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This factsheet does not bind the Court and is not exhaustive

# Parental Rights

See also the factsheets on [“Children’s rights”](#), [“International child abductions”](#) and [“Reproductive rights”](#).

Cases concerning parental rights raise issues mainly under **Article 8 (right to respect for private and family life) of the [European Convention on Human Rights](#)**, which states:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

In order to determine whether the interference by the authorities with the applicants’ private and family life was necessary in a democratic society and a fair balance was struck between the different interests involved, the European Court of Human Rights examines whether the interference was in accordance with the law, pursued a legitimate aim or aims and was proportionate to the aim(s) pursued.

## Adoption

### [Fretté v. France](#)

26 February 2002

The applicant alleged that the decision dismissing his request for authorisation to adopt had amounted to arbitrary interference with his private and family life because it had been based exclusively on unfavourable prejudice about his sexual orientation. He further complained that he had not been summoned to the hearing held by the *Conseil d’État*.

The European Court of Human Rights held that there had been **no violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private life) of the European Convention on Human Rights. It found that the national authorities had been legitimately and reasonably entitled to consider that the right to be able to adopt, on which the applicant had relied, was limited by the interests of children eligible for adoption, notwithstanding the applicant’s legitimate aspirations and without calling his personal choices into question. The Court further held that there had been a **violation of Article 6** (right to a fair trial) of the Convention, the applicant having been denied a fair hearing of his case in adversarial proceedings.

### [Wagner and J.M.W.L. v. Luxembourg](#)

28 June 2007

This case concerned a civil action seeking to have an adoption decision pronounced in Peru declared enforceable in Luxembourg. The Luxembourg courts had dismissed the application as the Civil Code made no provision for full adoption by a single woman.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention because of the Luxembourg courts’ failure to

acknowledge the family ties created by the full adoption granted in Peru, and a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8**, the child (and her mother as a result) having been penalised in her daily life on account of her status as the adoptive child of an unmarried mother of Luxembourg nationality whose family ties created by a foreign judgment were not recognised in Luxembourg.

### **E.B. v. France (application no. 43546/02)**

22 January 2008 (Grand Chamber)

The applicant alleged that at every stage of her application for authorisation to adopt she had suffered discriminatory treatment which had been based on her sexual orientation and had interfered with her right to respect for her private life.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention. The domestic administrative authorities, and then the courts that heard the applicant's appeal, had based their decision to reject her application for authorisation to adopt largely on the lack of a paternal referent in the applicant's household, which was not a legitimate reason. Also, the influence of her homosexuality on the assessment of her application had not only been established but had also been a decisive factor.

### **Moretti and Benedetti v. Italy**

27 April 2010

The applicants were a married couple. In May 2004 a newborn baby was provisionally placed in their care by a court decision. They subsequently sought to adopt the child, but in December 2005 another family was chosen for her. The applicants complained in particular that the relevant law and procedural rules had been incorrectly applied regarding their request to adopt.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It was not for the Court to substitute its own reasoning for that of the national courts, which had acted in good faith regarding the measures taken to ensure the child's well-being. However, the shortcomings observed in the proceedings in question had had a direct impact on the applicants' right to family life, and the authorities had failed to ensure effective respect for that right. In particular, it was regrettable that the request for adoption lodged by the applicants had not been examined before declaring the child free for adoption and that it had been dismissed with no reasons being stated.

### **Schwizgebel v. Switzerland**

10 June 2010

The applicant complained that the Swiss authorities had prevented her from adopting because of her age (47 and a half at the time of her last application). She claimed among other things that she had been discriminated against in comparison with other women of her age, who were able nowadays to give birth to children of their own.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention, finding that the difference of treatment imposed on the applicant had not been discriminatory. It observed in particular that the Swiss authorities had taken their decisions in the context of adversarial proceedings allowing the applicant to submit her arguments, which had been duly taken into account by those authorities. They had further considered not only the best interests of the child to be adopted, but also those of the child already adopted. Moreover, the criterion of the age-difference between the adopter and the child had been applied by the Federal Court flexibly and having regard to the circumstances of the situation. Lastly, the other arguments given in support of the decisions, i.e. those not based on age, had not been unreasonable or arbitrary.

### **Negrepontis-Giannisis v. Greece**

3 May 2011

This case concerned the refusal of the Greek authorities to recognise the full adoption order made in the United States allowing a monk to adopt his nephew (the applicant).

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the refusal to implement the applicant's adoption order in Greece had not met any pressing social need and had not been proportionate to the aim pursued. The Court further held that there had been a **violation of Articles 8 and 14** (prohibition of discrimination) **taken together**, finding that the difference in the treatment of the applicant, as an adopted child, compared with a biological child, had been discriminatory as it had had no objective and reasonable justification. The Court lastly found a **violation of Article 6 § 1** (right to a fair trial) of the Convention, in particular because of the texts on which the Greek Court of Cassation had relied in refusing to recognise the adoption, and a **violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention, because the decision of the Greek courts had deprived the applicant of his status as heir.

### **Gas and Dubois v. France**

15 March 2012

This case concerned two cohabiting women, one of whom had been refused a simple adoption order in respect of the other's child.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private and family life) of the Convention. It saw notably no evidence of a difference in treatment based on the applicants' sexual orientation, as opposite-sex couples who had entered into a civil partnership were likewise prohibited from obtaining a simple adoption order.

### **Harroudj v. France**

4 October 2012

This case concerned the refusal of permission for a French national to adopt an Algerian baby girl already in her care under the Islamic-law form of guardianship called "kafala"<sup>1</sup>.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It found that a fair balance had been struck between the public interest and that of the applicant, the authorities having sought, with due regard for cultural pluralism, to encourage the integration of kafala children without immediately severing the ties with the laws of their country of origin.

### **X and Others v. Austria (no. 19010/07)**

19 February 2013 (Grand Chamber)

This case concerned the complaint by two women who live in a stable homosexual relationship about the Austrian courts' refusal to grant one of the partners the right to adopt the son of the other partner without severing the mother's legal ties with the child (second-parent adoption). The applicants submitted that there was no reasonable and objective justification for allowing adoption of one partner's child by the other partner if heterosexual couples were concerned, be they married or unmarried, while prohibiting the adoption of one partner's child by the other partner in the case of homosexual couples.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private and family life) of the Convention on account of the difference in treatment of the applicants in comparison with unmarried different-sex couples in which one partner wished to adopt the other partner's child. It further held that there had been **no violation of Article 14**

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<sup>1</sup>. In Islamic law, adoption, which creates family bonds comparable to those created by biological filiation, is prohibited. Instead, Islamic law provides for a form of guardianship called "kafala". In Muslim States, with the exception of Turkey, Indonesia and Tunisia, kafala is defined as a voluntary undertaking to provide for a child and take care of his or her welfare and education.

**taken in conjunction with Article 8** when the applicants' situation was compared with that of a married couple in which one spouse wished to adopt the other spouse's child.

The Court found in particular that the difference in treatment between the applicants and an unmarried heterosexual couple in which one partner sought to adopt the other partner's child had been based on the first and third applicants' sexual orientation. No convincing reasons had been advanced to show that such difference in treatment was necessary for the protection of the family or for the protection of the interests of the child.

At the same time, the Court underlined that the Convention did not oblige States to extend the right to second-parent adoption to unmarried couples. Furthermore, the case was to be distinguished from the case *Gas and Dubois v. France* (see above), in which the Court had found that there was no difference of treatment based on sexual orientation between an unmarried different-sex couple and a same-sex couple as, under French law, second-parent adoption was not open to any unmarried couple, be they homosexual or heterosexual.

### **Ageyev v. Russia**

18 April 2013

This case concerned a married couple's complaint about the removal of their two adopted children and the revocation of the adoption following an incident when their son was burnt at home and had to go to hospital for treatment.

The Court found **five violations of Article 8** (right to respect for private and family life) of the Convention, on account of: the decision to revoke the adoption of the applicants' children; the applicants' inability to review the authorities' position concerning access to their children between 31 March 2009 and 3 June 2010; the actions of the officials of the hospital where their adoptive son was treated; the Russian authorities' failure to investigate the unauthorised disclosure of confidential information on the adopted status of the applicants' son; and, the Russian courts' failure to protect the second applicant's right to reputation in the defamation proceedings against a publishing house. The Court further held that there had been **no violation of Article 8** of the Convention on account of the initial removal of the applicants' adoptive children.

### **Chbihi Loudoudi and Others v. Belgium**

16 December 2014

This case concerned the procedure in Belgium for the adoption by the applicants of their Moroccan niece, who had been entrusted to their care by "kafala"<sup>2</sup>. The applicants complained in particular of the Belgian authorities' refusal to recognise the kafala agreement and approve the adoption of their niece, to the detriment of the child's best interests, and of the uncertain nature of her residence status.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention concerning the refusal to grant the adoption, and **no violation of Article 8** (right to respect for private and family life) concerning the child's residence status. It found in particular that the refusal to grant adoption was based on a law which sought to ensure, in accordance with the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, that international adoptions took place in the best interests of the child and with respect for the child's private and family life, and that the Belgian authorities could legitimately consider that such a refusal was in the child's best interests, by ensuring the maintaining of a single parent-child relationship in both Morocco and Belgium (i.e. the legal parent-child relationship with the genetic parents). In addition, reiterating that the Convention did not guarantee a right to a particular residence status, the Court observed that the only real obstacle encountered by the girl had been her inability to take part in a school trip. That difficulty, owing to the absence of a residence permit between May 2010 and February 2011, did not suffice for Belgium to be required to grant her unlimited leave to remain in order to protect her private life.

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<sup>2</sup>. See footnote 1 above.

### Gözüm v. Turkey

15 January 2015

This case concerned the refusal of the applicant's request, as a single adoptive mother, to have her own forename entered on the personal documents for her adopted son in place of the name of the child's biological mother. The applicant alleged in particular that the rules of civil law, as applied to her at the relevant time, had infringed her right to respect for private and family life.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that civil-law protection, as envisaged at the relevant time, had been inadequate in respect of Turkey's obligations under Article 8. It noted in particular that there had been a vacuum in Turkish civil law in relation to single-parent adoption, since at the time the applicant had made her request, there had been no regulatory framework for recognition of the adoptive single parent's forename in place of that of the natural parent. This had left the applicant in a situation of distressing uncertainty regarding her private and family life with her son.

