



Italian courts failed to fulfil positive obligation to take swift decision to establish applicant's legal relationship to biological father, but intended mother does have possibility of legally recognising child through adoption

In today's **Chamber judgment**¹ in the case of [C v. Italy](#) (application no. 47196/21) the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights with regard to the establishment of a legal parent-child relationship between the applicant and her biological father, and

no violation of Article 8 with regard to the establishment of a legal parent-child relationship between the applicant and her intended mother.

The case concerned the Italian authorities' refusal to recognise the legal parent-child relationship established by a Ukrainian birth certificate between C, a child born through a gestational surrogacy arrangement abroad, and her biological father and intended mother.

The Court observed that, as it had found in previous cases (mainly [Mennesson v. France](#) and [Labassee v. France](#)), under Article 8 of the Convention, domestic law had to provide a possibility of recognition of the legal relationship between a child born through a surrogacy arrangement abroad and the intended father where he was the biological father.

Legal parent-child relationship between the applicant and her biological father

The Court noted that in the present case the domestic courts had been unable to take a swift decision to protect the applicant's interest in having her legal relationship with her biological father established. The applicant, now aged four, had been kept since birth in a state of protracted uncertainty as to her personal identity and, as she had no legally established parentage, was considered a stateless person in Italy. The Court therefore held that, despite the margin of appreciation afforded to the State, the Italian authorities had failed to fulfil their positive obligation to ensure the applicant's right to respect for her private life under the Convention.

Legal parent-child relationship between the applicant and her intended mother

The Court found that while Italian law did not allow for the details of the birth certificate to be registered concerning the intended mother, it nevertheless afforded her the possibility of legally recognising the child by means of adoption. By refusing to enter the details of the applicant's Ukrainian birth certificate in the relevant Italian civil register in so far as it designated E.A.M. as her mother, the respondent State had not exceeded its margin of appreciation and there had thus been no violation of Article 8 of the Convention in that regard.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

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.

Principal facts

The biological father, L.B., and the intended mother, E.A.M., are acting on behalf of C, a stateless person who was born in 2019 and lives in C.S.

In 2018 L.B. and E.A.M. entered into a gestational surrogacy contract in Ukraine. An embryo generated from the egg of an anonymous donor and L.B.'s sperm was implanted in the uterus of a surrogate mother. C was born in August 2019. A birth certificate was drawn up in Ukraine.

On 16 September 2019 L.B. and E.A.M. asked the civil registrar to enter the details of the child's Ukrainian birth certificate in the relevant register. The registry office rejected their request on the grounds that such registration was contrary to public policy.

On 14 January 2020 L.B. and E.A.M. lodged an application with the District Court. They requested that the full details of the birth certificate be entered or, in the alternative, just the biological father's name as parent. The prosecutor's office asked the court to grant the alternative request. On 16 March 2020 the court rejected the application on the grounds that due consideration of the child's best interests could not result in disregard for the principle that surrogacy arrangements were incompatible with public policy.

L.B. and E.A.M. appealed against that decision and requested, by way of an urgent application within the appeal proceedings, that the details of the birth certificate be partially registered so as to indicate L.B. as father. The prosecutor's office asked the Court of Appeal to admit the application. The Court of Appeal dismissed their application, pointing out that the request for partial registration introduced in the urgent application was inadmissible on the grounds that the application in the main proceedings pertained exclusively to the full transcription of C's birth certificate.

On 8 June 2022 L.B. asked the registry office of the municipality where he had transferred his place of residence to partially register his daughter's birth details. The registry office refused his request on the grounds that the prohibition of surrogacy could not be circumvented.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant complained that she was unable to obtain recognition in Italy of the legal parent-child relationship lawfully established as a result of a gestational surrogacy arrangement.

The application was lodged with the European Court of Human Rights on 21 September 2021.

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

Marko **Bošnjak** (Slovenia), *President*,
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Lətif **Hüseynov** (Azerbaijan),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),

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

Decision of the Court

Article 8

The Court reiterated that respect for private life required that everyone should be able to establish details of their identity, which included the legal parent-child relationship. The applicant was in a position of legal uncertainty since the domestic courts had failed to recognise the parent-child relationship linking her to her biological father and intended mother according to her Ukrainian birth certificate and since she did not have Italian nationality.

