



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

Legal summary

August 2023

C v. Italy - 47196/21

Judgment 31.8.2023 [Section I]

Article 8

Positive obligations

Article 8-1

Respect for private life

Refusal to register details of foreign birth certificate establishing legal relationship between child born through surrogacy arrangement abroad and her biological father, without considering alternative solution: *violation*

Respect for family life

Respect for private life

Refusal to register details of foreign birth certificate establishing legal relationship between child born through surrogacy arrangement abroad and her intended mother, although recognition possible through adoption: *no violation*

Facts – In 2018 a heterosexual Italian couple (the biological father and the intended mother) entered into a gestational surrogacy contract in Ukraine. An embryo generated from the egg of an anonymous donor and the biological father's sperm was implanted in the uterus of a surrogate mother. The applicant was born in August 2019. Her Ukrainian birth certificate legally recognised the biological father and the intended mother as her parents.

In September 2019 the couple asked the civil registrar of an Italian municipality to enter the full details of the child's Ukrainian birth certificate in the relevant civil register. In December 2019 the registry office rejected that request on the grounds that such registration was contrary to public policy. The couple's appeals against that decision were unsuccessful. The biological father then filed an unsuccessful request for partial registration of the birth details with the civil registrar of another municipality to which he had transferred his place of residence.

Law – Article 8:

1) *Interference, legal basis and legitimate aim* – The rejection of the request to have the details of the applicant's foreign birth certificate entered in the relevant civil register constituted an interference with her right to respect for her private life. That interference was in accordance with the law since gestational surrogacy was prohibited. The legitimate aims it pursued were "the protection of health" and "the protection of the rights and freedoms of others", namely those of the child and the surrogate mother.

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2) *Necessity in a democratic society* -

a) *Concerning the establishment of the legal parent-child relationship between the applicant and her biological father* - The Court reiterated the principles developed in, *inter alia*, the *Mennesson v. France*, *Labassee v. France*, and *D v. France* cases, and in its Advisory Opinion P16 2018 001.

According to the Court's case-law, Article 8 required that domestic law 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. The lack of such a possibility entailed a violation of the child's right to respect for his or her private life as guaranteed by that provision.

The choice of means by which to permit recognition of the legal relationship between the child and the intended parent fell within the States' margin of appreciation. There was no consensus in Europe in that area and an individual's identity was less directly at stake where the issue was not the very principle of the establishment or recognition of his or her parentage, but rather the means to be implemented to that end. In addition, in the absence of recognition of a legal relationship between a child born through a surrogacy arrangement carried out abroad and the intended parent, it was in the child's interest that any legal uncertainty as to his or her identity within society in terms of establishing his or her parentage be as short-lived as possible.

In that connection, there was a duty to exercise exceptional diligence when a person's relationship with his or her child was at stake, as the passage of time might result in a *de facto* determination of the matter.

Each Contracting State had to equip itself with legal instruments which were adequate and sufficient to ensure compliance with the positive obligations imposed on it under Article 8 of the Convention, including the duty to exercise exceptional diligence when a person's relationship with his or her child was at stake.

It was of no concern to the Court by which means the parentage of a child born through a surrogacy arrangement abroad was established or recognised (partial or full registration of the details of the foreign birth certificate, full or simple adoption, fresh establishment of the legal relationship in the child's country of residence), but it had to verify that the decision-making process of the child's State of residence, seen as a whole, adequately ensured the protection of the interests at stake. It was thus paramount that the procedure laid down by domestic law for establishing parentage could be implemented promptly and effectively, in accordance with the child's best interests, so that he or she was not kept for a lengthy period in a position of legal uncertainty.

In the instant case, the District Court, notwithstanding the prosecutor's favourable opinion as to partial transcription, had dismissed the request for full transcription of the birth certificate on the grounds that due consideration of the child's best interests could not result in disregard for the principle that surrogacy arrangements were incompatible with public policy. No particular answer had been given as to the alternative request for partial transcription. The Court of Appeal had dismissed the appeal against the decision of the lower court, declaring the request for partial transcription inadmissible on formal grounds since the initial application had pertained exclusively to the full transcription of C's birth certificate, which was contrary to public policy. Subsequently, the biological father requested a civil registrar to partially register the birth certificate details, which request had also been refused.