### A.H. and Others v. Russia (nos. 6033/13 and 22 other applications)

17 January 2017

These applications were brought by 45 US nationals: both on their own behalf, and on behalf of 27 Russian children. In late 2012, the US applicants had been in the final stages of procedures to adopt the children, many of whom required specialist medical care. However, after a Russian law had been passed which banned adoptions of Russians by US nationals<sup>3</sup>, all of these procedures were abruptly halted. The applicants claimed that, because the proceedings had been at a late stage, a bond had already formed between the adults and children. They complained that the ban had violated their right to family life, that it had been discriminatory, and that it had amounted to ill-treatment of the children (as it prevented them from receiving specialist medical care in the US).

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private life) of the Convention, finding that the adoption ban had unlawfully discriminated against the prospective parents<sup>4</sup>. In particular, this was because it had prevented the adoption of Russian children by the US applicants purely on the basis of the prospective parents' nationality; and because such a ban had been disproportionate to the Russian Government's stated aims, given that it had been retroactive, indiscriminate, and was applied irrespective of the status of proceedings or the individual circumstances. However, the Court found **inadmissible** the applicants' complaint that the ban had caused ill-treatment of the children, as it found that they had received adequate medical treatment in Russia.

### O.L.G. v. France

5 June 2018 (decision on the admissibility)

The applicant in this case complained about the rejection of a visa application to bring a child whom he had adopted in Côte d'Ivoire to France, thus preventing him from living with the latter in French territory.

The Court concluded that the applicant had not exhausted all the domestic remedies and that the application was therefore **inadmissible**. It observed in particular that the proceedings relating to the applicant's appeal to set aside the decision to withhold a visa was pending before an Administrative Court. It also observed that the applicant ought to have appealed to the Conseil d'État against the decision of December 2016 rejecting his urgent application for protection of a fundamental freedom seeking a provisional travel document for the child. Finally, the Court noted that all the other urgent applications

<sup>3</sup>. Federal Law no.272-FZ, also known as the "Anti-Magnitsky Law" or "Dima Yakovlev Law".

<sup>4</sup>. One application was however struck out by the Court, as the applicants had withdrawn their complaints. The Court also declared inadmissible part of one of the applications, insofar as it was submitted on behalf of the previously adopted daughter of two of the US applicants. This is because the daughter had not been a party to the adoption proceedings, and therefore could not claim to be a victim of alleged violations of the Convention.

lodged by the applicant had concerned the stay of execution of the refusal to issue a visa and the re-examination of his application, and not the issue of a temporary travel document. Those remedies were not sufficient to redress the alleged violation of Article 8 (right to respect for private and family life) of the Convention.

## Confidentiality of birth information

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### Odièvre v. France

13 February 2003 (Grand Chamber)

The applicant was abandoned by her natural mother at birth and left with the Health and Social Security Department. Her mother requested that her identity be kept secret from the applicant, who was placed in State care and later adopted under a full adoption order. The applicant subsequently tried to find out the identity of her natural parents and brothers. Her request was rejected because she had been born under a special procedure which allowed mothers to remain anonymous. The applicant complained that she had been unable to obtain details identifying her natural family and said that her inability to do so was highly damaging to her as it deprived her of the chance of reconstituting her life history. She further submitted that the French rules on confidentiality governing birth amounted to discrimination on the ground of birth.

The Court noted that birth, and in particular the circumstances in which a child was born, formed part of a child's, and subsequently the adult's, private life guaranteed by Article 8 of the Convention. In the instant case, it held that there had been **no violation of Article 8** (right to respect for private life), observing in particular that the applicant had been given access to non-identifying information about her mother and natural family that enabled her to trace some of her roots, while ensuring the protection of third-party interests. In addition, recent legislation enacted in 2002 enabled confidentiality to be waived and set up a special body to facilitate searches for information about biological origins. The applicant could now use that legislation to request disclosure of her mother's identity, subject to the latter's consent being obtained to ensure that the mother's need for protection and the applicant's legitimate request were fairly reconciled. The French legislation thus sought to strike a balance and to ensure sufficient proportion between the competing interests. The Court further held that there had been **no violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** of the Convention, finding that the applicant had suffered no discrimination with regard to her filiation, as she had parental ties with her adoptive parents and a prospective interest in their property and estate and, furthermore, could not claim that her situation with regard to her natural mother was comparable to that of children who enjoyed established parental ties with their natural mother.

### Godelli v. Italy

25 September 2012

This case concerned the confidentiality of information concerning a child's birth and the inability of a person abandoned by her mother to obtain non-identifying information about her birth family. The applicant maintained that she had suffered severe damage as a result of not knowing her personal history, having been unable to trace any of her roots while ensuring the protection of third-party interests.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, considering in particular that a fair balance had not been struck between the interests at stake since the Italian legislation, in cases where the mother had opted not to disclose her identity, did not allow a child who had not been formally recognised at birth and was subsequently adopted to request either non-identifying information about his or her origins or the disclosure of the birth mother's identity with the latter's consent.

## Disappearance of newborn baby in hospital care

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### Zorica Jovanović v. Serbia

26 March 2013

This case concerned the alleged death of the applicant's healthy newborn son in 1983 in a State-run hospital. She had never been allowed to see his body and suspected that her son may even still be alive, having unlawfully been given up for adoption.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found that, although the procedure in hospitals when newborns die had been improved and reports had been drawn up by Parliament to investigate the missing babies cases, ultimately nothing had been done to remedy the ordeal suffered by the parents, including the applicant, in the past. Therefore the Court concluded that the applicant had suffered a continuing violation of the right to respect for her family life due to Serbia's continuing failure to provide her with credible information as to what has happened to her son.

Given the significant number of other potential applicants, the Court also held under **Article 46** (binding force and execution of judgments) of the Convention that Serbia had to take measures to give credible answers about what has happened to each missing child and to provide parents with adequate compensation.

#### **Pending applications**

##### **S.R. v. Serbia (no. 8184/07) and four other applications**

Applications communicated to the Serbian Government on 9 April 2015

##### **Ilić v. Serbia (no. 33902/08) and nine other applications**

Applications communicated to the Serbian Government on 20 June 2019

## Filiation

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### Marckx v. Belgium

13 June 1979

An unmarried Belgian mother complained that she and her daughter were denied rights accorded to married mothers and their children: among other things, she had to recognise her child (or bring legal proceedings) to establish affiliation (married mothers could rely on the birth certificate); recognition restricted her ability to bequeath property to her child and did not create a legal bond between the child and mother's family, her grandmother and aunt. Only by marrying and then adopting her own daughter (or going through a legitimisation process) would she have ensured that she had the same rights as a legitimate child.

The Court held in particular that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention taken alone, and a **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 8**, regarding both applicants, concerning the establishment of the second applicant's maternal affiliation, the lack of a legal bond with her mother's family and her inheritance rights and her mother's freedom to choose how to dispose of her property. A bill to erase differences in treatment between children of married and unmarried parents was going through the Belgian Parliament at the time of the judgment.

### Rasmussen v. Denmark

28 November 1984

This case concerned the fact that the applicant was prevented from bringing proceedings to challenge his paternity of a child, following his separation from his wife, because of a 1960 Act that placed a time-limit on a father's right to challenge paternity of a child born in wedlock but permitted the mother to challenge the paternity of a child at any time.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) **combined with Articles 6** (right to a fair trial) **and 8** (right to respect for private and family life) of the Convention, finding that the difference of treatment established on this point between husbands and wives was based on the notion that time-limits for challenging filiation were less necessary for wives than for husbands since the mother's interests usually coincided with those of the child, she being awarded custody in most cases of divorce or separation. The rules in force had been modified by the Danish Parliament in 1982 because it considered that the thinking underlying the 1960 Act was no longer consistent with the developments in society; it could not be inferred from this that the manner in which it had evaluated the situation twenty-two years earlier was not tenable.

### **Kroon and Others v. the Netherlands**

27 October 1994

This case concerned the authorities' refusal to acknowledge the applicant's partner as the father of her child. The applicant had had no contact with her husband for several years, but her divorce had not come through until a year after her son was born, so the child had been registered as her husband's son.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, pointing out that the notion of "family life" was not confined solely to marriage-based relationships and might encompass other "family ties". Where the existence of a family tie with a child has been established, the State must act in a manner calculated to enable that tie to be developed and legal safeguards must be established that render possible as from the moment of birth or as soon as practicable thereafter the child's integration in his family.

### **X, Y and Z v. the United Kingdom (no. 21830/93)**

22 April 1997

The first applicant, X, a female-to-male transsexual, was living in a permanent and stable union with the second applicant, Y, a woman. The third applicant, Z, was born to the second applicant as a result of artificial insemination by donor. The applicants complained that X's role as Z's father was not recognised and that their situation amounted to discrimination.

The Court, considering that *de facto* family ties linked the three applicants, held that Article 8 (right to respect for private and family life) of the Convention was applicable in this case. It further found that, in the present case, there had been **no violation of Article 8** of the Convention: given that transsexuality raised complex scientific, legal, moral and social issues, in respect of which there was no generally shared approach among the Contracting States, the Court was of the opinion that Article 8 could not, in this context, be taken to imply an obligation for the respondent State formally to recognise as the father of a child a person who is not the biological father. That being so, the fact that the law of the United Kingdom does not allow special legal recognition of the relationship between X and Z did not amount to a failure to respect family life within the meaning of that provision.

