



STATELESSNESS

Case Law Database

[ECTHR - C. v Italy](#)

The Italian authorities refused to transcribe the applicant's Ukrainian birth certificate, either in full or in part. The applicant, who was born through gestational surrogacy in Ukraine, was consequently denied a legal parent-child relationship with her intended parents under Italian law, as well as any nationality. The Court ruled that the Italian authorities' refusal to transcribe the birth certificate, even in part, prevented the establishment of a legal parent-child relationship between the applicant and her biological father, which was in contradiction with Article 8 ECHR.

Case name (in original language) : Affaire C. c. Italie

Case status: Decided

Case number: 47196/21

Citation: European Court of Human Rights, C. v. Italy, (application no. 47196/21), 31 August 2023

Date of decision: 31/08/2023

State: Italy

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: French

Applicant's country of birth: Ukraine

Applicant's country of residence: Italy

Legal instruments: European Convention on Human Rights (ECHR)

Key aspects: Birth registration, Childhood statelessness, Procedural safeguards, Respect for private and family life, Surrogacy & reproductive technology

Relevant Legislative Provisions:

- European Convention on Human Rights, Article 8

Facts

The applicant was born in Ukraine in August 2019 through gestational surrogacy from the egg of an anonymous donor and the intended father's sperm, implanted in

the uterus of a surrogate mother. The applicant now lives in Italy with her intended and thus biological father and her intended mother. The applicant is a stateless person acting through the intended parents.

A birth certificate was drawn up in Ukraine, and the intended parents asked the Italian civil registrar to enter the details of the child's Ukrainian birth certificate in the relevant register. The registry office rejected their request on the grounds that such registration was contrary to public policy, as surrogacy is formally prohibited under Italian law.

In January 2020 the intended parents filed an application with the district court, requesting the full transcript of the birth certificate in the relevant register or, as an alternative, to enter only the biological father's name in the relevant register as the child's parent. During the proceedings, the prosecutor's office asked the court to grant this alternative request. On 16 March 2020 the court rejected the application on the grounds that even with due consideration of the child's best interests ultimately, they could not disregard the principle that surrogacy arrangements were, under Italian law, incompatible with public policy.

The intended parents appealed against that decision and requested to transcribe only partially the birth certificate to indicate the biological father as parent. During the proceedings, the prosecutor's office asked the Court of Appeal to grant the request in this summary application. The Court of Appeal dismissed the appeal, pointing out specifically that the request in the summary application for a partial transcription was not admissible to the extent that the application in the main proceedings pertained exclusively to the full transcription of the birth certificate.

On 8 June 2022, the biological father asked the registry office to partially register the applicant's birth details. The registry office refused his request on the grounds that the prohibition of surrogacy could not be circumvented.

Legal arguments by the applicant

The applicant asked the Court to declare that there had been a breach of her right to private and family life on the basis that it was impossible for her to legally establish the parent-child relationship between her and her biological father and intended mother. This refusal by Italian authorities to recognise a legal parent-child relationship and the applicant's statelessness have placed her in great legal uncertainty, including difficulties in accessing public crèche, school, and medical

services.

In particular, the applicant argued that her intended and biological father asked, in accordance with the Italian Civil Code, the registry office to transcribe the birth certificate with a reference to the biological father, as he had already recognised her as his daughter according to the Ukrainian birth certificate and it was refused.

Legal arguments by the opposing party

The Italian government argued that there was no violation of the rights protected by the ECHR as the prohibition on transcribing foreign birth certificates with respect to children conceived by surrogacy fell within the sole competence of a State. Besides, the parent-child relationship with the biological and/or intended parent benefits from the recognition and protection afforded by adoption in special cases, which is largely equivalent to ordinary adoption.

Italian law prohibits, without exception, recourse to surrogacy. This prohibition is justified under, and thus made in accordance with, the ECHR as it pursues two of the legitimate aims provided for in Article 8 ECHR: "the protection of health" and "the protection of the rights and freedoms of others" (for the mother and for the child).

As to the intended and biological father, the Italian government stated that the applicant could be recognised by her biological father in accordance with the Civil Code. This would grant her Italian nationality. The refusal to transcribe the foreign birth certificate did not preclude recognition of the link between the child and the biological parent. It also pointed out that the biological father could have requested partial transcription of the birth certificate.

As to the intended mother, the Italian government pointed out that she could take the adoption route in special cases.

Decision & Reasoning

An interference shall be contrary to Article 8 ECHR unless it is (i) provided by law, (ii) aimed at achieving one of the aims listed in Article 8(2) ECHR and (iii) necessary in a democratic society.

