September 2023

Reproductive rights

Abortion

Tysiąc v. Poland

20 March 2007

The applicant was refused a therapeutic abortion, after being warned that her already severe myopia could worsen if she carried her pregnancy to term. Following the birth of her child, she had a retinal haemorrhage and was registered severely disabled.

The European Court of Human Rights found that the applicant had been denied access to an effective mechanism capable of determining whether the conditions for obtaining a legal abortion had been met, in **violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights.

A., B. and C. v. Ireland (application no. 25579/05)

16 December 2010 (Grand Chamber)

Three women living in Ireland, who became pregnant unintentionally, complained that, because of the impossibility of obtaining a legal abortion in Ireland[1], they had to go to the United Kingdom for an abortion and that the procedure was humiliating, stigmatising and risked damaging their health. One of the applicants in particular, in remission from a rare form of cancer and unaware that she was pregnant, underwent checkups contraindicated in pregnancy. She understood that her pregnancy could provoke a relapse and believed that it put her life at risk.

The Court found that Ireland had failed to implement the constitutional right to a legal abortion. There had therefore been a **violation of Article 8** (right to respect for private and family life) of the Convention concerning the applicant in remission from cancer (the Court held there had been **no violation of Article 8** concerning the other two applicants), because she was unable to establish her right to a legal abortion either through the courts or the medical services available in Ireland. The Court noted in particular the uncertainty surrounding the process of establishing whether a woman's pregnancy posed a risk to her life and that the threat of criminal prosecution had a "significant chilling" effect both on doctors and the women concerned.

R.R. v. Poland (no. 27617/04)

26 May 2011

A pregnant mother-of-two – carrying a child thought to be suffering from a severe genetic abnormality – was deliberately denied timely access to the genetic tests to which she was entitled by doctors opposed to abortion. Six weeks elapsed between the first ultrasound scan indicating the possibility that the foetus might be deformed and the results of the amniocentesis, too late for her to make an informed decision on whether to continue the pregnancy or to ask for a legal abortion, as the legal time limit had by then expired. Her daughter was subsequently born with abnormal chromosomes (Turner syndrome[2]). She submitted that bringing up and educating a severely-ill child had been

[1]. Having or helping anyone to have an abortion was a criminal offence in Ireland. However there was a constitutional right to an abortion where there was a real and substantial risk to the life of the mother.

[2]. A genetic condition, affecting around one in every 2,500 girls, in which the sufferer does not have the usual pair of two X chromosomes. They are also usually shorter than average and infertile. Other health problems

damaging to herself and her other two children. Her husband also left her following the birth of their third child.

The Court found a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention as the applicant, who was in a very vulnerable position, had been humiliated and "shabbily" treated, the determination of whether she should have had access to genetic tests, as recommended by doctors, being marred by procrastination, confusion and lack of proper counselling and information. The Court also found a **violation of Article 8** (right to respect for private and family life) of the Convention because Polish law did not include any effective mechanisms which would have enabled the applicant to have access to the available diagnostic services and to take, in the light of their results, an informed decision as to whether or not to seek an abortion. Given that Polish domestic law allowed for abortion in cases of foetal malformation, there had to be an adequate legal and procedural framework to guarantee that relevant, full and reliable information on the foetus' health be made available to pregnant women. The Court did not agree with the Polish Government that providing access to prenatal genetic tests was in effect providing access to abortion. Women sought access to such tests for many reasons. In addition, States were obliged to organise their health services to ensure that the effective exercise of the freedom of conscience of health professionals in a professional context did not prevent patients from obtaining access to services to which they were legally entitled.

P. and S. v. Poland (no. 57375/08)

30 October 2012

This case concerned the difficulties encountered by a teenage girl, who had become pregnant as a result of rape, in obtaining access to an abortion, in particular due to the lack of a clear legal framework, procrastination of medical staff and also as a result of harassment.

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 applicants had been given misleading and contradictory information and had not received objective medical counselling; and, the fact that access to abortion was a subject of heated debate in Poland did not absolve the medical staff from their professional obligations regarding medical secrecy.