### **Mikulić v. Croatia**

7 February 2002

The case concerned a child born out of wedlock who, together with her mother, filed a paternity suit. The applicant complained that Croatian law did not oblige men against whom paternity suits were brought to comply with court orders to undergo DNA tests, and that the failure of the domestic courts to decide her paternity claim had left her uncertain as to her personal identity. She also complained about the length of the proceedings and the lack of an effective remedy to speed the process up.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It observed in particular that, in determining an application to have paternity established, the courts were required to have regard to the basic principle of the child's interests. In the present case, it found that the procedure



available did not strike a fair balance between the right of the applicant to have her uncertainty as to her personal identity eliminated without unnecessary delay and that of her supposed father not to undergo DNA tests. Accordingly, the inefficiency of the courts had left the applicant in a state of prolonged uncertainty as to her personal identity. The Court further held that there had been a **violation of Articles 6 § 1** (right to a fair hearing within a reasonable time) and a **violation of Article 13** (right to an effective remedy) of the Convention.

### **Mizzi v. Malta**

12 January 2006

In 1966, the applicant's wife became pregnant. The following year, the couple separated. The applicant, under Maltese law, was automatically considered to be the father of the child born in the meantime and was registered as her natural father. Following a DNA test which, according to the applicant, established that he was not the child's father, he tried unsuccessfully to bring civil proceedings to repudiate his paternity of the child. The applicant complained that he had been denied access to a court and that the irrefutable presumption of paternity applied in his case had amounted to a disproportionate interference with his right for respect of private and family life. He also complained that he had suffered discrimination, because other parties with an interest in establishing paternity in the case had not been subject to the same strict conditions and time limits.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention, finding that the practical impossibility for the applicant to deny his paternity from the day the child was born until the present day had impaired, in essence, his right of access to a court. It further held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, considering that a fair balance had not been struck between the general interest of the protection of legal certainty of family relationships and the applicant's right to have the legal presumption of his paternity reviewed in the light of the biological evidence. Lastly, the Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Articles 6 and 8** of the Convention: observing that in bringing an action to contest his paternity the applicant had been subject to time-limits which did not apply to other "interested parties", it found that the rigid application of the time-limit along with the Maltese Constitutional Court's refusal to allow an exception had deprived the applicant of the exercise of his rights guaranteed by Articles 6 and 8 which had been and still were, on the contrary, enjoyed by the other interested parties.

### **Chavdarov v. Bulgaria**

21 November 2010

This case concerned a man's inability to secure recognition of his paternity of three children born of his relationship with a married woman during the time when they lived together.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention, finding that the fair balance between the interest of society and that of the individuals concerned had not been breached in this case. It observed that the authorities had not been responsible for the applicant's inaction in failing to avail himself of the possibilities open to him in domestic law to establish his paternal link with his children or to overcome the practical disadvantages posed by the absence of such a link. Respect for the children's legitimate interests had also been secured by the domestic legislation.

### **Krušković v. Croatia**

21 June 2011

The applicant complained that he had been denied the right to be registered as the father of his biological child, born out of wedlock. As he suffered from personality disorders as a result of long-term drug abuse, he had been deprived of legal capacity on the recommendation of a psychiatrist.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that, by ignoring the applicant's claims that he was the biological father of the child, the Croatian State had failed to discharge its positive obligation to guarantee his right to respect for private and family life. It observed in particular that in the two and a half years between the moment when the applicant had made his statement to the registry and the launching of the proceedings before the national courts to establish paternity, he had been left in a legal void; his claim had been ignored for no apparent reason. The Court could not accept that this was in the best interests of either the father, who had a vital interest in establishing the biological truth about an important aspect of his private life, or of the child to be informed about her personal identity.

### **Ahrens v. Germany and Kautzor v. Germany**

22 March 2012

These cases concerned the German courts' refusal to allow two men respectively to challenge another man's paternity of the first applicant's biological daughter, in the one case, and of the presumed biological daughter of the second applicant, in the other.

In both cases, the Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It considered that the decisions of the German courts to reject the applicants' requests to have their paternity legally established had interfered with their right to respect for their private life. At the same time, the Court found that those decisions did not amount to an interference with their family life for the purpose of Article 8 of the Convention, as there had never been any close personal relationship between the applicants and the respective children. The Court further held that there had been **no violation of Article 8 in conjunction with Article 14** (prohibition of discrimination) of the Convention, finding that the decision to give the existing family relationship between the child and her legal parents precedence over the relationship with her biological father fell, insofar as the legal status was concerned, within the State's margin of appreciation.

### **Ostace v. Romania**

25 February 2014

This case concerned the applicant's inability to obtain the revision of a judgment establishing his paternity of a child in spite of an extra-judicial forensic examination proving the contrary. The request was rejected on the ground that the document in question did not exist at the time of the initial proceedings.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It observed in particular that the applicant had not had any possibility of challenging the judicial declaration of his paternity under the applicable domestic law. Whilst the Court was prepared to admit that this inability to challenge could be explained by the legitimate interest in guaranteeing public safety and the stability of family relations and to protect the child's interests, it took the view, however, that by declaring inadmissible the request to reopen the paternity suit, even though all the parties seemed to be in favour of establishing the truth concerning the child's descent, the authorities had failed to strike a fair balance between the interests at stake.

### **Mennesson and Others v. France and Labassee v. France**

26 June 2014

These cases concerned the refusal to grant legal recognition in France to parent-child relationships that had been legally established in the United States between children born as a result of surrogacy treatment and the couples who had had the treatment. The applicants complained in particular of the fact that, to the detriment of the children's best interests, they were unable to obtain recognition in France of parent-child relationships that had been legally established abroad.

In both cases the Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention concerning the applicants' right to

respect for their family life. It further held in both cases that there had been a **violation of Article 8** concerning the children's right to respect for their private life. The Court observed that the French authorities, despite being aware that the children had been identified in the United States as the children of Mr and Mrs Mennesson and Mr and Mrs Labassee, had nevertheless denied them that status under French law. It considered that this contradiction undermined the children's identity within French society. The Court further noted that the case-law completely precluded the establishment of a legal relationship between children born as a result of – lawful – surrogacy treatment abroad and their biological father. This overstepped the wide margin of appreciation left to States in the sphere of decisions relating to surrogacy.

See also: [Foulon and Bouvet v. France](#), judgment of 21 July 2016; [Laborie v. France](#), judgment of 19 January 2017.

#### **D. and Others v. Belgium (no. 29176/13)**

8 July 2014 (decision – partly struck out of the list of cases; partly inadmissible)

This case concerned the Belgian authorities' initial refusal to authorise the arrival on its national territory of a child who had been born in Ukraine from a surrogate pregnancy, as resorted to by the applicants, two Belgian nationals. The applicants relied in particular on Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life) of the Convention.

In view of developments in the case since the application was lodged, namely the granting of a laissez-passer for the child and his arrival in Belgium, where he has since lived with the applicants, the Court considered this part of the dispute to be resolved and struck out of its list the complaint concerning the Belgian authorities' refusal to issue travel documents for the child. The Court further declared **inadmissible** the remainder of the application. While the authorities' refusal, maintained until the applicants had submitted sufficient evidence to permit confirmation of a family relationship with the child, had resulted in the child effectively being separated from the applicants, and amounted to interference in their right to respect for their family life, nonetheless, Belgium had acted within its broad discretion ("wide margin of appreciation") to decide on such matters. The Court also considered that there was no reason to conclude that the child had been subjected to treatment contrary to Article 3 of the Convention during the period of his separation from the applicants.

#### **Mandet v. France**

14 January 2016

This case concerned the quashing of the formal recognition of paternity made by the mother's husband at the request of the child's biological father. The applicants – the mother, her husband and the child – complained about the quashing of the recognition of paternity and about the annulment of the child's legitimation. In particular, they considered these measures to be disproportionate, having regard to the best interests of the child which, they submitted, required that the legal parent-child relationship, established for several years, be maintained, and that his emotional stability be preserved.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It noted in particular that the reasoning in the French courts' decisions showed that the child's best interests had been duly placed at the heart of their considerations. In taking this approach, they had found that, although the child considered that his mother's husband was his father, his interests lay primarily in knowing the truth about his origins. These decisions did not amount to unduly favouring the biological father's interests over those of the child, but in holding that the interests of the child and of the biological father partly overlapped. It was also to be noted that, having conferred parental responsibility to the mother, the French courts' decisions had not prevented the child from continuing to live as part of the Mandet family, in accordance with his wishes.

### **L.D. and P.K. v. Bulgaria (no. 7949/11)**

8 December 2016

This case concerned the inability for the applicants, who claimed to be the biological fathers of children born out of wedlock, to challenge declarations of paternity by two other men and to have their own paternity established.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found, in particular, that the right to respect for private life of the applicants had been breached on account of their inability under domestic law to establish that they were the fathers of children solely because other men had already recognised the latter as their own, without the particular circumstances of each case and the situations of the various protagonists (the child, the mother, the father by law and the man claiming to be the biological father) being taken into account.

### **Mifsud v. Malta**

29 January 2019

The applicant<sup>5</sup> complained about being ordered by a court to undergo a DNA test in a contested paternity case.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention, finding that the domestic courts had fairly balanced the applicant's rights and those of the woman who was trying to establish that he was her father. In particular, the courts had examined the applicant's objections to taking the test in a first-instance civil court and at two levels of constitutional jurisdiction, eventually finding against him and ordering the procedure to take place.

### **Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, requested by the French Court of Cassation (Request No. P16-2018-001)**

10 April 2019 (Grand Chamber)

This case concerned the possibility of recognition in domestic law of a legal parent-child relationship between a child born abroad through a gestational surrogacy arrangement and the intended mother, designated in the birth certificate legally established abroad as the "legal mother", in a situation where the child was conceived using the eggs of a third-party donor and where the legal parent-child relationship with the intended father has been recognised in domestic law.

The Court found that States were not required to register the details of the birth certificate of a child born through gestational surrogacy abroad in order to establish the legal parent-child relationship with the intended mother, as adoption may also serve as a means of recognising that relationship.

It held in particular that, in a situation where a child was born abroad through a gestational surrogacy arrangement and was conceived using the gametes of the intended father and a third-party donor, and where the legal parent-child relationship with the intended father has been recognised in domestic law,

1. the child's right to respect for private life within the meaning of Article 8 of the Convention requires that domestic law provide a possibility of recognition of a legal parent-child relationship with the intended mother, designated in the birth certificate legally established abroad as the "legal mother";

2. the child's right to respect for private life does not require such recognition to take the form of entry in the register of births, marriages and deaths of the details of the birth certificate legally established abroad; another means, such as adoption of the child by the intended mother, may be used.

