality or an official legal parent-child relationship were required (registration of the children for social-security purposes, enrolment at the school canteen or outdoor centre, or applications for financial assistance from the Family Allowances Office), they had to produce the US birth certificates together with an officially sworn translation in order to prove that the children were theirs, and the success of their application depended on the good will of the person dealing with it. The applicants pointed out in this connection that the advocate-general had recommended, before the Court of Cassation, recognising the legal parent-child relationship between the applicants, particularly on the ground of the children's best interests, and that the Paris Court of Appeal itself had observed that the situation would create practical difficulties for

the Mennesson family. They also referred to the report of the Conseil d'État of 2009 on the review of bioethical laws, which indicated that "in practice, families' lives [were] more complicated without registration, because of the formalities that had to be completed on various occasions in life". They added that, in Wagner and J.M.W.L. (cited above, § 132), the Court had acknowledged that in this type of situation there had been a failure to take account of the "social reality" and that "the child [had] not [been] afforded legal protection making it possible for her to be fully integrated into the [in that case] adoptive family". They also questioned the purpose of refusing to register the particulars of birth certificates drawn up abroad if, as the Government maintained, such certificates took full effect in France and registration was a mere formality.

Legal arguments by the opposing party

70. In their replies to the additional questions put by the President of the Section (see paragraph 5 above), the applicants indicated that under Article 311-14 of the Civil Code, the legal parent-child relationship was governed by the law of the mother's country on the date of the child's birth (and where the mother was not known, by the law of the child's country), that is, according to the case-law of the Court of Cassation (Civ., First Division, 11 June 1996), the law of the country indicated on the birth certificate. It was clear from the Supreme Court of California's decision of 14 July 2000 that the official parents of the third and fourth applicants were the first two applicants. The French authorities and courts had refused to make that finding, however, with the result that as the mother was not recognised as having that status under French law, the legal parent-child relationship could not be governed by the law of her country. Accordingly, it was governed by the law of the country of the third and fourth applicants: US law. As the legal parent-child relationship between them and the first two applicants could not be established under French law and the Court of Cassation's judgments of 13 September 2013 had annulled the recognition of paternity by biological fathers of children born as the result of a surrogacy agreement performed abroad ..., the third and fourth applicants could not acquire French nationality under Article 18 of the Civil Code ("a child of whom at least one parent is French has French nationality") even though the first applicant was their biological father. The applicants added that, notwithstanding the circular of 25 January 2013 ..., the third and fourth applicants could not obtain a certificate of nationality. They submitted that, as a result of the judgment delivered

in their case by the Court of Cassation and its decisions of 13 September 2013 describing as “fraudulent” the process by which the birth certificate of a child born abroad of a surrogacy agreement was drawn up, the US birth certificates of the children were invalid for the purposes of Article 47 of the Civil Code, whereupon that provision was inoperative. They added that the thrust of the circular was not aimed at precluding the issuing of a certificate of nationality on the basis of a mere suspicion that recourse had been had to a surrogacy arrangement, and that it was therefore inoperative in respect of situations such as theirs in which the courts had explicitly found that there had been a surrogacy arrangement. In support of that argument, they stated that they had not received a reply to the request for a certificate of French nationality for the third and fourth applicants lodged by the first applicant with the registry of the Charenton-le-Pont District Court on 16 April 2013. They produced acknowledgment of receipt forms signed on 31 October 2013 and 13 March 2014 by the registrar indicating that the request “[was] still being processed in [his] department pending a reply to the request for authentication sent to the consulate of Los Angeles, California”. They added that, on account in particular of the Court of Cassation’s decisions of 13 September 2013, the first applicant could not recognise the third and fourth applicants even though he was their biological father.

Decision & Reasoning

89. Moreover, a consequence – at least currently – of the fact that under French law the two children do not have a legal parent-child relationship with the first or second applicant is that they have not been granted French nationality. This complicates travel as a family and raises concerns – be they unfounded, as the Government maintain – regarding the third and fourth applicants’ right to remain in France once they attain their majority and accordingly the stability of the family unit. The Government submit that, having regard in particular to the circular of the Minister of Justice of 25 January 2013 ..., the third and fourth applicants could obtain a certificate of French nationality on the basis of Article 18 of the Civil Code, which provides that “a child of whom at least one parent is French has French nationality”, by producing their US birth certificates.