S.F.K. v. Russia (no. 5578/12)[3]

11 October 2022

This case concerned the applicant's complaint that in 2010 she was forced to have an abortion by her parents, even though she had made it clear to them and at the public hospital where the intervention took place that she wanted to continue with the five-week pregnancy. The parents were opposed to her relationship with the would-be father, who was the suspect in a violent crime and had been arrested. The applicant lodged a number of complaints against her parents and the medical personnel, but no criminal proceedings were ever instituted as the relevant authorities found that no elements of a crime could be established and that her parents had acted in the best interests of their child. She had since had two miscarriages and was declared infertile in 2017. Before the Court, she submitted in particular that the forced abortion, and inadequate medical care before and afterwards, had amounted to inhuman and degrading treatment.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention, under its substantive aspect, noting in particular that the applicant's abortion had been carried out against her will and in breach of all the applicable medical rules, and that such a forced abortion undergone in those circumstances had been contrary to her human dignity. The Court found that it

can include kidney and heart abnormalities, high blood pressure, obesity, diabetes mellitus, cataract, thyroid problems, and arthritis. Some sufferers may also have learning difficulties.

[3]. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").

had been an egregious form of inhuman and degrading treatment which had not only resulted in a serious immediate damage to her health – that is the loss of her unborn child – but had also entailed long-lasting negative physical and psychological effects. The Court also held that there had been a **violation** of the procedural aspect **of Article 3**, finding that, in view of the manner in which the authorities had handled the case – notably their reluctance to open a criminal investigation into the applicant's credible claims of forced abortion and their failure to take effective measures against the applicant's parents and the relevant health professionals, ensuring their punishment under the applicable legal provisions – the State had failed to discharge its duty to investigate the ill-treatment that the applicant had endured.

G.M. and Others v. the Republic of Moldova (no. 44394/15)

22 November 2022

This case concerned the imposition of abortions and birth-control measures on three intellectually disabled women, residents in a neuropsychiatric asylum, after they had been repeatedly raped by one of the head doctors there, and the investigation into their complaints.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in both its substantive and its procedural aspects. It noted in particular that the domestic authorities had failed to carry out an effective investigation into the applicants' allegations of ill-treatment despite it having been reopened on four occasions following their appeals. Moreover, the inquiry had not factored in their vulnerability as intellectually disabled women exposed to sexual abuse in an institutional context. The Court also found that the domestic criminal law had not provided effective protection against such invasive medical interventions carried out without the patient's valid consent.

Pending applications

K.B. v. Poland and three other applications (nos. 1819/21, 3682/21, 4957/21 and 6217/21), K.C. v. Poland and three other applications (nos. 3639/21, 4188/21, 5876/21 and 6030/21) et A.L. - B. v. Poland and three other applications (nos. 3801/21, 4218/21, 5114/21 and 5390/21)

Applications communicated to the Polish Government on 1 July 2021

These applications concern abortion rights in Poland and, in particular, a statutory provision for abortion in the case of foetal abnormalities declared unconstitutional by the Polish Constitutional Court. Over 1,000 similar applications have been received by the Court.

The Court gave notice of the applications to the Polish Government and put questions to the parties under, in particular, Article 8 (right to respect for private and family life) and Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

M.L. v. Poland (no. 40119/21)

Application communicated to the Polish Government on 8 October 2021

Embryo donation and scientific research

Parrillo v. Italy

27 August 2015 (Grand Chamber)

This case concerned a ban under Italian Law no. 40/2004, preventing the applicant from donating to scientific research embryos obtained from an *in vitro* fertilisation which were not destined for a pregnancy. Under Article 1 (protection of property) of Protocol No. 1 to the Convention, the applicant complained that she was unable to donate her embryos, conceived through medically assisted reproduction, to scientific research and was obliged to keep them in a state of cryopreservation until their death. The applicant also considered that the prohibition in question amounted to a violation of her right to respect for her private life, protected by Article 8 of the Convention.