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<sup>5</sup>. He passed away in December 2017 and the application has been pursued by his widow.

### **C and E v. France (nos. 1462/18 and 17348/18)**

19 November 2019 (Committee decision on the admissibility)

This case concerned the French authorities' refusal to enter in the French register of births, marriages and deaths the full details of the birth certificates of children born abroad through a gestational surrogacy arrangement and conceived using the gametes of the intended father and a third-party donor, in so far as the birth certificates designated the intended mother as the legal mother.

The Court declared the two applications **inadmissible** as being manifestly ill-founded. It considered in particular that the refusal of the French authorities was not disproportionate, as domestic law afforded a possibility of recognising the parent-child relationship between the applicant children and their intended mother by means of adoption of the other spouse's child. The Court also noted that the average waiting time for a decision was only 4.1 months in the case of full adoption and 4.7 months in the case of simple adoption.

See *also*, recently:

**Doktorov v. Bulgaria**, judgment of 5 April 2018, concerning the applicant's complaint that it had been impossible for him to contest the paternity of a child born during his marriage to the mother, where the Court held that there had been a violation of Article 8 (right to respect for private and family life) of the Convention.

**Fröhlich v. Germany**, judgment of 26 July 2018, concerning the applicant's belief that he was the biological father of a baby girl born in 2006 and the related domestic court proceedings, where the Court held that there had been no violation of Article 8 (right to respect for private and family life) of the Convention.

### **Pending applications**

#### **D. v. France (no. 11288/18)**

Application communicated to the French Government on 29 March 2018

#### **Schlittner-Hay v. Poland (nos. 56846/15 and 56849/15)**

Applications communicated to the Polish Government on 26 February 2019

## Parental authority, child custody and access rights

### **Hoffmann v. Austria**

23 June 1993

This case concerned the withdrawal of parental rights from the applicant after she divorced the father of their two children, because she was a Jehovah's Witness.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) **in conjunction with Article 14** (prohibition of discrimination) of the Convention, finding that the withdrawal of parental authority had been based on a distinction essentially deriving from religious considerations.

### **Salgueiro da Silva Mouta v. Portugal**

21 December 1999

The applicant – a homosexual living with another man – was prevented by his ex-wife from visiting his daughter, in breach of an agreement reached at the time of their divorce. He complained of an unjustified interference with his right to respect for his private and family life, as guaranteed by Article 8 of the Convention and discrimination contrary to Article 14 of the Convention. He maintained, too, that contrary to Article 8 he had been forced by the court of appeal to hide his homosexuality when seeing his daughter.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) taken **in conjunction with Article 8** (right to respect for private and family life) of the Convention. The Portuguese courts' decision had been largely based on the fact that the applicant was a homosexual and that "the child should live in a

traditional Portuguese family”. That distinction, based on considerations relating to sexual orientation, was not acceptable under the Convention.

### Palau-Martinez v. France

16 December 2003

The applicant, a Jehovah’s Witness, submitted in particular that the residence order providing that her two children should live with their father had interfered in her private and family life and was discriminatory.

In the absence of a reasonable relationship of proportionality between the means employed and the aim pursued, the Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private and family life) of the Convention. The Court observed in particular that when the Court of Appeal ruled that the children should live with their father they had been living with their mother for nearly three and a half years. Furthermore, in examining the conditions in which the applicant and her ex-husband had raised their children, the Court of Appeal had treated the parents differently on the basis of the applicant’s religion, on the strength of a harsh analysis of the educational principles allegedly imposed by the religion. The Court found that, in so doing, the appellate court had ruled on the basis of general considerations without establishing a link between the children’s living conditions with their mother and their real interests. Although relevant, that reasoning had not been sufficient.

### Zaunegger v. Germany

3 December 2009

His daughter having been born out of wedlock, the applicant complained about the fact that, unlike divorced fathers and mothers, German law did not provide him with the opportunity to be granted joint custody without the mother’s consent.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect of private and family life) of the Convention, finding that there had not been a reasonable relationship of proportionality between the general exclusion of judicial review of the initial attribution of sole custody to the mother and the aim pursued, namely the protection of the best interests of a child born out of wedlock. The Court considered, in particular, that there could be valid reasons to deny the father of a child born out of wedlock participation in parental authority, for example if a lack of communication between the parents risked harming the welfare of the child. These considerations did not apply in the present case, however, as the applicant continued to take care of the child on a regular basis.

### P.V. v. Spain (no. 35159/09)

30 November 2010

This case concerned a male-to-female transsexual who, prior to her gender reassignment, had had a son with his wife in 1998. They separated in 2002 and the applicant complained of the restrictions that had been imposed by the court on the contact arrangements with her son on the ground that her emotional instability after her change of sex entailed a risk of disturbing the child, then aged six.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) **in conjunction with Article 14** (prohibition of discrimination) of the Convention. It found that the restriction on contact had not resulted from discrimination on the ground of the applicant’s transsexualism. The decisive ground for the restriction imposed by the Spanish courts, having regard to the applicant’s temporary emotional instability, had been the child’s well-being. They had therefore made a gradual arrangement that would allow the child to become progressively accustomed to his father’s gender reassignment.

### Anayo v. Germany

21 December 2010

This case concerned the refusal of German courts to allow the applicant to see his biological children, twins, with whom he had never lived.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found in particular that the authorities had not examined the question whether a relationship between the twins and the applicant would have been in the children's interest.

### Schneider v. Germany

15 September 2011

This case concerned the refusal of German courts to allow the applicant to have contact with a boy who, he claimed, was his biological son. The child's legitimate father was married to the mother.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found that the fact that there was no "family life" – it had not been established that the applicant was in fact the child's biological father and there had never been any close personal relationship between them – could not be raised against the applicant. The question whether he had a right of access or of information in respect of the child, even in the absence of family life, concerned a significant part of his identity and therefore of his "private life".

### Diamante and Pelliccioni v. San Marino

27 September 2011

This case concerned the procedure for awarding parental authority and custody in respect of a child whose mother was Italian and whose father was a San Marino national. The applicants, the mother and the child, complained in particular about a decision ordering the child to be returned to San Marino to live with her father and to attend school there.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. In general, the domestic courts had conducted the proceedings with due diligence; the measure in question pursued the legitimate aim of protecting the rights and freedoms of the child and his parents; the child's best interests and the family's particular situation had been taken into account; and a change of award had been envisaged if necessary.

### Lyubenova v. Bulgaria

18 October 2011

This case concerned the custody rights of a mother who had temporarily entrusted the child to her parents-in-law. The applicant complained in particular of the refusal of the domestic courts to order her in-laws to return her son to her and argued that the authorities had not taken the necessary steps to facilitate reunion with her minor son.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the Bulgarian authorities had failed in their positive obligation to take the necessary measures to protect the family life of the applicant and her son.

### Cengiz Kılıç v. Turkey

6 December 2011

This case concerned the inability of a father to exercise his contact rights in relation to his son during the course of divorce proceedings. The applicant complained in particular of shortcomings on the part of the domestic authorities, which had not taken the necessary steps to allow him to maintain relations with his son and had not removed the obstacles to the exercise of his right to contact despite the court decisions in which he had been granted that right. He further complained of the length of the two sets of divorce proceedings, and of the lack of an effective remedy enabling him to have his case heard within a reasonable time.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that, by failing to take all the practical measures that could reasonably have been expected of it in the circumstances of the case, the Turkish State had fallen short of its obligations under Article 8. The Court in this case noted in particular that the national legal system made no provision for civil mediation, an option which would have been desirable as a means of promoting cooperation between all persons concerned. In this connection it referred to [Recommendation No. R \(98\) 1](#) of the Committee of Ministers of the Council of Europe on family mediation<sup>6</sup>, which stated that recourse to family mediation could “improve communication between family members, reduce conflict between parties in dispute, produce amicable settlements, provide continuity of personal contacts between parents and children, and lower the social and economic costs of separation and divorce for the parties themselves and states”. The Court further held that there had been a **violation of Article 6 § 1** (right to a fair hearing within a reasonable time) of the Convention, finding that, in view of what was at stake in the proceedings, namely the parents’ divorce and its consequences for the applicant’s relations with his son, the length of the two sets of proceedings could not be considered reasonable. Lastly, observing that the Turkish legal system did not afford litigants the opportunity to complain of the excessive length of proceedings, the Court held that there had been a **violation of Article 13** (right to an effective remedy) **taken in conjunction with Article 6 § 1** of the Convention.

See also: [Polidario c. Suisse](#), judgment of 30 July 2013.

### **Kopf and Liberda v. Austria**

17 January 2012

Between December 1997 and October 2001 the applicants, a married couple, were foster parents to a boy, born in 1995. After his biological mother regained custody of him, the applicants were denied access as well as visiting rights. They complained in particular that the Austrian courts had decided – after proceedings lasting three and a half years – that granting them visiting rights was no longer in the child’s best interests.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found that, while the Austrian courts, at the time of taking their decisions, had struck a fair balance between the competing interests of the child and his former foster parents, they had however not examined sufficiently rapidly the applicants’ request to be allowed to visit their former foster child.

### **Santos Nunes v. Portugal**

22 May 2012

The applicant complained about the inaction and lack of diligence of the Portuguese authorities and the excessive length of the proceedings to have a decision granting him custody of his daughter enforced. The mother had placed the child in the care of a couple who refused to hand her over.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found in particular that the unusual situation facing the authorities in this case, going beyond a dispute between biological parents or with the State, did not dispense them from using their best endeavours to secure the enforcement of the decision awarding custody of the child to the applicant.

