



[ECtHR- Labassee v. France, 65941/11](#)

The case concerns the refusal to grant legal recognition in France to parent-child relationships that had been legally established in the United States for a child born as a result of surrogacy arrangement. The French authorities refused to transcribe the birth certificate of the child into the French civil status registry on the grounds that it would be contrary to public order. The three applicants complained that the refusal to acknowledge the filiation of the parents and child applicant under French law violated Article 8 ECHR. The European Court of Human Rights found that France violated the child's right to respect for her private life in breach of Article 8 ECHR.

Case name (in original language) : Labassee v. France, 65941/11

Case status: Decided

Case number: 65941/11

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Date of decision: 26/06/2014

State: France

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: Turkish, French, German, Other

Applicant's country of birth: United States

Applicant's country of residence: France

Legal instruments: Convention on the Rights of the Child (CRC), European Convention on Human Rights (ECHR)

Key aspects: Acquisition of nationality, Respect for private and family life, Surrogacy & reproductive technology

Relevant Legislative Provisions:

- Article 8(1) and (2) of the European Convention of Human Rights
- Article 1 of the French Declaration of Human and Civic Rights of 26 August 1789
- Article 3(1) of the Convention of the Rights of the Child of 20 November 1989

- Articles 16-7, 16-9 and 18 of French Civil Code

Facts

The applicants were born in 1950, 1951, and 2001 respectively, and live in France. The first and second applicants are the husband and wife. Due to the infertility of the second applicant, they decided to resort to surrogate motherhood. In 2000, the first applicants entered into a contract with the International Fertility Center for Surrogacy in the United States and a couple, under the terms of which the woman would carry an embryo derived from an ovocyte from an anonymous donor and gametes from the first applicant. The third applicant was thus born in 2002 in Minnesota (United States).

The Minnesota State Court, finding that the purpose of the woman's pregnancy was to give birth to a child biologically related to the first applicant and that she did not intend to retain her parental rights, ruled that those rights terminated with this judgment. It declared the first applicant as the biological father of the third applicant, granting him her legal and physical custody. The first applicant was authorised to return to France with her. The Court further acknowledged that the surrogate couple expressly waived their rights on the child.

A birth certificate drawn up in Minnesota establishes that the third applicant is the daughter of the first and second applicants. The French Authorities refused to transcribe the birth certificate of the third applicant into the French civil status registry (*Etat Civil*) on the grounds that it would be contrary to French public order rules and regulations and further refused to acknowledge a filiation between the first applicants and the third applicant under French law.

The French Court of Cassation ruled on 6 April 2011 that according to applicable law in France, it is contrary to the principle of non-availability of the human body, which is an essential principle of French law, to give effect to an agreement relating to surrogacy of motherhood regardless of whether the agreement was lawfully concluded abroad. As a consequence, the French Court of Cassation confirmed the ruling of the Court of Appeal that the de facto parent-child relationship existing between the third applicant and the first applicants, as it resulted from the 2000 agreement on surrogacy of motherhood, could not produce any effect with respect to the establishment or recognition of filiation under French law. The Court found that such a situation neither deprives the child of the maternal and paternal filiation recognised by the law of the State of Minnesota nor prevents the third applicant

from living with the first applicants in France. It subsequently found that the refusal by French Authorities to recognise a filiation between the first applicants and the third applicant does not interfere with the latter's right to respect for her private and family life within the meaning of Article 8 of the European Convention of Human Rights (ECHR), nor to her best interests as guaranteed by Article 3(1) of the International Convention on the Rights of the Child.

Legal arguments by the applicant

The applicants pointed out that where a family bond with a child is established, the State must act in such a way as to allow this bond to develop and grant legal protection to make it possible for the child to integrate into his or her family. They stressed that due to the refusal by French Authorities to transcribe the birth certificate into the French civil status registry and to recognise the *de facto* parent-child relationship between the first two applicants and the third applicant, the latter was deprived of filiation vis-à-vis the second applicant.