Concerning the establishment of the legal parent-child relationship between the applicant and her biological father

The Court reiterated that, according to its case-law, Article 8 of the Convention required that domestic law provide a possibility of recognition of the legal relationship between a child born through a surrogacy arrangement abroad and the intended father where he was the biological father. It referred mainly to its [Mennesson v. France](#) and [Labassee v. France](#) judgments. It pointed out that in its [Advisory Opinion no. P16-2018-001](#) it had found that the choice of means by which to permit recognition of the legal relationship between the child and the intended parent fell within the States' margin of appreciation.

In addition, the Court noted that the lack of recognition of a legal relationship between a child born through a surrogacy arrangement carried out abroad and the intended parent had a negative impact on several aspects of that child's right to respect for his or her private life and was disadvantageous to the child as it placed him or her in a position of legal uncertainty regarding his or her identity within society. It was therefore in the child's interest that the uncertainty surrounding his or her legal parentage be as short-lived as possible. In that regard, the Court pointed out that there was a duty to exercise exceptional diligence when a person's relationship with his or her child was at stake, as the passage of time might result in a *de facto* determination of the matter.

In the present case, L.B. and E.A.M. had applied to the District Court to have the birth certificate fully transcribed in the register or, in the alternative, with only the biological father indicated as parent. Notwithstanding the favourable opinion of the prosecutor's office, which had requested that partial transcription be granted, the court had dismissed the application on the grounds that due consideration of the child's best interests could not result in disregard for the principle that surrogacy arrangements were incompatible with public policy. No particular answer had been given as to the alternative request. L.B. and E.A.M. had appealed against that decision and, in an urgent application, had requested the partial registration of the birth details so as to include those of L.B. The prosecutor's office had once again expressed a favourable opinion. The Court of Appeal had dismissed the application, declaring the request for partial transcription inadmissible on formal grounds since the initial application had pertained exclusively to the full transcription of C's birth certificate, which would be contrary to public policy. Subsequently, L.B. had asked the civil registrar to partially transcribe the birth certificate, which request had also been refused.

Clearly, the domestic courts had dismissed the relevant requests without weighing up the different interests at stake and, most importantly, without regard to the applicable requirements of promptness and effectiveness.

There was reason to conclude that, in the instant case, the domestic courts had been unable to take a swift decision to protect the applicant's interest in having her biological parentage established, and no alternative solution appeared to have been considered. The applicant, aged four, had been kept since birth in a state of protracted uncertainty as to her personal identity. In particular, as she had no legally established parentage, she was considered a stateless person in Italy.

The Court therefore held that, despite the margin of appreciation afforded to the State, the Italian authorities had failed to fulfil their positive obligation to ensure the applicant's right to respect for

her private life under the Convention. There had thus been a violation of Article 8 of the Convention in that regard.

Concerning the establishment of the legal parent-child relationship between the applicant and her intended mother

The Court noted that E.A.M. could apply to adopt the applicant under section 44 (d) of Law no. 184 of 1983.

In that connection, the Court pointed out that the Constitutional Court itself had declared the provisions relating to adoption “in particular cases” unconstitutional to the extent that they had precluded the creation of the same family ties between the adoptee and the adopter’s relatives as those established by other types of adoption. In November 2022 the Court of Cassation, sitting as a full court, while reiterating that it was forbidden, as being contrary to public policy, to transcribe the birth certificate of a child born through a surrogacy arrangement abroad in so far as the intended parent was concerned, had established that “adoption is the means by which it is possible to obtain legal recognition – by conferring on such a child the status of son or daughter in relation to the adoptive parent – of the *de facto* relationship between the child in question and the person who shared in the procreative project with the biological parent and has contributed to caring for the child since his or her birth.”

The Court took the view that the principles developed in the [Mennesson](#) and [Labassee](#) cases, in its [Advisory Opinion no. P16-2018-001](#) and in [D v. France](#) applied in the present case. It pointed out, in particular, that although the States had a narrow margin of appreciation where the issue was the very principle of establishing or recognising parentage, that margin was wider in terms of the means to be implemented to that end. While Italian law did not permit registration of the birth certificate details concerning the intended mother, it nevertheless afforded her the possibility of legally recognising the child by way of adoption.

The Court therefore found that it was not generally and absolutely impossible to have a parent-child relationship recognised between the applicant and the intended mother. By refusing to enter the details of the applicant’s Ukrainian birth certificate in the relevant Italian civil register in so far as it designated E.A.M. as her mother, the respondent State had not exceeded its margin of appreciation. There had thus been no violation of Article 8 of the Convention in that regard.

Just satisfaction (Article 41)

The Court held that Italy was to pay the applicant 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 9,536 in respect of costs and expenses.

Separate opinion

Judge **Wojtyczek** expressed a separate opinion. This opinion 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.