The domestic courts had dismissed the requests at issue without weighing up the different interests at stake and, most importantly, without regard to the applicable procedural requirements of promptness and effectiveness.

Concerning “effectiveness”: No reasons aside from a conflict with public policy had been given for refusing the opinions submitted by the prosecutor’s office; the request for partial transcription had been dismissed for a single, overly formal reason, namely that it did not constitute the subject matter of the initial application, which was irrelevant in proceedings concerned with the child’s best interests; and no indication had been given, at any stage of the proceedings, as to an alternative means of establishing the legal relationship between the applicant and her biological father, thereby presenting the applicant with a simple refusal lacking any basis in terms of unsatisfied criteria.

Concerning the “promptness” requirement: Although four years had passed since the initial request for registration of the applicant’s foreign birth certificate and in spite of the prosecutor’s favourable opinion, the domestic courts had denied full transcription and had declined to examine the request for partial transcription on procedural grounds. Furthermore, after refusing the registration requests, the courts had failed to envisage any procedural transition to more appropriate proceedings for establishing the legal parent-child relationship, such that the biological father had had to start the procedure all over again by applying to a civil registrar who, when asked to partially transcribe the birth details, had refused to do so notwithstanding the fact that partial transcription was normally accepted in respect of the biological father.

The Court could not speculate as to the outcome of any fresh proceedings before the national courts. However, in the present case, the domestic courts had been unable to take a swift decision to protect the applicant’s interest in having her biological parentage established and no alternative solution appeared to have been considered. The applicant, aged four, had been kept since birth in a state of protracted uncertainty as to her personal identity. In particular, she had no legally established parentage, which had serious consequences for her civil status as she was considered a stateless person in Italy.

In the light of the above considerations, the Court reiterated that in order to ensure a “prompt” and “effective” result in accordance with the child’s best interests when it came to establishing a legal parent-child relationship between a biological parent and a child born through a surrogacy arrangement abroad: (a) the decision-making process had to be sufficiently focused on the child’s best interests and, to that end, free of excessive formalism and apt to further those interests irrespective of any procedural flaws; (b) the domestic courts were required to cooperate with the parties by pointing to the legal solutions available, irrespective of their specific requests.

Thus, having regard to the particular circumstances of the present case, in spite of the State’s margin of appreciation, the national authorities had failed to fulfil their positive obligation to ensure the applicant’s right to respect for her private life.

Conclusion: violation (by six votes to one).

b) *Concerning the establishment of the legal parent-child relationship between the applicant and her intended mother* – The Court had to determine whether the refusal to recognise the legal relationship between the applicant and her intended mother, as established by the foreign birth certificate, was compatible with the former’s right to respect for her private and family life in the light of the principles developed in the *Mennesson v. France*, *Labassee v. France* and *D v. France* cases, and in its Advisory Opinion P16 2018 001.

While it was true that national law did not allow for transcription of the birth certificate details concerning the intended mother, it nevertheless afforded her the possibility of legally recognising the child by means of adoption. That had been confirmed by the jurisprudence of the Constitutional Court and that of the Plenary Court of Cassation.

In that regard, according to the Plenary Court of Cassation, adoption allowed courts to assess the requirements of Article 8 and the child's best interests. That review would be carried out on the basis of prerequisites that each State could establish in accordance with its margin of appreciation, for instance by requiring a relationship between the two parents and the involvement of the intended parent in the parental project through specific acts.

The Court found that the desire to have a parent-child relationship recognised between the applicant and the intended mother was not generally and absolutely impossible to satisfy.

As a result, by refusing to enter the details of the applicant's foreign birth certificate in the relevant civil register in so far as it designated the intended mother as her mother, the respondent State had not, in the circumstances of the present case, overstepped its margin of appreciation.

Conclusion: no violation (unanimously).

Article 41: EUR 15,000 in respect of non-pecuniary damage; claim for pecuniary damage dismissed.

(See also *Labassee v. France*, 65941/11, 26 June 2014, [Legal summary](#); *Menesson v. France*, 65192/11, 26 June 2014, [Legal summary](#); *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* [GC], P16-2018-001, French Court of cassation, 10 April 2019, [Legal summary](#); *D v. France*, 11288/18, 16 July 2020, [Legal summary](#); *D.B. and Others v. Switzerland*, 58817/15 and 58252/15, 22 November 2022, [Legal summary](#))

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