### **Vojnity v. Hungary**

12 February 2013

This case concerned the total removal of a father’s access rights on the grounds that his religious convictions had been detrimental to his son’s upbringing. The applicant complained in particular that the denial of his access rights had been based on his

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<sup>6</sup>. [Recommendation No. R \(98\) 1](#) of the Committee of Ministers of the Council of Europe to Member States on family mediation, adopted by the Committee of Ministers on 21 January 1998, at the 616<sup>th</sup> meeting of the Ministers’ Deputies.



religious beliefs and that he had been treated differently to other people seeking access rights following divorce or separation.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **read in conjunction with Article 8** (right to respect for private and family life) of the Convention. It found that the Hungarian courts had failed to prove that it was in the child's best interest to have all ties severed with his father, who had therefore been discriminated against in the exercise of his right to respect for family life. Indeed, there had been no exceptional circumstance to justify taking such a radical measure as severing all form of contact and family life between the applicant and his son.

### **Kuppinger (no. 2) v. Germany**

15 January 2015

This case concerned in particular the complaint by the father of a child born out of wedlock that the proceedings he had brought to enforce court decisions granting him contact rights with his son had been excessively long and ineffective.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention as regards the execution of an interim decision of May 2010 granting the applicant the right to see his son. It found that the German authorities had failed to take effective steps to execute the decision in question. The Court further held that there had been **no violation of Article 8** as regards both the execution of an order on contact custodianship of September 2010 and the proceedings on the review of the contact regulations. Lastly, the Court held that there had been a **violation of Article 13** (right to an effective remedy) **in conjunction with Article 8** of the Convention, finding, in particular, that he did not have an effective remedy under German law against the length of proceedings which did not only offer monetary redress, but which could have expedited the proceedings on his contact rights before the family courts.

### **Nazarenko v. Russia**

16 July 2015

This case concerned the applicant's exclusion from his daughter's life when, it having been revealed that he was not the biological father, his paternity was terminated. The applicant complained in particular about the termination of his paternity, alleging that this had deprived him of contact with his daughter and the ability to defend her interests in court.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found that the Russian authorities had failed to provide a possibility for the family ties between the applicant and the child, who had developed a close emotional bond over a number of years and believed themselves to be father and daughter, to be maintained. The applicant's complete and automatic exclusion from the child's life after the termination of his paternity without any possibility to have regard to the child's best interests – the consequence of the inflexibility of the domestic law – had therefore amounted to a failure to respect his family life. The Court considered in particular that States should be obliged to examine on a case-by-case basis whether it is in a child's best interests to maintain contact with a person, whether biologically related or not.

### **Bondavalli v. Italy**

17 November 2015

This case concerned the applicant's inability to exercise fully his right of contact with his son on account of negative reports by the Scandiano social services, with which the mother had professional links. The applicant complained in particular that the social services had too much autonomy in implementing the decisions of the Bologna Minors Court. He also criticised that court for failing to exercise regular supervision of the social services' work.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the Italian authorities had not made appropriate and sufficient efforts to ensure that the applicant had been able to exercise his right of contact with his child and had thus breached his right to respect for his family life. The Court noted in particular that in spite of several applications lodged by the applicant and a number of assessments produced by him, according to which he was not suffering from any psychological problems, the domestic courts had continued to entrust the supervision of his right of contact to the Scandiano social services. Furthermore, the domestic courts had not taken any appropriate measure to protect the applicant's rights and to take his interests into account. In view of the irremediable consequences of the passage of time on the relationship between the child and his father, the Court took the view that it was for the domestic authorities to re-examine the applicant's right of contact, in a timely manner, taking into account the best interests of the child.

### **Kocherov and Sergeeva v. Russia**

29 March 2016

The applicants in this case – father and daughter – complained about the restriction of the first applicant's parental authority on account of his disability.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the reasons relied on by the Russian courts to restrict the first applicant's parental authority over the second applicant had been insufficient to justify the interference with the applicants' family life, which had therefore been disproportionate to the legitimate aim pursued.

### **Kacper Nowakowski v. Poland**

10 January 2017

This case concerned the contact rights of a deaf and mute father with his son, who also has a hearing impairment. The applicant complained in particular about the dismissal of his request to extend contact with his son.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that, even though the parents' strained relationship had admittedly not made the Polish courts' task an easy one when deciding on contact rights, they should nonetheless have taken measures to reconcile the parties' conflicting interests, keeping in mind that the child's interests were paramount. The courts had notably not properly examined the possibilities which existed under domestic legislation of facilitating the broadening of contact between the applicant and his son. Moreover, they had failed to envisage measures more adapted to the applicant's disability, such as obtaining expert evidence from specialists familiar with the problems faced by those with hearing impairments. Indeed, the courts had relied on expert reports which had focused on the communication barrier between father and son instead of reflecting on the possible means of overcoming it.

### **M.K. v. Greece (no. 51312/16)**

1 February 2018

This case concerned the inability of the applicant, the mother of two children, to exercise custody of one of her sons (A.) despite a decision by the Greek courts awarding her permanent custody. Her ex husband lived in Greece with their two sons, while she lived in France. The applicant complained in particular that the Greek authorities had not complied with the judgments in her favour given by the Greek and French courts regarding the custody of her son. She further alleged that they had refused to facilitate the child's return to France and had failed to act on her complaints against her ex-husband for child abduction.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention, finding that the Greek authorities had taken the measures that could reasonably be expected of them in order to comply with their positive obligations under Article 8. Among other things, they had taken into account the overall family situation, the way it had changed over time and the best interests of the

two brothers, and especially of A. The latter, who had been 13 at the time, had clearly expressed to the Greek authorities a wish to remain with his brother and father in Greece. In this case, the Court recalled in particular that the wishes expressed by a child who had sufficient understanding were a key factor to be taken into consideration in any judicial or administrative proceedings affecting him or her. The right of children to be heard and to be involved in the decision-making in any family proceedings primarily affecting them was also guaranteed by several international legal instruments. In particular, Article 13 of the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 provided that the authorities could refuse to order the return of a child if the child objected to being returned and had attained an age and degree of maturity at which it was appropriate to take account of his or her views.

### **Bonnaud and Lecoq v. France**

6 February 2018 (decision on the admissibility)

This case concerned an application for joint exercise of parental responsibility made by two women living as a couple, each of whom had a child born as a result of medically assisted reproduction. The applicants alleged that the refusal of their application to delegate parental responsibility to each other had been based on their sexual orientation and entailed an unjustified and disproportionate difference in treatment.

The Court decided to conduct a separate examination of the applicants' situation before and after their separation in early 2012. Concerning the applicants' situation before their separation, it considered that the assessment made by the Court of Appeal and upheld by the Court of Cassation, according to which the criteria for mutual delegation of parental responsibility between the applicants were not satisfied, did not disclose a difference in treatment based on their sexual orientation. It therefore declared this aspect of the complaint **inadmissible** as being manifestly ill-founded. As regards the applicants' situation after their separation, the Court rejected this aspect of the complaint as being premature.

### **Antkowiak v. Poland**

22 May 2018 (decision on the admissibility)

This case concerned a custody dispute over a child between the applicants, who are prospective adoptive parents, and the biological parents. The applicants wanted to adopt a baby from a woman who had agreed during her pregnancy to give up her child. However, she changed her mind when the baby was born. A legal dispute between the applicants and the biological parents was still ongoing. The child had been in the care of the applicant couple since being born in 2011. Before the Court, the applicants complained about the domestic courts' decision ordering the child's removal from their care and placement with his biological parents.

The Court declared the application **inadmissible** as being manifestly ill-founded. While acknowledging the emotional suffering that the domestic decision had caused the applicant couple, it found that the Polish courts had consistently acted in the child's best interests. In particular, they had considered that it was not too late to give the child, in view of his young age, the chance to be raised by his biological family and had noted that that was the only way to regulate his situation in the long term and avoid more emotional complications in the future. The Court found that the courts had come to this conclusion after taking into account the views of all those concerned as well as diverging expert reports and testimony, thus striking a fair balance between conflicting interests in what was a sensitive and complex case.

### **R.I. and Others v. Romania (no. 57077/16)**

4 December 2018 (Committee)

This case concerned a woman (the first applicant) who was given custody of her two children but who was not able to enforce the orders, which left the children with the father. The first applicant complained in particular that the authorities had failed to help her and her children enforce the custody orders and act efficiently over the psychological abuse the children had suffered at their father's hands.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. While accepting that the authorities had been placed in a difficult position given opposition from the father and from the children themselves, possibly under the father's influence, it found that they had not acted in a timely or reasonable manner to enforce the custody orders. The Court criticised in particular the fact that the authorities had not paid attention to the gradual dissolution of the first applicant's relationship with her children during the separation, or to the father's manipulative behaviour. It therefore found that, overall, the applicants had not received effective protection of their rights.

### **Zelikha Magomadova v. Russia**

8 October 2019

This case concerned a widow being denied access to her six children by her in-laws in defiance of court orders and the authorities' decision to withdraw her parental authority. The applicant had been forcibly separated from her children by her brother-in-law in 2010. The children remained with her husband's family, which had prevented her from having access to them since. The brother-in-law brought three sets of proceedings to deprive her of her parental authority, which eventually went in his favour in 2013 following the authorities' failure to enforce two judgments first ordering that the children live with their mother and then determining contact rights with her.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in respect of the applicant, finding that depriving her of her parental authority had been arbitrary and grossly disproportionate, and that such an arbitrary interference with one of the fundamental Convention rights should not take place in a democratic society governed by the rule of law. The Court noted in particular that not only had the authorities been idle for years when faced with the applicant's situation, despite being fully aware that she wanted to have access to her children and to take care of them, but they had then shifted responsibility on to her when ultimately depriving her of parental authority. It also found that the domestic court conclusions in the proceedings, namely that she had failed to have contact with her children and support them financially, had been so unreasonable that they could only be regarded as "grossly arbitrary".

### **Stankūnaitė v. Lithuania**

29 October 2019

This case concerned complaints by the applicant about care decisions related to her daughter and the fact that her daughter was not returned to her even though the criminal investigation against her (her former partner had accused her of being complicit in the sexual molestation of their daughter) had been discontinued. She also complained about the delays in the actual return of her daughter after the court order in her favour.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention in respect of the applicant. It found in particular that the Lithuanian authorities had acted with the requisite diligence in the care proceedings: they had had first to wait for the applicant to be cleared of involvement in the alleged sexual molestation of her daughter. Once that obstacle was out of the way and the courts had examined what was in the best interests of the child they had ordered her return to the applicant. The authorities had then faced obstruction from other family members in handing the child over but had eventually successfully taken the appropriate measures to deal with what was an extremely difficult situation.