The Court, which was called upon for the first time to rule on this issue, held that Article 8 (right to respect for private and family life) of the Convention was applicable in this case under its "private life" aspect, as the embryos in question contained the applicant's genetic material and accordingly represented a constituent part of her identity. The Court considered at the outset that Italy was to be given considerable room for manoeuvre ("wide margin of appreciation") on this sensitive question, as confirmed by the lack of a European consensus and the international texts on this subject. It then noted that the drafting process for Law no. 40/2004 had given rise to considerable discussions and that the Italian legislature had taken account of the State's interest in protecting the embryo and the interest of the individuals concerned in exercising their right to self-determination. The Court further stated that it was not necessary in this case to examine the sensitive and controversial question of when human life begins, as Article 2 (right to life) of the Convention was not in issue. Noting, lastly that there was no evidence that the applicant's deceased partner would have wished to donate the embryos to medical research, the Court concluded that the ban in question had been necessary in a democratic society. In consequence, the Court held that there had been **no violation of Article 8** of the Convention. Lastly, with regard to Article 1 (protection of property) of Protocol No. 1 to the Convention, the Court considered that it did not apply to the present case, since human embryos could not be reduced to "possessions" within the meaning of that provision. This complaint was accordingly dismissed.

Home birth

Ternovsky v. Hungary

14 December 2010

The applicant complained about being denied the opportunity to give birth at home, arguing that midwives or other health professionals were effectively dissuaded by law from assisting her, because they risked being prosecuted. (There had recently been at least one such prosecution.)

The Court found that the applicant was in effect not free to choose to give birth at home because of the permanent threat of prosecution faced by health professionals and the absence of specific and comprehensive legislation on the subject, in **violation of Article 8** right to respect for private and family life) of the Convention.

Dubská and Krejzová v. the Czech Republic

15 November 2016 (Grand Chamber)

This case concerned a law in the Czech Republic which made it impossible in practice for mothers to be assisted by a midwife during home births. The applicants, two women who wished to avoid unnecessary medical intervention in delivering their babies, complained that because of this law they had had no choice but to give birth in a hospital if they wished to be assisted by a midwife.

The Grand Chamber 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 national authorities had considerable room for manoeuvre when regulating the question of home births, a matter for which there is no European consensus and which involves complex issues of health-care policy as well as allocation of State resources. In the applicants' case, the Grand Chamber considered that the Czech Republic's current policy struck a fair balance between, on the one hand, mothers' right to respect for their private life and, on the other, the State's interest in protecting the health and safety of the child and mother during and after delivery. Moreover, since 2014 the Czech Government had taken some initiatives with a view to improving the situation in local maternity hospitals, notably by setting up a new governmental expert committee on obstetrics, midwifery and related women's rights. Lastly, the Grand Chamber invited the Czech authorities to make further progress by continuing their constant review of the relevant legal provisions on home births, making sure that they reflect medical and scientific developments whilst fully respecting women's rights in the field of reproductive rights.

Pojatina v. Croatia

4 October 2018

This case concerned Croatian legislation on home births. The applicant in the case was a mother who had given birth to her fourth child at home with the help of a midwife from abroad. She alleged in particular that, although Croatian law allowed home births, women such as her could not make this choice in practice because they were not able to get professional help.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It accepted that at first there might have been some doubt as to whether a system for assisted home births had been set up in Croatia. It therefore called on the authorities to consolidate the relevant legislation so that the matter is expressly and clearly regulated. However, it found that the applicant had clearly been made aware, through the letters from the Croatian Chamber of Midwives and the Ministry of Health which she had received while she had still been pregnant with her fourth child, that the domestic law did not allow assisted home births. It further found that the authorities had struck the right balance between the applicant's right to respect for her private life and the State's interest in protecting the health and safety of mothers and children. It pointed out in particular that Croatia was not currently required under the Convention to allow planned home births. There was still a great disparity between the legal systems of the Contracting States on home births and the Court was sensitive to the fact that the law developed gradually in this area.

