D. and Others v. Belgium (dec.) - 29176/13

Decision 8.7.2014 [Section II]

Article 8

Article 8-1

Respect for family life

Refusal to provide applicants with a travel document to enable their child, born abroad as a result of a surrogacy arrangement, to travel back with them to their country of origin: *inadmissible*

Facts – A. was born on 26 February 2013 as a result of a surrogacy arrangement in Ukraine. On 31 July 2013 the Brussels Court of Appeal upheld the applicants' appeal contesting the Belgian authorities' refusal to issue a travel document in A.'s name, considering that they had by that stage sufficiently established that the first applicant was A.'s biological father and that the public-order concerns previously expressed by the authorities with regard to the circumstances of A.'s birth had been lifted. It ordered the Belgian State to issue the first applicant with an appropriate document bearing A.'s name, in order to enable him to travel to Belgium with the first applicant. A. arrived in Belgium with the applicants on 6 August 2013. Before the European Court, relying on Article 8 of the Convention, the applicants alleged, *inter alia*, that their effective separation from the child on account of the Belgian authorities' refusal to issue a travel document had severed the relationship between a baby aged only a few weeks and his parents.

Law – Article 8: This Article was applicable wherever there existed *de facto* family ties. While it was true that the applicants had been separated from the child during the period under consideration, an intended family life did not fall entirely outside the ambit of Article 8. It was not disputed that the applicants wished to care for the child, as parents, from his birth, and that they had taken steps to allow for an effective family life. Since A.'s arrival in Belgium, he and the applicants had lived together in a manner that was indistinguishable from the traditional notion of "family life". Article 8 was therefore applicable.

The Belgian authorities' refusal to issue a travel document for the child, which had resulted in an effective separation of the applicants and the child, had amounted to an interference in the applicants' right to respect for their family life. The interference had been provided for by law and pursued several legitimate aims, in particular, the prevention of trafficking in human beings, and the protection of the rights of others, in this case those of the surrogate mother and also, to a certain extent, those of A.

The applicants and the child had been separated for three months and twelve days, during which period the applicants had paid at least two one-week visits to Ukraine. The urgent proceedings had lasted four months and twelve days. This situation must have been difficult for the applicants, who may have suffered anguish, or even distress, and this had not been favourable to maintaining family ties between the applicants and A. Equally, it was important for a child's

psychological development to have sustained contact with one or several persons who were close to him or her, especially in the first months of life.

Nonetheless, having regard to the circumstances of the case, neither the urgent proceedings nor the period of the applicants' actual separation from A. could be considered as unreasonably long. The Convention could not oblige the States to authorise entry to their territory of children born to a surrogate mother without the national authorities having a prior opportunity to conduct certain relevant legal checks. Moreover, the applicants could reasonably have foreseen that the procedure to have the family relationship recognised and to take the child to Belgium would necessarily take a certain time. In addition, the Belgian State could not be held responsible for the difficulties the applicants had encountered in remaining in Ukraine for a longer period, even during the entire period that the proceedings were pending before the Belgian courts. Lastly, the time taken to obtain the laissez-passer had, at least in part, been attributable to the applicants themselves, in that they had not submitted sufficient evidence at first instance to demonstrate, prima facie, their biological ties to A. Thus, in refusing until 31 July 2013 to authorise A.'s entry to the national territory, the Belgian State had acted within the limits of the margin of appreciation enjoyed by it.

Conclusion: inadmissible (manifestly ill-founded).