The Court noted that by surrogacy being forbidden by law in Italy, condition (i) was met. Additionally, the Court ruled in *Mennesson* that refusing to recognise the parent-child relationship established abroad to deter nationals from using surrogacy abroad to preserve the interests of the child and the surrogate mother was in line with the aims provided for under Article 8(2) ECHR. As such, condition (ii) was also met. With regard to condition (iii), still with reference to *Mennesson* and other precedents, the Court recognised that while not allowing them to legally establish a parent-child relationship would constitute a violation of Article 8 ECHR, each State has a margin of appreciation in how they legally proceed with the recognition of such a relationship, and this does not necessarily need to be through a transcription of the foreign birth certificate but can also be, for example, through an adoption procedure. Finally, the legal uncertainty prior to the legal recognition of such relationship shall not last for a significant amount of time in order to remain proportionate. The Court noted that Italian courts rejected in both the first and second instance the request for partial transcription without providing specific grounds to this rejection other than its contradiction to public policy. The formal reasons given cannot be relevant in a procedure centred on the best interests of the child without indicating to the applicant or the biological father which alternative procedure could be used instead.

It follows that the applicant has been deprived of a legal parent-child relationship with her biological father causing prolonged legal uncertainty and rendering her stateless in Italy. The Court ruled that in consideration of the best interests of the child, the process to establish their legal parent-child relationship with their biological parent further to a gestational surrogacy abroad shall (i) be focused on the best interest of the child and as such exempt from excessive formalism (i.e., able to come to a rapid and effective outcome despite potential formal breaches) and (ii) ensure the active cooperation of the judicial system to indicate to the parties the best solution available to them in such jurisdiction, independent of the actual request submitted by the parties. There was therefore a breach of Article 8 ECHR.

The Court noted that an adoption procedure was available to the intended mother under Italian law which would recognise her relationship to the child., and that, in light of its previous case law, it was part of the margin of appreciation left to the States to refuse the transcription of the foreign birth certificate if offering an alternative procedure for the intended parent to legally recognise the child as theirs (in this case, an adoption). As there is no general and absolute impossibility for the applicant to establish a legal parent-child relationship with the intended mother

under Italian law, and rather the refusal by the register office to fully transcribe the applicant's Ukrainian birth certificate remains within the margin of appreciation left to the Italian State, the Court ruled there was no breach of Article 8 ECHR.

Decision documents

[AFFAIRE C c. ITALIE.pdf](#)

[C v. Italy \(Legal summary, EN\).pdf](#)

Outcome

The Court acknowledged that there was an interference with the applicant's right to private and family life. The Court ruled that States have a duty to legally recognise the parent-child relationship between a child born through gestational surrogacy and their intended parents. The nature of the procedure to do so, however, remains within the margin of appreciation of each State.

The process for recognising such a relationship shall (i) be focused on the best interest of the child and exempt from excessive formalism and (ii) ensure the active cooperation of the system to indicate to the parties the best solution available to them in such jurisdiction, independent of the actual request submitted by the parties. The Court holds that in view of the particular circumstances of the case, the Italian authorities failed in their positive obligation to guarantee the applicant's right to respect for her private life. Accordingly, there was a breach of Article 8 of the Convention.

The adoption procedure enables the courts to assess the requirements of Article 8 and the best interests of the child. The Court therefore finds that the desire to have a link between the applicant and the mother of intention is not a general and absolute impossibility. In refusing to transcribe the applicant's Ukrainian birth certificate, the respondent State did not exceed its margin of appreciation.

Caselaw cited

- *Between a child born through a gestational surrogacy arrangement abroad and the intended mother* [GC], request no. P16-2018-001, French Court of cassation, 10 April 2019
- *Ahrens v. Germany*, no. 45071/09, 22 March 2012
- *D v. France*, no. 11288/18, 16 July 2020
- *D.B. and Others v. Switzerland*, nos. 58817/15 and 58252/15, 22 November 2022

- *Foulon and Bouvet v. France*, nos. 9063/14 and 10410/14, 21 July 2016
- *Labassee v. France*, no. 65941/11, 26 June 2014
- *Laborie v. France*, no. 44024/13, 19 January 2017
- *Mennesson v. France*, no. 65192/11, ECHR 2014 (extracts).
- *Soares de Melo v. Portugal*, no. 72850/14, 16 February 2016
- *Strand Lobben and Others v. Norway* [GC], no. 3728/13, 10 September 2019