### **Luzi v. Italy**

5 December 2019 (Committee)

The applicant complained of a violation of his right to respect for his family life on the grounds that he had been unable fully to exercise his right of access to his child for eight years, in spite of several judicial decisions.

The Court held that there had been a **violation of Article 8** (right to respect for family life) of the Convention, finding that in the light of the mother's opposition, which had

continued for some eight years, the Italian authorities had not made the appropriate efforts to ensure the implementation of the applicant's right to have contact with his daughter, and had breached his right to respect for his family life.

### **Cînta v. Romania**

18 February 2020<sup>7</sup>

This case concerned court-ordered restrictions on the applicant's contact with his daughter. The applicant complained about the limited time allowed for contact with his daughter and the conditions placed on it. He also submitted that he had been discriminated against on the grounds of his health, notably his mental illness, in the setting of the contact rights.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention and a **violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 8**. It found in particular that the domestic decisions to restrict the applicant's contact had been based partly on the fact that he had a mental illness. The courts had ordered that he only have contact twice a week in the presence of his estranged wife, with whom the child was to live. However, the courts had failed to carry out any meaningful assessment to explain why his mental health should be a reason to curtail his contact rights even though there had been no evidence to show he could not take care of his daughter. Nor had the courts properly examined allegations that the child would be unsafe in his care; shown in what way they had taken account of the child's best interests; or considered alternative contact arrangements. The Court further considered that the fact that he suffered from a mental illness could not in itself justify treating him differently from other parents seeking contact with their children. His contacts rights had been restricted after the courts had made a distinction based on his mental health for which they had not provided relevant and sufficient reasons. In the present case, the applicant had made out a *prima facie* case of discrimination, which the respondent State had not been able to rebut.

### **Y.I. v. Russia (no. 68868/14)**

25 February 2020<sup>8</sup>

This case concerned the applicant's complaint about being deprived of her parental authority in respect of her three children because she was a drug addict. Drug addiction is a ground for removing parental authority under the Russian Family Code, and entailed her losing all contact rights.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the Russian authorities had failed to show that removing the applicant's parental authority had been the most appropriate option in the children's best interests and that the measure had therefore been disproportionate. The Court found in particular that the national courts had not sufficiently justified taking such a drastic measure, even though there were less radical solutions available under domestic law. Nor had they taken into consideration that the applicant had no history of neglecting her children, had started rehabilitation and had not apparently been given any warnings about or support for her drug problems.

See *also*, among other recent judgments and decisions:

### **Mamchur v. Ukraine**

16 July 2015

### **N.P. v. Republic of Moldova (no. 58455/13)**

6 October 2015

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<sup>7</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

<sup>8</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

**[Stasik v. Poland](#)**

6 October 2015

**[G.B. v. Lithuania \(no. 36137/13\)](#)**

19 January 2016

**[Cincimino v. Italy](#)**

28 April 2016

**[Fourkiotis v. Greece](#)**

16 June 2016

**[Strumia v. Italy](#)**

23 June 2016

**[Malec v. Poland](#)**

28 June 2016

**[Krapivin v. Russia](#)**

12 July 2016

**[Moog v. Germany](#)**

6 October 2016

**[Wdowiak v. Poland](#)**

7 February 2017

**[D'Alconzo v. Italy](#)**

23 February 2017

**[D. and B. v. Austria \(no. 40597/12\)](#)**

31 October 2017 (decision –partly inadmissible; partly struck out)

**[Vyshnyakov v. Ukraine](#)**

24 July 2018

**[Uzbyakov v. Russia](#)**

5 mai 2020<sup>9</sup>

**Pending applications**

**[R.M. v. Latvia \(no. 53487/13\)](#)**

Application communicated to the Latvian Government on 28 June 2017

**[Honner v. France \(no. 19511/16\)](#)**

Application communicated to the French Government on 6 September 2018

**[X. v. Poland \(no. 20741/10\)](#)**

Application communicated to the Polish Government on 26 February 2019

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## Taking of children into care

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**[Keegan v. Ireland](#)**

26 May 1994

The applicant complained that his child had been placed for adoption without his knowledge or consent and that national law did not afford him even a defeasible right to be appointed guardian. He also alleged that he had had no access to a court in respect of the proceedings before the Adoption Board.

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<sup>9</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It observed that the essential problem in the present case was with the fact that Irish law permitted the applicant's child to have been placed for adoption shortly after her birth without his knowledge or consent. Such a state of affairs had not only jeopardised the proper development of the applicant's ties with the child but also set in motion a process which was likely to prove to be irreversible, thereby putting the applicant at a significant disadvantage in his contest with the prospective adopters for the custody of the child. The Irish Government having advanced no reasons relevant to the welfare of the applicant's daughter to justify such a departure from the principles that govern respect for family ties, the Court could therefore not consider that the interference which it had found with the applicant's right to respect for family life had been necessary in a democratic society.

The Court further held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention. The applicant having had no rights under Irish law to challenge the placement decision either before the Adoption Board or before the courts or, indeed, any standing in the adoption procedure generally, his only recourse to impede the adoption of his daughter had been to bring guardianship and custody proceedings. By the time these proceedings had terminated, the scales concerning the child's welfare had tilted inevitably in favour of the prospective adopters.

### **T.P. and K.M. v. United Kingdom (no. 28945/95)**

10 May 2001 (Grand Chamber)

This case concerned the placement of a four-year-old girl in the care of the local authorities. She had complained that she had been sexually abused and her mother was considered incapable of protecting her. The mother and daughter alleged that they had had no access to a court or to an effective remedy to challenge the lack of justification for this placement, which had separated them.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, the mother having been deprived of an adequate involvement in the decision-making process concerning the care of her daughter. It further held that there had been **no violation of Article 6** (right to a fair trial) of the Convention, as the applicants had not been deprived of any right to a determination on the merits of their negligence claims against the local authority. Lastly, the Court held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention, as the applicants had had no appropriate means of obtaining a determination of their allegations that their right to respect for their family life had been breached, and no possibility of obtaining an enforceable award of compensation for the damage suffered as a result.

### **Kutzner v. Germany**

26 February 2002

The applicants, a married couple, complained that the withdrawal of their parental authority in respect of their daughters and the placement of the latter in foster families, mainly on the grounds that the parents did not have the intellectual capacity to bring up their children, had breached their right to respect for their family life.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found that, whilst the reasons given by the national authorities and courts had been relevant, they had not been sufficient to justify such a serious interference with the applicants' family life.

### **K.A. v. Finland (no. 27751/95)**

14 April 2003

The applicant (who was suspected, with his wife, of incest and sexual abuse of their children) complained about his children's placement in public care, the decision-making procedure and the implementation of the care.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, for failure to take sufficient steps to reunite the

applicant's family. It further held that there had been **no violation of Article 8** of the Convention in respect of the care of the children or the applicant's involvement in the decision-making process.

### **Wallová and Walla v. the Czech Republic**

26 October 2006

The applicants complained that they had been separated from their five children, who had been placed in public care, because of the difficulties they had finding suitable accommodation for such a large family. They also complained about the lack of assistance on the part of the Czech authorities.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found that the care order in respect of the applicants' children had been made solely because the large family had been inadequately housed at the time. Under the social welfare legislation, however, the national social welfare authorities had powers to monitor the applicants' living conditions and hygiene arrangements and to advise them what steps they could take to improve the situation themselves and find a solution to their housing problem. Separating the family completely on the sole grounds of their material difficulties had been an unduly drastic measure.

### **Kearns v. France**

10 January 2008

This case concerned a request, outside the relevant statutory time-limit, for the return of a child born to the applicant but registered anonymously. Married and living in Ireland, the applicant had given birth in France to a baby girl, from an extramarital relationship. She complained in particular of the shortness of the two-month period within which she was entitled to claim her child back. She also submitted that the French authorities had not taken all the necessary steps to ensure that she understood the precise implications of her actions, arguing that she had not been provided with sufficient linguistic assistance to be able to understand all the relevant procedures and time-limits.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. Regarding the time-limit for withdrawal of consent, it found that the reflection period provided for under French law sought to strike a balance and ensure the right proportionality between the conflicting interests. The applicant had further been 36 years old at the time, had been accompanied by her mother and had had two long interviews with the social services after the birth. According to the Court, the French authorities had also provided the applicant with sufficient and detailed information, affording her linguistic assistance not required by law and ensuring that she was informed as thoroughly as possible of the consequences of her choice. All the necessary steps had thus been taken to ensure that the applicant understood the precise implications of her actions and the French State had not failed in its positive obligations towards her under Article 8 of the Convention.

### **R.K. and A.K. v. the United Kingdom (no. 38000/05)**

30 September 2008

The applicants' daughter, born in July 1998, was in September 1998 taken to hospital with a fractured femur; doctors concluded that the injury had not been accidental and she was placed in the care of her aunt. Following another injury, the child was diagnosed with brittle bone disease (*osteogenesis imperfecta*). She was returned home in April 1999. The applicants complained that their daughter had been placed temporarily in care due to a medical misdiagnosis.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention, finding that the domestic authorities had had relevant and sufficient reasons to take protective measures which in the circumstances had been proportionate to the aim of protecting the child. The Court further held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention, considering that the applicants should have had available to them a means



to claim that the local authority's handling of procedures had been responsible for any damage they had suffered and to claim compensation, a redress that had not been available at the relevant time.

### **Saviny v. Ukraine**

18 December 2008

This case concerned the placement of children in public care on ground that their parents, who have both been blind since childhood, had failed to provide them with adequate care and housing. The domestic authorities based their decision on a finding that the applicants' lack of financial means and personal qualities endangered their children's life, health and moral upbringing.