Kosaitė-Čypienė and Others v. Lithuania

4 June 2019

This case concerned Lithuania's law on medical assistance for home births. The applicants, four women, had unsuccessfully requested that the Ministry of Health amend the legislation that prohibited medical professionals from assisting in home births. They complained in particular that the law had dissuaded healthcare professionals from assisting in home births.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention. It found that Lithuania had struck a fair balance between the interests involved: namely, the mothers' right to respect for their private life against the State's interest in health and safety. In particular, the four women could have opted for any one of the maternity wards created in Lithuania since the 1990s to ensure home-like conditions for women giving birth, in particular in Vilnius where they lived. Additionally, postnatal care was available if an emergency had arisen during or after a delivery at home. Moreover, although Lithuania had recently changed the law on home births, it had not actually been required to do so under the European Convention given the great disparity between the legal systems of the Contracting States on the matter.

Medically-assisted procreation

Evans v. United Kingdom

10 April 2007 (Grand Chamber)

The applicant, who was suffering from ovarian cancer, underwent in-vitro fertilisation (IVF) with her then partner before having her ovaries removed. Six embryos were created and placed in storage. When the couple's relationship ended, her ex-partner withdrew his consent for the embryos to be used, not wanting to be the genetic parent of the applicant's child. National law consequently required that the eggs be destroyed. The applicant complained that domestic law permitted her former partner effectively to withdraw his consent to the storage and use by her of embryos created jointly by them, preventing her from ever having a child to whom she would be genetically related.

For the reasons given by the Chamber in its judgment of 7 March 2006, namely that the issue of when the right to life began came within the State's margin of appreciation,

the Grand Chamber found that the embryos created by the applicant and her former partner did not have a right to life. It therefore held that there had been **no violation of Article 2** (right to life) of the Convention. The Grand Chamber further considered that, given the lack of European consensus, the fact that the domestic rules had been clear and brought to the attention of the applicant and that they had struck a fair balance between the competing interests, there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. Lastly, the Grand Chamber held that there had been **no violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** of the Convention.

Dickson v. United Kingdom

4 December 2007 (Grand Chamber)

The applicant, a prisoner with a minimum 15-year sentence to serve for murder, was refused access to artificial insemination facilities to enable him to have a child with his wife, who, born in 1958, had little chance of conceiving after his release.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention as a fair balance had not been struck between the competing public and private interests.

S.H. and Others v. Austria (no. 57813/00)

3 November 2011 (Grand Chamber)

This case concerned two Austrian couples wishing to conceive a child through IVF. One couple needed the use of sperm from a donor and the other, donated ova. Austrian law prohibits the use of sperm for IVF and ova donation in general.

The Court noted that, although there was a clear trend across Europe in favour of allowing gamete donation for in-vitro fertilisation, the emerging consensus was still under development and was not based on settled legal principles. Austrian legislators had tried, among other things, to avoid the possibility that two women could claim to be the biological mother of the same child. They had approached carefully a controversial issue raising complex ethical questions and had not banned individuals from going overseas for infertility treatment unavailable in Austria. The Court concluded that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention in the present case. However, it underlined the importance of keeping legal and fast-moving scientific developments in the field of artificial procreation under review.

Costa and Pavan v. Italy

28 August 2012

This case concerned an Italian couple who are healthy carriers of cystic fibrosis and wanted, with the help of medically-assisted procreation and genetic screening, to avoid transmitting the disease to their offspring.

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 interference with the applicants' right to respect for their private and family life had been disproportionate. It noted in particular the inconsistency in Italian law that denied the couple access to embryo screening but authorised medically-assisted termination of pregnancy if the foetus showed symptoms of the same disease. The Court also stressed the difference between this case, which concerned preimplantation diagnosis (PID) and homologous insemination[4], and that of *S.H. and Others v. Austria* (see above), which concerned access to donor insemination. Although the question of access to PID raised delicate issues of a moral and ethical nature, the legislative choices made by Parliament in the matter did not elude the Court's supervision.

