



## Children born through a gestational surrogacy arrangement: the French authorities' refusal to register the full details of a foreign birth certificate was not disproportionate

In its decision in the case of [C and E v. France](#) (applications nos. 1462/18 and 17348/18) the European Court of Human Rights has unanimously declared the applications inadmissible as being manifestly ill-founded. The decision is final.

The case concerned the French authorities' refusal to enter in the French register of births, marriages and deaths the full details of the birth certificates of children born abroad through a gestational surrogacy arrangement and conceived using the gametes of the intended father and a third-party donor, in so far as the birth certificates designated the intended mother as the legal mother.

The Court considered that the refusal of the French authorities was not disproportionate, as domestic law afforded a possibility of recognising the parent-child relationship between the applicant children and their intended mother by means of adoption of the other spouse's child. The Court observed, in particular, that the average waiting time for a decision was only 4.1 months in the case of full adoption and 4.7 months in the case of simple adoption.

### Principal facts

**Application no. 1462/18** was lodged by three French nationals: Mr and Mrs C, born in 1963 and 1965 respectively, and a child born in 2010.

The child was born in February 2010 in the United States, having been conceived using the gametes of Mr C and a third-party donor. The birth certificate, drawn up in October 2010 in Florida, named Mrs C as the mother and Mr C as the father.

In 2014 the couple requested that the particulars of the child's birth certificate be entered in the register of births, marriages and deaths at the French consulate in Miami. The request was forwarded to the Nantes public prosecutor's office as there were indications that Mr and Mrs C had had recourse to a gestational surrogacy arrangement.

In 2015 Mr and Mrs C were informed by the Nantes public prosecutor's office that their request for registration had been refused. Relying on Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the European Convention on Human Rights, the couple brought proceedings against the public prosecutor in the Nantes *tribunal de grande instance*, seeking to have the particulars of the child's birth certificate entered in the register of births, marriages and deaths.

In 2016 the *tribunal de grande instance* granted their request. In 2017 the Rennes Court of Appeal upheld that judgment in so far as it had granted the request for registration with regard to the legal father-child relationship. However, it quashed the judgment in so far as it concerned the legal mother-child relationship, on the grounds that the couple had entered into a surrogacy arrangement abroad and Mrs C had not given birth to the child.

**Application no. 17348/18** was lodged by five French nationals: Mr and Mrs E, born in 1962 and 1969, and three children born in 2014.

The three children were born in February 2014 in Ghana, having been conceived using the gametes of Mr E and a third-party donor. Their birth certificates, drawn up in Ghana in May 2014, named

Mrs E as their mother and Mr E as their father. Mr and Mrs E requested the French embassy in Ghana to enter the details of the birth certificates in the register.

In 2014 the Nantes public prosecutor informed the couple that as the children had been born through a gestational surrogacy arrangement, prohibited under Article 16-7 of the French Civil Code, he had decided to defer registration of the details of the birth certificates pending instructions from the Ministry of Justice.

In 2015 Mr and Mrs E brought proceedings against the Nantes public prosecutor in the *tribunal de grande instance*, seeking registration of the details of the three children's birth certificates. The court granted their request and that judgment was upheld by the Court of Appeal in March 2017.

In 2018, following an appeal on points of law by the principal public prosecutor at the Rennes Court of Appeal, the Court of Cassation quashed the Court of Appeal judgment in so far as it had ordered registration of the details of the birth certificates with regard to the legal mother-child relationship.

## Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 4 January 2018 and on 10 April 2018.

Relying on Article 8 (right to respect for private and family life), the applicants alleged a violation of the applicant children's right to respect for their private life on account of the French authorities' refusal to enter the full details of their birth certificates in the French register of births, marriages and deaths.

Under Article 14 (prohibition of discrimination) read in conjunction with Article 8, the applicants also alleged discriminatory interference with the applicant children's right to respect for their private life.

The decision was given by a Committee of three judges, composed as follows:

Mārtiņš **Mits** (Latvia), *President*,  
André **Potocki** (France),  
Lətif **Hüseynov** (Azerbaijan),

and also Milan **Blaško**, *Deputy Registrar*.

## Decision of the Court

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

The Court observed that, on 10 April 2019, it had delivered an advisory opinion ([link](#)) concerning situations where children had been born abroad as the result of a gestational surrogacy arrangement, having been conceived using the gametes of the intended father and a third-party donor, and where the legal relationship between the child and the intended father had been recognised in domestic law ([link to press release](#)).

The Court noted that the applicant children in the present case were in that same position. It also observed that domestic law afforded a possibility of recognising the parent-child relationship between the children and their intended mother by means of adoption of the other spouse's child. This was clear from the Court of Cassation judgments of 5 July 2017<sup>1</sup>, and the Court saw no reason to doubt the assurances given by the Government in that regard. It was true that this possibility had only been established with certainty since 5 July 2017, when child C had been seven years old and the children of family E had been three years old, and thus in all likelihood some considerable time

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<sup>1</sup> First Civil Division, 5 July 2017, nos. 824 (15-28.597), 825 (16-16.901 and 16-50.005) and 826 (16-16.455).

after the relationship between the children and their intended mother had become a practical reality. In its advisory opinion of 10 April 2019 the Court had specified that, at the latest when, according to the assessment of the circumstances of each case, the relationship between the child and the intended mother had become a practical reality, an effective mechanism should exist enabling that relationship to be recognised. Nevertheless, the Court considered that in the present case it would not place an excessive burden on the children concerned to expect the applicants to initiate adoption proceedings now for that purpose. The Court observed in particular that it emerged from the information provided by the Government that the average waiting time for a decision was only 4.1 months in the case of full adoption and 4.7 months in the case of simple adoption.

Consequently, the Court concluded that the French authorities' refusal to enter the details of the children's foreign birth certificates in the French register of births, marriages and deaths in so far as the certificates named the intended mother as the children's mother was not disproportionate to the aims pursued. This part of the applications was therefore manifestly ill-founded.

#### [Article 14 \(prohibition of discrimination\) read in conjunction with Article 8](#)

The Court specified that the only difference between "other children born abroad" and "children born abroad through a gestational surrogacy arrangement" was that the latter could not have the full details of the foreign birth certificate entered in the register, and had to have recourse to adoption. It noted that it was clear from the Government's explanations that this difference in treatment regarding the means of establishing the legal mother-child relationship, since it entailed supervision by the courts, made it possible to verify in the specific circumstances of each case whether it was in the best interests of a child born through a gestational surrogacy arrangement for such a relationship to be established with the intended mother. Furthermore, the Court had indicated in its advisory opinion of 10 April 2019 that the choice of means by which to permit recognition of the legal relationship between the child and the intended parents fell within the States' margin of appreciation, and that Article 8 did not impose a general obligation on States to recognise a parent-child relationship between the child and the intended mother from the outset. Consequently, the difference in treatment complained of was based on an objective and reasonable justification. This part of the applications was therefore manifestly ill-founded.

*The decision is available only in French.*

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