

## Refusal to grant applicant contact rights in respect of child born to her ex-partner using assisted reproductive techniques: no violation of the Convention

In today's Chamber judgment<sup>1</sup> in the case of [Honner v. France](#) (application no. 19511/16) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 8** (right to respect for family life) of the European Convention on Human Rights.

The case concerned the refusal to award contact rights to the applicant in respect of the child which had been born to her former partner in Belgium using assisted reproductive techniques while the two women were a couple, despite the fact that the applicant had raised the child during his early years.

The Court found in particular that by rejecting the applicant's request on grounds of the child's best interests and by duly giving reasons for the decision, the French authorities had not failed to fulfil their positive obligation to guarantee effective respect for the applicant's right to respect for her family life.

### Principal facts

The applicant, Rachel Honner, is a French national who was born in 1966 and lives in Paris (France).

The child, G., was born in 2007 after the applicant and her former partner, C., decided to start a family. The couple had been living together since 2000 and had entered into a civil partnership in April 2009. The child was brought up by both women until their separation in May 2012.

A few weeks after their separation, Ms Honner's former partner objected to the continuing relationship between her child and the applicant. The applicant applied to the family judge for visiting and staying contact rights, which were granted by the *tribunal de grande instance*. The judge took the view that the child's birth had been the result of a joint family project on the part of the couple and that the applicant had been committed to the child since he was born.

The applicant's former partner appealed against the judgment of the *tribunal de grande instance*, which was overturned. The Paris Court of Appeal found that the meetings between the applicant and the child were excessively traumatic for the child and that granting contact rights to Ms Honner was therefore contrary to his best interests. Ms Honner lodged an appeal on points of law with the Court of Cassation, without success.

In the meantime, in response to a complaint filed by Ms Honner, the first-instance disciplinary board of the Ile-de-France Medical Association had issued a reprimand to the doctor who had drawn up certificates produced by the applicant's former partner in the Court of Appeal proceedings. The disciplinary board found that the certificates had been biased and had contained statements about facts that the doctor himself could not have known.

1. 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).

## Complaints, procedure and composition of the Court

Relying on Article 8 of the Convention (right to respect for family life), the applicant alleged that the refusal to grant her contact rights in respect of her former partner's son, whom she had raised during his early years, had breached her right to respect for her family life.

The application was lodged with the European Court of Human Rights on 7 April 2016.

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

Síofra O'Leary (Ireland), *President*,  
Stéphanie Mourou-Vikström (Monaco),  
Latif Hüseyinov (Azerbaijan),  
Jovan Ilievski (North Macedonia),  
Lado Chanturia (Georgia),  
Ivana Jelić (Montenegro),  
Mattias Guyomar (France),

and also Victor Soloveytchik, *Section Registrar*.

## Decision of the Court

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

The child G. had been raised by the applicant and C. after they had decided to start a family. They had lived together from 2000 until their separation in May 2012. The Court noted that the ties which had developed between the applicant and G. during the four and a half years they had lived together constituted family life within the meaning of Article 8.

The Court found that the bond between the child and the applicant had been impaired not by a decision or act of the public authority but as a result of the applicant's separation from her former partner. The domestic court had not abolished a visiting and staying contact right which the applicant could have claimed in respect of the child, but had rejected the applicant's application on the basis of the second paragraph of Article 371-4 of the Civil Code, under which the family judge was entitled to determine the arrangements for the maintaining of relations between a child and persons other than his or her ascendants if that was in the child's interest. The Court therefore examined the case from the perspective of the positive obligation of States Parties to ensure that persons within their jurisdiction enjoyed effective respect for their family life, rather than from the perspective of their obligation not to interfere with the exercise of that right.

The Court reiterated that a fair balance had to be struck between the competing interests of the individual and of society as a whole. The States Parties enjoyed a certain margin of appreciation, which was broad where the public authorities had to strike a balance between competing private and public interests or between different rights protected by the Convention. This had been the case here, in particular since it was not only the right to respect for the applicant's family life which had been at stake, but also the principle of the best interests of the child, and the rights of both G. and C., her former partner, under Article 8 of the Convention.

The Court observed that French law allowed a person who had developed a *de facto* family relationship with a child to seek measures to preserve that relationship. The French legal framework thus entitled the applicant to seek judicial review of the question whether she could preserve the ties that she had developed with G., and she had duly made use of that remedy. The Court noted that the Paris Court of Appeal had held that the child's meetings with the applicant had been too traumatic for him and that it was therefore not in his interest to pursue them. Its decision had therefore been based on the child's best interests.

The Court of Appeal had noted that G., a fragile child, had found himself in a traumatising and guilt-ridden situation, at the centre of a conflict between the applicant and his biological mother, who were unable to communicate with each other without being aggressive. It had also noted that there was no smooth handover of the child from one to the other and that G. had been reluctant to go to the applicant's home. The Court could not call into question the conclusion that the Court of Appeal had reached from these findings, namely that it was not in the child's interest to continue meeting the applicant.

The Court also noted the applicant's complaint that the Court of Appeal had not taken account of the documents she had produced and that it had relied exclusively on attestations from C.'s relatives and on certificates of convenience, including those drawn up by a doctor for which he was reprimanded by the Medical Association's disciplinary board because they referred to facts which he himself could not have known. However, there was nothing to suggest that the Paris Court of Appeal had failed to take account of the evidence produced by the applicant. As to the certificates whose reliability was in issue, the Government pointed out that it was clear from the Court of Appeal's judgment that it had not relied decisively on them.

As to the applicant's view that the Paris Court of Appeal could have organised supervised meetings between G. and herself, this was contradicted by the Court of Appeal's finding that, because of the particularly tense relations between the two women, putting the child in a traumatic situation, it was not in the child's interest to make arrangements for such contact between him and the applicant.

The Court understood the distress that the applicant could have been caused by the situation at issue and by the response of the Paris Court of Appeal. However, it was of the view that the applicant's rights could not take precedence over the best interests of the child.

Further having regard to the broad margin of appreciation afforded to the authorities in such matters, the Court concluded that the respondent State had not failed to fulfil its positive obligation to guarantee effective respect for the applicant's right to respect for her family life.

There had therefore been no violation of Article 8 of the Convention.

*The judgment is available only in French.*

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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.