4. Using gametes from the couple (cf. donor insemination, using donated gametes).

Knecht v. Romania

2 October 2012

In July 2009 frozen embryos that the applicant had deposited with a private clinic were seized by the authorities due to concerns about the clinic's credentials. The applicant subsequently experienced considerable difficulties in securing a transfer by the State of the embryos to a specialised clinic so that she might use them to become a parent by means of an IVF procedure. Before the Court, the applicant complained that this resulted in a breach of her right to a private and family life.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. The domestic courts had expressly acknowledged that the applicant had suffered a breach of her rights under Article 8 on account of the refusal by the authorities to allow the embryo transfer, and had offered her the required redress for the breach, which led to the transfer of the embryos in a relatively short time. Therefore the requisite steps had been taken to secure respect for the applicant's right to respect for her private life.

Nedescu v. Romania

16 January 2018

The applicants, a married couple, alleged that they had not been able to recover embryos that had been seized by the prosecuting authorities in 2009 and that they had been prevented from having another child. The couple had won court orders in their favour to retrieve the embryos, but they had not been able to fulfil them.

In this case the Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding in particular that preventing the applicants from retrieving their embryos as ordered by the High Court of Cassation had constituted an interference with their right to respect for their private life which was not provided for by law.

See also: **Lia v. Malta**, judgment of 5 May 2022.

Charron and Merle-Montet v. France

16 January 2018 (decision on the admissibility)

The applicants, a female married couple, complained that their request for medically assisted reproduction had been rejected on the grounds that French law did not authorise such medical provision for same-sex couples.

The Court declared the application **inadmissible**. It noted in particular that the Hospital's decision rejecting the applicants' request for access to medically assisted reproduction had been an individual administrative decision that could have been set aside on appeal for abuse of authority before the administrative courts. However, the applicants had not used that remedy. In the present case, noting the importance of the subsidiarity principle, the Court found that the applicants had failed to exhaust domestic remedies.

Petithory Lanzmann v. France

12 November 2019 (Committee decision on the admissibility)

This case concerned the applicant's request to have her deceased son's sperm transferred to an establishment capable of arranging medically assisted reproduction or gestational surrogacy. The applicant complained in particular that it was impossible to have access to her deceased son's sperm with a view to arranging, in accordance with his last wishes, medically assisted reproduction via a donation to an infertile couple or gestational surrogacy, procedures which would be authorised in Israel or the United States.

The Court observed that the applicant's complaint actually comprised two distinct parts. In the first part she claimed to be an indirect victim, on behalf of her late son, while in the second she claimed to be a direct victim since she had been deprived of the possibility of becoming a grandparent. The Court declared both parts of the application **inadmissible**, noting in particular that the right for an individual to decide how and

when to become a parent was a non-transferable right and that Article 8 (right to respect for private and family life) of the Convention did not guarantee a right to become a grandparent.

Gauvin-Fournis v. France and Silliau v. France

7 septembre 2023[5]

This case concerned the inability, alleged by the applicants, who were born in the 1980s by means of medically assisted procreation using third-party donors, to access information concerning the respective donors[6]. The applicants submitted that their inability to obtain information concerning their respective biological fathers constituted an infringement of their right to respect for their private and family life. They added that, owing to the method through which they had been conceived, they faced discrimination in the exercise of their right to respect for their private life, by contrast with other children, since it was impossible for them to obtain non-identifying information concerning the third-party donor, including medical information.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention in the present case, finding that the respondent State had not breached its positive obligation to ensure effective respect for the first and second applicants' private life. The Court noted in particular that the situation complained of by the applicants resulted from decisions taken by the legislature. Each bioethics law had been preceded by a public debate in the form of consultations, in order to take into consideration all points of view. In the Court's opinion, the legislature had duly weighed up the interests and rights at stake after an informed and gradual process of reflection on the need to lift donor anonymity. Reiterating that there was no clear consensus on the issue of access to origins, merely a recent trend in favour of lifting donor anonymity, it considered that the legislature had acted within its discretion ("margin of appreciation"). The respondent State could not therefore be criticised for the pace at which the reform had been enacted or for having been slow to agree to such reform. In the present case, the Court considered that the respondent State had not overstepped its margin of appreciation in this area, including in its decision when enacting the Bioethics Act of 2 August 2021 to make access to information about one's origins for persons in the applicants' situation subject to the condition that the third-party donor gave his or her consent. Lastly, the Court noted that when the applications were lodged with the Court, the principle of anonymity in gamete donations had not prevented doctors from obtaining access to medical information and disclosing it to individuals born through the relevant gamete donation, where required by therapeutic necessity, including with a view to preventing the risk of consanguinity, considered by the applicants to be an infringement of their right to health. With regard to non-identifying medical information, the Court noted that the State had struck a faire balance between the competing interests at stake.

