



## Totally prohibiting the establishment of a relationship between a father and his biological children born following surrogacy arrangements abroad was in breach of the Convention

The European Court of Human Rights notified today its Chamber judgments in the cases of [Mennesson v. France](#) (application no. 65192/11) and [Labassee v. France](#) (no. 65941/11), which are not final<sup>1</sup>.

The 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 Court held, unanimously, that there had been:

**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;**

**A violation of Article 8 concerning the children's right to respect for their private life.**

The Court observed 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.

### Principal 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 in the second case are husband and wife Francis and Monique Labassee, French nationals born in 1950 and 1951 respectively, and Juliette Labassee, an American national born in 2001. They live in Toulouse. 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 and Mr and Mrs Labassee are unlawful.

Owing to Mrs Mennesson's and Mrs Labassee's infertility, the two couples had surrogacy treatment in the United States<sup>2</sup>. The embryos, produced using the sperm of Mr Mennesson and Mr Labassee,

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

<sup>2</sup> Under the French Criminal Code, recourse to surrogacy is punishable by one year's imprisonment and a fine of 15,000 euros.

were implanted in each case in another woman's uterus. As a result, the Mennesson twins and Juliette Labassee were born. Judgments given in California in the first case and in Minnesota in the second case ruled that Mr and Mrs Mennesson were the twins' parents and that Mr and Mrs Labassee were Juliette's parents. The French authorities, suspecting that the cases involved surrogacy arrangements, refused to enter the birth certificates in the French register of births, marriages and deaths. In the Mennesson case, the birth certificates were nevertheless entered in the register on the instructions of the public prosecutor, who subsequently brought proceedings against the couple with a view to having the entries annulled. In the Labassee case, the couple did not challenge the refusal to register the birth, but sought to have the legal relationship recognised on the basis of *de facto* enjoyment of status ("*possession d'état*"). They obtained an "*acte de notoriété*", a document issued by a judge attesting to the status of son or daughter, that is, the existence of a *de facto* parent-child relationship, but the public prosecutor refused to enter this in the register. The couple then took the matter to court.

The applicants' claims were dismissed at final instance by the Court of Cassation on 6 April 2011 on the grounds that recording such entries in the register would give effect to a surrogacy agreement that was null and void on public-policy grounds under the French Civil Code<sup>3</sup>. The court found that there had been no infringement of the right to respect for private and family life since the annulment of the entries had not deprived the children of the maternal and paternal legal relationship recognised by the laws of California and Minnesota and had not prevented them from living in France with Mr and Mrs Mennesson and Mr and Mrs Labassee.

## Complaints, procedure and composition of the Court

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.

The applications were lodged with the European Court of Human Rights on 6 October 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark Villiger (Liechtenstein), *President*,  
Angelika Nußberger (Germany),  
Boštjan M. Zupančič (Slovenia),  
Ganna Yudkivska (Ukraine),  
Vincent A. de Gaetano (Malta),  
André Potocki (France),  
Aleš Pejchal (the Czech Republic),

and also Claudia Westerdiek, *Section Registrar*.

<sup>3</sup> Article 16-9 of the Civil Code specifies that the provisions of Article 16-7 of the Code ("All agreements relating to reproduction or pregnancy for a third party shall be null and void") are a matter of public policy.

## Decision of the Court

### Mennesson v. France

#### Article 8 (right to respect for private and family life)

The Court found that Article 8 was applicable in both its “family life” aspect and its “private life” aspect. Firstly, there was no doubt that Mr and Mrs Mennesson had cared for the twins as parents since the children’s birth and that the four of them lived together in a way that was indistinguishable from “family life” in the accepted sense of the term. Secondly, 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 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.

The Court 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 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.

The Court went on to examine whether the interference had been “necessary in a democratic society”. It 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<sup>4</sup> 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.

With regard to the applicants’ family life, the Court observed that it was inevitably affected by the lack of recognition under French law of the parent-child relationship between Mr and Mrs Mennesson and the twins. However, it noted that the applicants had not claimed that the obstacles they faced had been insurmountable, nor had they demonstrated that they had been prevented from the enjoyment in France of their right to respect for their family life. It noted that the four of them had been able to settle in France shortly after the birth of the children, that they lived there together in circumstances which, by and large, were comparable to those of other families, and that there was nothing to suggest that they were at risk of being separated by the authorities because of their situation under French law. Furthermore, the French courts had examined their specific situation before concluding that the practical difficulties faced by the applicants did not exceed the limits imposed by respect for family life. Consequently, a fair balance had been struck between the applicants’ interests and those of the State, in so far as their right to respect for their family life was concerned.

However, with regard to the twins’ right to respect for their private life, the Court noted that they were in a state of legal uncertainty: the French authorities, although aware that the twins had been identified in another country as the children of Mr and Mrs Mennesson, had nevertheless denied them that status under French law. The Court considered that this contradiction undermined the children’s identity within French society. Moreover, although their biological father was French, they

<sup>4</sup> See paragraphs 40 to 42 and 78 of the judgment.

faced worrying uncertainty as to the possibility of obtaining French nationality, a situation that was liable to have negative repercussions on the definition of their own identity. The Court further observed that they could only inherit from Mr and Mrs Mennesson as legatees, which meant that their inheritance rights would be less favourable; the Court regarded this as depriving them of a further component of their identity in relation to their parentage. The effects of the refusal to recognise a parent-child relationship in French law between children born following surrogacy treatment abroad and the couples who had the treatment were not confined to the couples, but also extended to the children. Their right to respect for their private life, which implied that everyone should be able to establish the essence of his or her identity, including his or her parentage, was significantly affected. There was therefore a serious issue as to the compatibility of the situation with the children's best interests, which must guide any decision concerning them.

In the Court's view, this analysis took on a special dimension when, as in the present case, one of the parents was also the child's biological father. Given the importance of biological parentage as a component of each individual's identity, it could not be said to be in the best interests of the child to deprive him or her of a legal tie of this nature when the biological reality of that tie was established and the child and the parent concerned sought its full recognition. Not only had the tie between the twins and their biological father not been acknowledged when the request was made for the birth certificates to be entered in the register; in addition, the recognition of that tie by means of a declaration of paternity or adoption, or on the basis of *de facto* enjoyment of status, would fall foul of the prohibition established by the case-law of the Court of Cassation in that regard. In thus preventing the recognition and establishment of the children's legal relationship with their biological father, the French State had overstepped the permissible margin of appreciation. The Court held that the children's right to respect for their private life had been infringed, in breach of Article 8.

#### [Article 14 \(prohibition of discrimination\)](#)

In view of its finding of a violation of Article 8 concerning Valentina and Fiorella Mennesson, the Court did not consider it necessary to examine the applicants' complaint under Article 14.

#### [Just satisfaction \(Article 41\)](#)

The Court held that France was to pay 5,000 euros (EUR) to each of the children in respect of non-pecuniary damage and EUR 15,000 to the applicants in respect of costs and expenses.

#### **Labassee v. France**

The Court adopted the same approach as in the Mennesson case, finding that there had been no violation of Article 8 concerning the applicants' right to respect for their family life, and a violation of Article 8 concerning the right of Juliette Labassee to respect for her private life. The Court held that France was to pay EUR 5,000 to the latter in respect of non-pecuniary damage and EUR 4,000 to the applicants in respect of costs and expenses.

*The judgments are available only in French.*

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