The Court held that there had been a **violation of Article 8** (right to respect of private and family life) of the Convention, doubting the adequacy of the evidence on which the authorities had based their finding that the children's living conditions had in fact been dangerous to their life and health. It observed in particular that the judicial authorities had only examined those difficulties which could have been overcome by targeted financial and social assistance and effective counselling and had not apparently analysed in any depth the extent to which the applicants' irremediable incapacity to provide requisite care had been responsible for the inadequacies of their children's upbringing.

### **Y.C. v. the United Kingdom (no. 4547/10)**

13 March 2012

This case concerned childcare proceedings in respect of the applicant's son, born in 2001, which had resulted in an order authorising the child to be placed for adoption because of concerns about her relationship with the child's father. The applicant complained in particular about the courts' refusal to order an assessment of her as a sole carer for her son.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention, finding that the decision to make a placement order had not exceeded the State's margin of appreciation and that the reasons for the decision had been relevant and sufficient. The applicant had further been given every opportunity to present her case and had been fully involved in the decision-making process. The Court observed in particular that the domestic courts had directed their mind, as required by Article 8 of the Convention, to the child's best interests, had had regard to various relevant factors and made detailed reference to the reports and oral evidence of the social worker, the guardian and the psychologist, all of whom had identified the issues at stake.

### **K.A.B. v. Spain (no. 59819/08)**

10 April 2012

This case concerned the adoption – despite the father's opposition – of a child who had been declared abandoned after his mother's deportation. The applicant complained in particular that he had been deprived of all contact with his son and that neither he nor the child's mother had been informed of the proposal to adopt the child. He also complained that the authorities had remained inactive regarding the child's mother's deportation and his attempts to prove his paternity.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found, in particular, that the passage of time – resulting from the authorities' inaction –, the deportation of the child's mother without the necessary prior verification, the failure to assist the applicant when his social and financial situation was most fragile at the earlier stage, together with the failure of the courts to give weight to any other responsibility for the child's abandonment and the finding that the applicant had lost interest in his son's welfare, had decisively contributed to preventing the possibility of reunion between father and son. The national authorities had therefore failed in their duty to act particularly swiftly in such matters and had not made appropriate or sufficient efforts to ensure respect for the applicant's right to be reunited with his son.

### **Pontes v. Portugal**

10 April 2012

The applicants alleged a breach of their right to respect for private and family life, on account of decisions that led to one of their children being removed from them and ultimately adopted, their parental authority having been withdrawn.

The Court found **two violations of Article 8** (right to respect for private and family life) of the Convention, considering that the authorities had not taken measures enabling the applicants to benefit from regular contact with their son and that the decision to have the child adopted had not been based on relevant or sufficient reasons.

### **A.K. and L. v. Croatia (no. 37956/11)**

8 January 2013

This case concerned a mother with mild mental disability who had been divested of her parental rights. Her son had been put up for adoption without her knowledge, consent or participation in the adoption proceedings.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found that, by not informing the first applicant about the adoption proceedings, the national authorities had deprived her of the opportunity to seek restoration of her parental rights before the ties between her and her son had been finally severed by his adoption.

### **B. (no. 2) v. Romania (no. 1285/03)**

19 February 2013

This case concerned the psychiatric confinement of a mother and the placement in residential care of her two minor children as a result of that decision.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, both as regards the confinement of the applicant as well as the placement in care of her minor children. It pointed out in particular that in Romania there had been a number of precedents of improper confinement of individuals with psychiatric disorders, in spite of recent legislative changes in favour of patients' rights. It concluded that, judging from the applicant's medical history, the authorities had not followed the applicable procedure when deciding on her confinement. Furthermore, the absence of special protection, especially through the official appointment of a lawyer or designation of a guardian, had had the effect of depriving the applicant of her right to take part in the decision-making process concerning the placement of her children in residential care.

### **R.M.S. v. Spain (no. 28775/12)**

18 June 2013

This case concerned the placement of a child with a foster family on account of her mother's financial situation and without taking into account subsequent change in circumstances. The applicant complained mainly of being deprived of all contact with her daughter and being separated from her without good reason.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the authorities had failed to make adequate and effective efforts to secure the applicant's right to live with her child and had thereby breached her right to respect for her private and family life.

### **Zhou v. Italy**

21 January 2014

In October 2004 the applicant, a Chinese national, was placed in a welfare housing facility with her son, then aged one month. In agreement with the social services, her son was placed with a foster family during the day. Three months later, however, this family was no longer prepared to accept the child. The applicant decided to entrust the child to a neighbouring couple while she went to work. The social services, which did not accept her choice of caregiver, informed the public prosecutor at the children's court about the applicant's situation. At the end of 2007 the prosecutor asked the court to

open adoption proceedings in respect of the child, as the mother was not in a position to look after him. The applicant complained in particular that her child had been placed in a foster family with a view to adoption.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the Italian authorities had not fulfilled their obligations before envisaging the severing of family ties, and had not made appropriate or sufficient efforts to ensure respect for the applicant's right to live with her child. In particular, the paramount need to preserve, in so far as possible, the family ties between the applicant, who was in a vulnerable situation, and her son, had not been duly considered. The judicial authorities had merely assessed the difficulties, which could have been overcome through targeted support from the social welfare services. The applicant had had no opportunity to re-establish a relationship with her son: in reality, the experts had not examined the real possibilities for an improvement in the applicant's ability to look after her son, bearing in mind also her health. Furthermore, the Italian Government had provided no convincing explanation which could justify the severing of the maternal affiliation between the applicant and her son.

See also: [Akinnibosun v. Italy](#), judgment of 16 July 2015 (concerning the decision to place the daughter of the applicant – a Nigerian national – in the care of social services and her subsequent adoption by a foster family).

### **I.S. v. Germany (no. 31021/08)**

5 June 2014

The applicant in this case complained of not being able to have regular contact and receive information about her biological children who had been adopted by another couple. She submitted that the German courts' decisions on contact and information with regard to her children had breached her rights, in particular, under Article 8 (right to respect for private and family life) of the Convention. She alleged that she had been promised a "half-open" adoption, entitling her to contact with and information about the children, which had not been respected.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention finding that, by consenting to the adoption, the applicant had knowingly given up all rights as regards her biological children. The arrangements concerning her right to regularly receive information about them had in particular been based on a mere declaration of intent by the adoptive parents. The German courts' decision to favour the children's interest in developing in their adoptive family without disruption over the mother's right to respect for her private life had therefore been proportionate.

### **T. v. the Czech Republic (no. 19315/11)**

17 July 2014

This case concerned a father's application to obtain visiting and then residence rights in respect of his daughter, who had been placed in a foster family. The national courts found that the applicant's personality represented a serious and insurmountable obstacle to his being granted residence rights in respect of his daughter. The applicant complained about the decision to place his daughter in care and the State's failure to comply with its obligation to contribute to the maintenance of their family ties.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention concerning the decision to place the child in care. It found, however, that there had been a **violation of Article 8** concerning the State's failure to comply with its obligation to contribute to the maintenance of the family ties between the applicant and the child.

### **Soares de Melo v. Portugal**

16 February 2016

This case concerned an order for seven of the applicant's children to be taken into care with a view to their adoption, and its enforcement in respect of six of them. The applicant complained about the implementation of the placement order and the

prohibition of her access to the children following the judgment of the Family Court. In that connection she submitted that she had lodged various unsuccessful applications and appeals and complained that the courts had based their decisions on the fact that she had not honoured her family-planning undertakings.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found in particular that the measures taken by the domestic courts in ordering the placement of the applicant's children with a view to their adoption had not struck a fair balance between the interests at stake, given that the applicant had been deprived of parental rights and all contact with her children; her refusal to undergo sterilisation by means of tubal ligation had formed one of the grounds for that decision; and she had had no effective involvement in the decision-making process. The Court therefore considered that the placement order had not been appropriate to the legitimate aim pursued or necessary in a democratic society, bearing in mind the absence of any violent conduct, the existence of strong emotional ties and the failure of social services to address the applicant's material deprivation as a mother having to raise a large number of children almost unaided. The Court also held that the authorities should reconsider the applicant's situation with a view to taking appropriate measures in the children's best interests, and decided that the interim measures indicated to the Portuguese Government under Rule 39 (interim measures<sup>10</sup>) of the Rules of Court should remain applicable until the judgment became final.

### **Paradiso and Campanelli v. Italy**

24 January 2017 (Grand Chamber)

This case concerned the placement in social-service care of a nine-month-old child who had been born in Russia following a gestational surrogacy contract entered into with a Russian woman by an Italian couple (the applicants); it subsequently transpired that they had no biological relationship with the child. The applicants complained, in particular, about the child's removal from them, and about the refusal to acknowledge the parent-child relationship established abroad by registering the child's birth certificate in Italy.

The Grand Chamber found, by eleven votes to six, that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention in the applicants' case. Having regard to the absence of any biological tie between the child and the applicants, the short duration of their relationship with the child and the uncertainty of the ties between them from a legal perspective, and in spite of the existence of a parental project and the quality of the emotional bonds, the Grand Chamber held that a family life did not exist between the applicants and the child. It found, however, that the contested measures fell within the scope of the applicants' private life. The Grand Chamber further considered that the contested measures had pursued the legitimate aims of preventing disorder and protecting the rights and freedoms of others. On this last point, it regarded as legitimate the Italian authorities' wish to reaffirm the State's exclusive competence to recognise a legal parent-child relationship – and this solely in the case of a biological tie or lawful adoption – with a view to protecting children. The Grand Chamber also accepted that the Italian courts, having concluded in particular that the child would not suffer grave or irreparable harm as a result of the separation, had struck a fair balance between the different interests at stake, while remaining within the room for manoeuvre ("margin of appreciation") available to them.

### **Barnea and Caldararu v. Italy**

22 June 2017

This case concerned the removal of a 28-month-old girl from her birth family for a period of seven years and her placement in a foster family with a view to her adoption.

<sup>10</sup>. These are measures adopted as part of the procedure before the Court, under Rule 39 of the [Rules of Court](#), at the request of a party or of any other person concerned, or of the Court's own motion, in the interests of the parties or of the proper conduct of the proceedings. See also the factsheet on ["Interim measures"](#).