The applicants considered this to amount to an unjustified interference with their right to respect their private and family life. In their view, national judges cannot reasonably disregard the legal status validly created abroad and corresponding to family life within the meaning of Article 8 ECHR, nor could they refuse to recognise a *de facto* pre-existing parent-child relationship.

They emphasized that the refusal opposed by French Authorities was contrary to the best interests of the third applicant to have a filiation aligned with the legal truth resulting both from her birth certificate and from her real private and family life, as well as the right of the child and of his father and mother to have a normal family life.

The applicants further stressed that, in effect, the impossibility of having French civil status documents or a French family record book on which the third applicant was registered significantly would complicate their family life and their situation with regard to parental authority in the event of the parent's separation or the death of one of them. It further indicated that it would deprive the applicants of the rights attached to their paternal and maternal filiation in France, particularly in matters of inheritance, and that during their lifetime, they would be deprived of the fundamental right to establish their filiation.

Legal arguments by the opposing party

The Government did not dispute that the refusal by French Authorities to transcribe the birth certificate of the third applicant into the French civil status registry interfered with the applicants' rights to respect private and family guaranteed by Article 8 ECHR.

However, the Government stressed that such refusal was justified because it would otherwise give effect to a surrogacy of motherhood agreement, which was formally prohibited by local laws and constitutes a criminal offense under French law. The Government concluded that the interference was legitimate as it was aimed at protecting public order rules and regulations, preventing criminal offences, and ultimately protecting the health and the rights and liberties of others.

The Government emphasised that the refusal by French Authorities to legally recognise the filiation between the first two applicants and the third applicant did not prevent the American civil status document issued at the birth of the third applicant in the United States from producing its full effects in France.

The Government, therefore, questioned the actual extent of the interference with the applicant's family life since this interference was limited to the possibility of them being issued with French civil status certificates.

The Government added that, since surrogate motherhood was a moral and ethical issue and since there was no consensus on the matter among the States, French authorities must be allowed a wide margin of appreciation in this area and in the way in which they deal with the effects of filiation established in such context abroad.

The Government concluded that given this wide margin of appreciation and the fact that the applicants had a normal family life based on the third applicant's American civil status, the child's best interests were safeguarded. Accordingly, the interference with the applicant's rights under article 8 of the Convention was proportionate to the aims pursued so that there was no violation of this provision.

Decision & Reasoning

The Court recognises that the refusal from French Authorities to legally recognise the filiation between the first two applicants and the third applicant shall be considered an interference with the applicant's right to respect for a private and

family life. The Court reiterates that such interference constitutes a violation of Article 8 of the Convention except if, in accordance with the law, it is necessary for a democratic society in the interests of one or more of the legitimate purposes set in Article 8(2) ECHR.

The Court notes that it is not established that the fact that French individuals have recourse to surrogate motherhood in a country where it is legally permitted would constitute an offence under French law. The Court yet acknowledges that the refusal by French Authorities to recognise a filiation between children born abroad as a result of surrogate motherhood and the parents of the intended child stems from a desire to discourage its nationals from resorting outside the national territory to a method of procreation that it prohibits on its territory with the aim, according to the Court's perception, of preserving the children and the surrogate mother.

The Court, therefore, confirms that the Government could consider that the interference at issue was aimed at two of the legitimate aims listed in Article 8(2) ECHR: "the protection of health" and "the protection of the rights and freedoms of others."

It also confirms that States shall be granted a wide margin of appreciation in deciding not only whether to authorise this method of procreation but also whether to recognise a filiation between children legally conceived by surrogate motherhood abroad and the intended parents. However, account must also be taken of the fact that an essential aspect of the identity of individuals is at stake when filiation is affected. The margin of appreciation available to the respondent State in this case must therefore be reduced.

