



## Anonymous birth: domestic authorities struck fair balance between applicant's right to find out her origins and her biological mother's right to remain anonymous in compliance with Article 8 of the Convention

In today's **Chamber judgment**<sup>1</sup> in the case of [Cherrier v. France](#) (application no. 18843/20) the European Court of Human Rights held, by six votes to one, that there had been:

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

The case concerned the refusal by the National Council for Access to Information about Personal Origins (*Conseil national pour l'accès aux origines personnelles* – “the CNAOP”) to inform the applicant, who was born to anonymous parents, of the identity of her biological mother. The applicant had applied for information about her origins to be disclosed, but the mother had reasserted her choice not to reveal her identity.

The Court held that the refusal in issue had amounted to an interference with the applicant's right to respect for her private life under Article 8 of the Convention. That interference was in accordance with the law and pursued the aim of protecting the biological mother's rights and interests. In its [Odièvre v. France](#) judgment of 13 February 2003, the Court had found that the system implemented by France in 2002 to provide access to information about personal origins was such as to strike a fair balance between the relevant interests. In the present case, to determine whether the interference was proportionate to the aim pursued, the Court examined whether the applicant's right to respect for her private life had not been violated by that system, such as it had evolved and been implemented.

Having pointed out the conflict between the applicant's rights and interests and those of her biological mother, the Court saw no reason to review its 2003 assessment of the balance between the rights and interests at stake in anonymous birth cases. It found that a procedure for the confidentiality of a mother's identity to be waived, subject to her consent, and for accessing non-identifying information on the child's origins was a suitable mechanism for ensuring a fair and reasonable balance between the rights and interests at stake.

After noting that the applicant's case had been heard before the domestic courts, where she had been able to present her arguments as part of adversarial proceedings, the Court found that the State had not overstepped its margin of appreciation and that the fair balance between the applicant's right to find out her origins and her biological mother's rights and interests with respect to remaining anonymous had not been upset. It followed that there had been no violation of Article 8.

### Principal facts

The applicant, Annick Cherrier, is a French national who was born in 1952 and lives in Nouméa (New Caledonia).

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).

The applicant was adopted in 1952, a few months after her birth, and only learned of that fact upon the death of her second adoptive parent in 2008.

That same year the applicant contacted the CNAOP to find out why she was relinquished for adoption and who her biological parents were. She also submitted several questions about her mother's nationality, her family's medical history and whether she had any biological siblings.

The CNAOP looked into the matter and found information on the applicant's biological mother (surname, first name, place and date of birth, physical description) and biological father (surname, first name, age, physical description). It also obtained the applicant's adoption order and the following information on the reason for her relinquishment: "the young woman (age unknown) is engaged and he [her fiancé] only wants to marry if she gives up the child". The CNAOP tracked down the mother who, as she was entitled to do under Article L. 147-6 of the Social Action and Families Code, stated that she wished to keep her identity secret, "[then] and after her death". The mother also confirmed the identity of the birth father to the CNAOP and answered the questions submitted by the applicant.

In a letter of 16 April 2009 the applicant applied to the CNAOP for her birth mother to be contacted again with additional questions.

On 15 June 2009 the applicant requested that further investigations be carried out to locate her birth father. Based on the CNAOP's work, an individual was identified whose first name, surname and age corresponded to those indicated in the applicant's file. A very elderly man by the relevant time, the individual was unable to acknowledge paternity and refused to waive confidentiality concerning his identity, including after his death.

In September 2010 and then in February 2012 the applicant repeated her requests to access information on her birth mother's identity.

In a letter dated 29 September 2010 the CNAOP informed the applicant that, although her mother could still change her mind, it could not disregard her mother's refusal to waive confidentiality concerning her identity. In a letter of 6 March 2012 the CNAOP refused to disclose the identity of the applicant's mother.

In a judgment of 30 September 2015 the New Caledonia Administrative Court rejected the applicant's claims that the CNAOP had not taken all possible steps to provide her with access to information about her origins and dismissed her application to have the decision of 6 March 2012 set aside.

On 30 January 2018 the Paris Administrative Court of Appeal dismissed her appeal against that judgment. The *Conseil d'État* subsequently dismissed her appeal on points of law on 16 October 2019.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant complained that the CNAOP had refused to disclose her biological mother's identity, submitting that it had thereby infringed her right of access to information about her origins.

The application was lodged with the European Court of Human Rights on 27 April 2020.

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

Georges Ravarani (Luxembourg), *President*,  
Lado Chanturia (Georgia),  
Mārtiņš Mits (Latvia),  
Stéphanie Mourou-Vikström (Monaco),

María Elósegui (Spain),  
Mattias Guyomar (France),  
Kateřina Šimáčková (the Czech Republic),

and also Victor Soloveytchik, *Section Registrar*.

## Decision of the Court

### Article 8

The Court noted that the CNAOP's refusal, based on an obligation to respect the biological mother's wishes, amounted to an interference in the applicant's private life. To determine whether that interference violated the applicant's right to respect for her private life, the Court had to examine whether the decision was in accordance with the law and necessary in a democratic society.

Concerning domestic law, the Court noted that the 2009 legislative reform had rounded out the system introduced in 2002, whereby the confidentiality of the mother's identity could be waived. The blanket refusal applied to actions to establish maternity brought by children born to anonymous mothers had been repealed, so that any such child who learned of his or her mother's identity could institute proceedings to establish a legal mother-child relationship. The Court also observed that on 16 May 2012 the Constitutional Council had found the system of anonymous births compatible with the Constitution, basing its decision on the constitutional requirements to protect health and holding that the system was such as to ensure a satisfactory balance between "the interests of the mother and those of the child".

The Court first reiterated its past acknowledgment that the rights and interests at issue – that is, those of two adults, each endowed with their own free will – were not easily reconciled.

Secondly, in the [Odièvre v. France](#) and [Godelli v. Italy](#) judgments, the Court had not challenged the ability of the relevant States to continue allowing women to give birth anonymously. It had, however, found that such a system of anonymity should be counterbalanced by a procedure for the confidentiality of the mother's identity to be waived, subject to her consent, and for requesting access to non-identifying information concerning the child's origins.

Thirdly, as a result of the above, the Court saw no reason to question the balance of rights struck by the domestic authorities in the present case.

The Court noted that the CNAOP had collected a certain amount of non-identifying information that it had provided to the applicant, thereby enabling her to understand the circumstances of her birth.

The Court also noted that the applicant's case had been heard before the domestic courts, where she had been able to present her arguments as part of adversarial proceedings.

Lastly, it observed that the *Conseil d'État*, referring to the legislature's decision not to allow the confidentiality of identity to be waived unconditionally, had justified its decision by citing the aim pursued by the 2002 legislative reform. In particular, that reform had sought to achieve a compromise between the rights and interests at stake by establishing a conciliation procedure to facilitate access to information about one's origins without disregarding the mother's wishes or decisions.

The Court thus found that the State had not overstepped its margin of appreciation and that the fair balance between the applicant's right to find out her origins and her biological mother's rights and interests with respect to remaining anonymous had not been upset. It followed that there had been no violation of Article 8 of the Convention.

## Separate opinion

Judge S. Mourou-Vikström expressed a separate opinion, which is annexed to the judgment.

*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.