The applicant family complained in particular about the child's removal and placement in care by the Italian authorities in 2009, about the social services' failure to execute the Court of Appeal's judgment of 2012 ordering that a programme be put in place for gradually reuniting the child and her birth family, about the child's placement in a foster family and the reduction in the number of meetings between the child and the members of her birth family.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the Italian authorities had failed to undertake appropriate and sufficient efforts to secure the applicants' right to live with their child between June 2009 and November 2016. The Court found, firstly, that the reasons given by the children's court for refusing to return the child to her family and for declaring her available for adoption did not amount to "very exceptional" circumstances that would justify a severing of the family ties. The Court found, secondly, that the Italian authorities had incorrectly executed the Court of Appeal's 2012 judgment, which provided for the child's return to her birth family. Thus, the passage of time – a consequence of the social services' inertia in putting in place a programme for reuniting the family – and the grounds put forward by the children's court for extending the child's temporary placement had been decisive factors in preventing the applicants' reunion with the child, which ought to have occurred in 2012.

### **Achim v. Romania**

24 October 2017

This case concerned the placement in care of the applicants' seven children on the grounds that the couple had not been fulfilling their parental duties and obligations. The applicants complained, firstly, of the placement in care of their children, which they deemed unjustified and, secondly, of the court of appeal's dismissal of their request for the return of their children.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It found in particular that the children's temporary placement in care had been justified by relevant and sufficient reasons and that the authorities had been endeavouring to safeguard their interests, while seeking a fair balance between the applicant's rights and those of their children. In this case the decisions taken by the domestic courts had been based not only on the family's material deprivation but also on the parents' neglect of the children's state of health and educational and social development; the authorities had adopted a constructive attitude, advising the parents about the action they should take to improve their financial situation and their parenting skills; the children's placement had only been temporary and the authorities had taken the requisite action to facilitate the children's return to their parents as soon as the latter had adopted a cooperative attitude and their situation had improved.

### **Tlapak and Others v. Germany (nos. 11308/16 and 11344/16) and Wetjen and Others v. Germany (nos. 68125/14 and 72204/14)**

22 March 2018

These cases concerned the partial withdrawal of parental authority and the taking into care of children belonging to the Twelve Tribes Church (*Zwölf Stämme*), living in two communities in Bavaria. In 2012 the press reported that church members punished their children by caning. The reports were subsequently corroborated by video footage of caning filmed with a hidden camera in one of the communities. Based on these press reports, as well as statements by former members of the church, the children living in the communities were taken into care in September 2013 by court order. The proceedings before the Court have been brought by four families who are members of the Twelve Tribes Church. They complained about the German courts' partial withdrawal of their parental authority and the splitting up of their families.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention, finding that the German courts, in fair and reasonable proceedings in which each child's case had been looked at individually,

had struck a balance between the interests of the parents and the best interests of the children. The Court agreed in particular with the German courts that the risk of systematic and regular caning of children justified withdrawing parts of the parents' authority and taking the children into care. Their decisions had been based on a risk of inhuman or degrading treatment, which is prohibited in absolute terms under the Convention. The Court pointed out, moreover, that the German courts had given detailed reasons why they had had no other option available to them to protect the children. In particular, the parents had remained convinced during the proceedings that corporal punishment was acceptable and, even if they would have agreed to no caning, there had been no way of ensuring that it would not be carried out by other members of the community.

### **Wunderlich v. Germany**

10 January 2019

This case concerned the withdrawal of some aspects of the parents' authority and the removal of the four children from their family home for three weeks, after the applicants persistently refused to send their children to school. The applicants complained about the decision by the German authorities to withdraw parts of their parental authority by transferring them to the youth office. In particular, they complained about the forcible removal of their children and their placement in a children's home for three weeks.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It found in particular that the enforcement of compulsory school attendance in order to ensure the children's integration into society was a relevant reason for justifying the partial withdrawal of parental authority. It also found that the authorities had reasonably assumed that the children were isolated, had had no contact with anyone outside of the family and that a risk to their physical integrity had existed. The Court held that the actual removal of the children had not lasted any longer than was necessary to ensure the children's best interests. It therefore concluded that there were "relevant and sufficient" reasons for the withdrawal of some parts of the parents' authority and the temporary removal of the children from their family home.

### **V.D. and Others v. Russia (no. 72931/10)**

9 avril 2019

This case concerned a child, who was cared for by a foster mother, the first applicant in the case, for nine years and was then returned to his biological parents. The first applicant and her remaining children complained about the Russian courts' decisions to return the child to his parents, to terminate the first applicant's guardianship rights and to deny them all access to the child.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention owing to the order by the domestic courts to remove the child from his foster mother and return him to his biological parents and a **violation of Article 8** of the Convention because of the decision to deny the foster family any subsequent contact with the child. It found in particular that the domestic courts had weighed up all the necessary factors when deciding to return the child to his parents, such as whether the measure had been in his best interests. However, the courts had denied the foster family any subsequent contact with the child, who had formed close ties with the first applicant and her remaining children. In this regard, the Court noted that the courts' decision had been based solely on an application of Russia's legislation on contact rights, which was inflexible and did not take account of varying family situations. The courts had therefore not carried out the required assessment of the individual circumstances of the case.

### **Haddad v. Spain**

18 June 2019

The applicant's three children, including his daughter, then aged one and a half, were placed in a residential centre in Madrid, at their mother's request, and declared

abandoned. The children were later placed in centres in Murcia. The applicant was not informed of their placement. As criminal proceedings were pending against him for domestic violence, based on a complaint filed by his wife, he was not allowed to have contact with his children or to approach them. He was ultimately acquitted. Having subsequently regained the custody of his two sons, he had been seeking to recover custody of his minor daughter. In the present case the applicant complained that the child protection department had taken no steps to help him re-establish contact with his daughter after his acquittal and the lifting of the temporary restraining orders.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the Spanish authorities had not made appropriate or sufficient efforts to ensure respect for the applicant's right to live with his daughter, together with her brothers. It noted in particular that the administrative authorities should have envisaged other, less radical measures than pre-adoption foster care for the minor daughter and should have taken account of the applicant's requests to re-establish contact with her, at least after the criminal proceedings against him had been terminated.

### **Strand Lobben and Others v. Norway**

10 September 2019

This case concerned the Norwegian authorities' decision to remove a mother's parental authority and let foster parents adopt her son. The applicants – the mother and her son – complained about the domestic authorities' decision to remove the mother's parental authority and let the child's foster parents adopt him.

The Grand Chamber held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in respect of both applicants. It found in particular that the main reason for the Norwegian authorities' actions had been the mother's inability to care properly for her son, in particular in view of his special needs as a vulnerable child. However, that reasoning had been based on limited evidence as the contact sessions between mother and son after his placement in foster care had been few and far between and the psychologists' reports out-dated. In addition, a review of his vulnerability had contained barely any analysis and no explanation as to how he could continue to be vulnerable despite having been in care since he was three weeks' old. Overall, the domestic authorities had not in the present case attempted to carry out a genuine balancing exercise between the interests of the child and his biological family or taken into consideration developments in the mother's family life, namely she had in the meantime married and had a second child.

### **K.O. and V.M. v. Norway (no. 64808/16)**

19 November 2019

This case concerned official decisions to take the applicants' daughter into care a few weeks after her birth in 2015 and their limited contact rights. The family were ultimately reunited in 2018.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention as concerned the placement of the applicant couple's daughter in care, and a **violation of Article 8** of the Convention as concerned their contact with their daughter, which had been restricted to four, then six times per year. It considered in particular that the authorities had conducted an in-depth examination of the case with regard to the care order and that the related procedure had provided sufficient protection for the applicants' interests. In contrast, the Court found that the authorities' decisions on contact rights had, at a very early stage in the procedure, been based on the assumption that the family would not be reunited because it was considered that the foster care would be for the long-term. Moreover, the authorities had not explained why it had been contrary to the daughter's best interests to see her parents more often, even though there had been positive feedback on the family's interaction during visits.

See *also*, among other recent judgments:

**[M.L. v. Norway \(no. 43701/14\)](#)**

7 September 2017

**[Mohamed Hasan v. Norway](#)**

26 April 2018

**[Jansen v. Norway](#)**

6 September 2018

**[S.S. v. Slovenia \(no. 40938/16\)](#)**

30 October 2018

**[A.S. v. Norway \(no. 60371/15\)](#)**

17 December 2019

**[Pedersen and Others v. Norway](#)**

10 March 2020<sup>11</sup>

**[Hernehult v. Norway](#)**

10 March 2020<sup>12</sup>

**Pending applications**

**[Abdi Ibrahim v. Norway \(no. 15379/16\)](#)**

17 December 2019 (Chamber judgment) – case referred to the Grand Chamber in May 2020

This case concerns the decision by the Norwegian authorities to allow the adoption of a child by a foster family against his mother's wishes. The child, a son born in 2009 in Kenya before she moved to Norway, where she was granted refugee status, was taken into emergency foster care in late 2010. He was subsequently placed with a Christian family, while the applicant had argued he should go to either her cousins or to a Somali or Muslim family. The applicant complains about the withdrawal of her parental rights and the authorisation for adoption.

In its Chamber judgment of 17 December 2019, the Court, deciding to consider the applicant's complaints under Article 8 (right to respect for private and family life) of the Convention alone, held, unanimously, that there had been a violation of that Article. The Chamber referred in particular to the recent judgment in the case of [Strand Lobben v. Norway](#) (see above), noting the "strict scrutiny" it had to apply when limitations had been placed on parental access after a child had been taken into care. It found that the decision-making process on the applicant's son had failed to give due account to her views and interests, leading to violations of her human rights.

On 11 May 2020 the Grand Chamber Panel [accepted](#) the applicant's request that the case be referred to the Grand Chamber.

**[Kilic v. Austria \(no. 27700/15\)](#)**

Application communicated to the Austrian Government on 23 May 2017

This case concerns the placement of the applicants' Muslim children in Christian foster care families.

The Court gave notice of the application to the Austrian Government and put questions to the parties under Article 8 (right to respect for family life) and Article 9 (freedom of thought, conscience and religion) of the Convention.

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<sup>11</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

<sup>12</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).