The Court further considers that the refusal by French authorities to recognise a filiation between the first two applicants and the third applicant unquestionably affects their family life. The Court raises that the fact that, under French law, the third applicant was not related to the first applicants meant that, at least to date, she had not been granted French nationality. This circumstance was likely to complicate the family's movements and give rise to concerns as to the third applicant's right of residence in France after she had reached the age of majority and thus as to the stability of the family unit. (paragraph 68) According to French law (Article 18 of the French Civil Code), French nationality is attributed on the basis of the nationality of either parent, and the Court notes that the legal determination of the parents is precisely at the heart of the application. Thus, the Court states that

it appears that the rules of private international law in the present case make it particularly complex and uncertain to have recourse to that national provision to establish the third applicant's French nationality. Moreover, based on another national provision (Article 47 of the Civil Code), civil status records drawn up abroad in the form used in the countries concerned are authentic 'unless other records or documents held, external data or elements drawn from the record itself establish that the record is irregular or falsified or that the facts stated therein do not correspond to reality'. The question therefore arises as to whether the present case falls under that exclusion, when the children concerned are the result of surrogate motherhood obtained abroad, which the French Court of Cassation analyses as fraud against the law. (paragraph 69)

The Court further notes that the applicants do not claim that the difficulties they demonstrated were insurmountable and do not demonstrate that the impossibility of obtaining recognition of filiation in French law prevents them from benefiting in France from their right to respect for their family life.

Regarding the third applicant's right to respect for her private life, the Court states that respect for private life requires that everyone be able to establish the details of their identity as human beings, which includes their filiation, an essential aspect of an individual's identity. As the law stands, the third applicant is in a situation of legal uncertainty in this respect.

The Court also stresses that even if Article 8 ECHR does not guarantee a right to acquire a particular nationality, the fact remains that nationality is an element of personal identity (referring to [Genovese v. Malta](#)). However, although her biological father was French, the third applicant was faced with a troubling uncertainty as to whether she can be recognised as a French national under Article 18 of the French Civil Code, which is likely to have a negative impact on the definition of her own identity. (paragraph 76)

The effects of the non-recognition in French law of the parent-child relationship between the children are not confined to the situation of the intended parents but also affect the situation of the children themselves, whose right to respect for private life, which implies that each person should be able to establish the substance of his or her own identity, including his or her parent-child relationship, is significantly affected. A serious question therefore arises as to the compatibility of this situation with the best interests of the children, whose respect must guide any

decision concerning them. (paragraph 78)

Given the weight that shall be given to the interests of the child when balancing the interests at stake, the Court concludes that the third applicant's right to respect for her private life has been infringed.

Decision documents

[Labassee v. France, 65941/11](#)

Outcome

The Court considers that the decision of the French Court of Cassation strikes a fair balance between the interests of the applicants and those of the State, insofar as it relates to their right to respect for their family life. Hence, the Court found that there was no violation of Article 8 ECHR with respect to the applicant's right to respect their family life.

The Court yet rules that, given the consequences of the severe infringement to the third applicant's right to respect for her private life, by preventing both the recognition and the establishment in the domestic law of her filiation with her biological father, the respondent State has violated her right to respect for her private life in breach of Article 8 ECHR.

Caselaw cited

- 22 April 1997, X, Y and Z v. United Kingdom, 21830/93, ECHR
- 26 June 2003, Maire v. Portugal, 48206/99, ECHR
- 28 June 2007, Wagner et J.M.W.L. v. Luxembourg, 76240/01, ECHR
- 22 January 2008, E.B. v. France [GC], 43546/02, ECHR
- 21 December 2010, Chavdarov v. Bulgaria, 3465/03, ECHR
- 3 May 2011, Negreponis-Giannisis v. Greece, 56759/08, ECHR
- [26 June 2014, Mennesson v. France, 65192/11, ECHR](#)
- [11 October 2011, Genovese v. Malta, 53124/09, ECHR](#)