



The French Court of Cassation has submitted to the European Court of Human Rights the first request under Protocol No. 16, seeking an advisory opinion on the question of surrogacy

On 16 October 2018 the Court received a request for an advisory opinion from the French Court of Cassation. It is the first request received by the Court since the entry into force of [Protocol No. 16](#) to the European Convention on Human Rights on 1 August 2018. This Protocol allows the highest courts and tribunals, as specified by the member States which have ratified this text, to request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or its protocols.

An advisory opinion may be requested only in the context of a case pending before the domestic court. The acceptance or refusal of a request is left to the Court's discretion. A panel of five judges decides whether to accept the request, giving reasons for any refusal. Advisory opinions, given by the Grand Chamber, will give reasons and will not be binding. They will be published and communicated to the requesting court or tribunal and to the relevant High Contracting Party. Judges will be entitled to deliver a separate opinion.

The panel and the Grand Chamber will include *ex officio* the judge elected in respect of the High Contracting Party to which the requesting court or tribunal pertains.

The aim of Protocol No. 16 is to enhance the interaction between the Court and national authorities and thereby reinforce the implementation of Convention rights and freedoms by the requesting court in its adjudication of the pending case.

The Court of Cassation, in a judgment of 5 October 2018, decided to submit to the European Court of Human Rights a request for an advisory opinion on the following questions:

“(1) By refusing to enter, in the civil register of births, the birth of a child born abroad to a surrogate mother, in so far as the foreign birth certificate designates the child's “intended mother” as its “legal mother”, whereas the registration is accepted in so far as it designates the “intended father”, who is also the child's biological father, will a State party be overstepping its margin of appreciation under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms? In this connection should a distinction be drawn as to whether or not the child was conceived using the eggs of the “intended mother”?

(2) In the event of an answer in the affirmative to one of the two questions above, would the possibility for the intended mother to adopt the child of her spouse, the biological father, this being a means of establishing the legal mother-child relationship, ensure compliance with the requirements of Article 8 of the Convention?”

The Court of Cassation is adjourning its proceedings until the Court has given its opinion.

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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.