90. The Court notes, however, that it is still unclear whether this possibility does actually exist. Firstly, it notes that according to the very terms of the provision referred to, French nationality is granted on the basis of the nationality of one or the other parent. It observes that it is specifically the legal determination of the parents

that is at the heart of the application lodged with the Court. Accordingly, the applicants' observations and the Government's replies suggest that the rules of private international law render recourse to Article 18 of the Civil Code in order to establish the French nationality of the third and fourth applicants particularly complex, not to mention uncertain, in the present case. Secondly, the Court notes that the Government rely on Article 47 of the Civil Code. Under that provision, civil-status certificates drawn up abroad and worded in accordance with the customary procedures of the country concerned are deemed valid "save where other certificates or documents held, external data, or particulars in the certificate itself establish ... that the document in question is illegal, forged, or that the facts stated therein do not match the reality". The question therefore arises whether that exception applies in a situation such as the present case, where it has been observed that the children concerned were born as the result of a surrogacy agreement performed abroad, which the Court of Cassation has deemed a circumvention of the law. Although they were invited by the President to answer that question and specify whether there was a risk that a certificate of nationality thus drawn up would subsequently be contested and annulled or withdrawn, the Government have not provided any indications. Moreover, the request lodged for that purpose on 16 April 2013 with the registry of the Charenton-le-Pont District Court by the first applicant was still pending eleven months later. The senior registrar indicated on 31 October 2013 and on 13 March 2014 that it was "still being processed in [his] department pending a reply to the request for authentication sent to the consulate of Los Angeles, California" (see paragraph 28 above).

97. Whilst Article 8 of the Convention does not guarantee a right to acquire a particular nationality, the fact remains that nationality is an element of a person's identity (see Genovese v. Malta, no. 53124/09, § 33, 11 October 2011). As the Court has already pointed out, although their biological father is French the third and fourth applicants face a worrying uncertainty as to the possibility of obtaining recognition of French nationality under Article 18 of the Civil Code ... That uncertainty is liable to have negative repercussions on the definition of their personal identity.

Decision documents

CASE%20OF%20MENNESSON%20v.%20FRANCE%20%5BExtracts%5D.pdf
AFFAIRE%20MENNESSON%20c.%20FRANCE.pdf
003-4804617-5854908.pdf

Outcome

No violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights concerning the applicants’ right to respect for their family life;
Violation of Article 8 concerning the children’s right to respect for their private life.

Caselaw cited

Strasbourg Case-Law

- A., B. and C. v. Ireland [GC], no 25579/05, ECHR 2010
- Chavdarov v. Bulgaria, no 3465/03, 21 December 2010
- E.B. v. France [GC], no 43546/02, §§ 76 and 95, 22 January 2008
- Genovese v. Malta, no 53124/09, § 33, 11 October 2011
- Jäggi v. Switzerland, no 58757/00, § 37, ECHR 2006 X
- Mazurek v. France, no 34406/97, ECHR 2000 II
- Mikulić v. Croatia, no 53176/99, §§ 34-35, ECHR 2002 I
- Negrepontis-Giannisis v. Greece, no 56759/08, § 58, 3 May 2011
- Pla and Puncernau v. Andorra, no 69498/01, ECHR 2004 VIII
- Rotaru v. Romania [GC], no 28341/95, § 55, ECHR 2000 V
- S.H. and Others v. Austria [GC], no 57813/00, ECHR 2011
- Sabanchiyeva and Others v. Russia, no 38450/05, § 124, ECHR 2013 (extracts)
- Wagner and J.M.W.L. v. Luxembourg, no 76240/01, 28 June 2007
- X, Y and Z v. the United Kingdom, 22 April 1997, Reports of Judgments and Decisions 1997 II