



## Citizenship of children born through surrogacy

In its decision in the case of [S.-H. v. Poland](#) (application nos. 56846/15 and 56849/15) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The applicants' parents are a same-sex couple, who in 2010 had the children conceived via a surrogacy agreement. The applicants were confirmed as children of their parents by the Superior Court of California. The case concerned their application for Polish citizenship (one of their parents is a Polish national).

The Court held that as the applicants had not suffered any hardship or been left in a legal vacuum as a result of the Polish authorities' decision, the application had to be rejected *ratione materiae*.

### Principal facts

The applicants, S. and M. S.-H., are dual Israeli and United States nationals who were both born in 2010 and live in Ramat-Gan (Israel).

In 2010 the applicants were born via a surrogacy agreement to Mr S. – who holds, among other citizenships, Polish nationality – and Mr H. The procedure involved using Mr S.'s gametes and a donor egg. The Superior Court of California in the United States confirmed that Mr S. and Mr H. were the children's parents in September 2010 before the birth.

On 20 July 2012 Mr S. applied on behalf of both applicants to the Polish authorities for confirmation of the applicants' Polish citizenship. The applicants submitted a copy of the U.S. court decision, but refused to provide other documents. In two decisions, the Mazowiecki Governor rejected the application, noting, among other things, the failure to provide Polish birth certificates and that the State did not recognise surrogacy. That decision was upheld by the Minister of the Interior, who also found that the original birth certificates had no evidentiary value as they contravened the Polish legal order.

The applicants appealed, alleging breaches of the Constitution, among other things. The Warsaw Regional Administrative Court and the Supreme Administrative Court upheld the decisions of the administrative authorities. They held that there had been no confirmation that the U.S. court's judgment conformed to the Polish legal order, and that as Poland did not recognise surrogacy, the mother was the birth mother and the father was her husband. The latter court noted that "parent" had a specific legal meaning, and so Mr S.'s genetic link to the children and Polish nationality were irrelevant to the case, reiterating that having two men as parents on the U.S. birth certificate ran counter to the basic principles of the Polish legal system.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 5 November 2015.

Relying on Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination), the complainant complained of the refusal by the Polish authorities to recognise their relationship with their biological father, which they alleged had been because their parents were a same-sex couple.

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

Ksenija **Turković** (Croatia), *President*,  
 Krzysztof **Wojtyczek** (Poland),  
 Gilberto **Felici** (San Marino),  
 Erik **Wennerström** (Sweden),  
 Raffaele **Sabato** (Italy),  
 Lorraine **Schembri Orland** (Malta),  
 Ioannis **Ktistakis** (Greece),

and also Renata **Degener**, *Section Registrar*.

## Decision of the Court

### Article 8

The applicants contended that they were Polish Jews whose family members had been killed in the Holocaust and that this heritage was extremely important to them. Allegedly, due to Israel's difficult geopolitical situation, the family were considering moving to Europe.

The Court determined that the case had been seen in the light of the consequences of the Polish authorities' decisions. While it acknowledged that the applicants would not have Polish and European citizenship as a result of those decisions, it pointed out that they would still enjoy free movement in Europe. For the Court, they had not put forward any claims of hardship they had suffered as a result of the decisions, either before the Court or the domestic authorities. In particular, the parent-child link in this case, although not recognised by the Polish authorities, was recognised in the State where the applicants resided. Legal recognition in the United States had meant that the applicants had not been left in a legal vacuum both as to their citizenship and as to the recognition of the legal parent-child relationship with their biological father.

Given the lack of negative consequences, the Court adjudged that was no factual basis for concluding that there had been an interference with the right to respect for private and family life in the present case, and consequently rejected the complaint *ratione materiae*.

### Other articles

Given the decision under Article 8, the linked complaint under Article 14 also had to be rejected *ratione materiae*.

*The decision is available only in English.*

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHR\\_CEDH](https://twitter.com/ECHR_CEDH).

### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

Neil Connolly (tel : + 33 3 90 21 48 05)

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Denis Lambert (tel : + 33 3 90 21 41 09)

Inci Ertekin (tel : + 33 3 90 21 55 30)

Jane Swift (tel : + 33 3 88 41 29 04)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.