Baret et Caballero c. France

14 September 2023[7]

The two cases concerned the prohibition on exporting the sperm of the first applicant's deceased husband and the embryos created by the second applicant with her deceased husband to Spain, a country where posthumous conception was permitted. The applicants submitted that the refusals complained of, which had been based on the prohibition of posthumous conception laid down by Article L. 2141-2 of the Public Health Code and the prohibition on exporting gametes or embryos for purposes prohibited by French law under Article L. 2141-11-1 of that Code, entailed a violation of their rights.

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5. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.
6. This situation had lasted until 1 September 2022, when a new legal system for obtaining access to one's origins entered into force. It introduced a system of access to information about one's origins for individuals who had been born prior to its entry into force; however, this was subject to the donors giving their consent.
7. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

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 French authorities had struck a fair balance between the competing interests at stake and that the respondent State had acted within its discretion. The Court found in particular that the contested prohibition had affected the applicants' private life, in that the possibility for people to exercise their choice as to what happened to their embryos or gametes came within the ambit of their right to self-determination, and that it constituted an interference with their right to attempt to have children by having recourse to medically assisted reproduction techniques. It considered that the impugned interference, which derived from the notion of family as it prevailed at the time and which aimed to guarantee respect for human dignity and self-determination and to ensure a fair balance between the interests of the different parties involved in medically assisted reproduction, pursued the legitimate aims of "the protection of the rights and freedoms of others" and the "protection of morals". As to the necessity of the impugned interference, the Court considered that the absolute nature of the prohibition on posthumous insemination in France was a political choice and that, when it came to a social issue relating to moral or ethical considerations, the role of the domestic policy-maker had to be given special weight. It noted that the prohibition on exporting gametes or embryos, which equated to "exporting" the prohibition on posthumous conception within the national territory, had as its aim to avert the risk that the provisions of the Public Health Code prohibiting this practice would be circumvented. It also noted that, up until the enactment of the Bioethics Act of 2 August 2021, the legislature had attempted to reconcile the desire to extend access to medically assisted reproduction with the need to respect society's concerns as to the sensitive ethical considerations raised by the possibility of posthumous conception. The Court found that the above considerations were also relevant as concerned the prohibition on posthumous embryo transfer, reiterating that an embryo did not have independent rights or interests. It pointed out that the *Conseil d'État* had carried out its review of the contested refusals in accordance with the methodology laid down by it in its decision in *Gonzalez Gomez* of May 2016 and that, in the circumstances of the present cases, there was no reason to depart from the findings of the domestic court. Nevertheless, the Court acknowledged that the legislature's decision to extend the right to medically assisted reproduction to female couples and single women since 2021 reopened the debate as to the relevance of the justification for maintaining the prohibition complained of by the applicants.

Precautionary measures to protect a new-born baby's health

Hanzelkovi v. the Czech Republic

11 December 2014

This case concerned a court-ordered interim measure requiring the return to hospital of a new-born baby and its mother, who had just given birth and had immediately gone home, and the lack of any remedy by which to complain about that measure. The applicants – the mother and the child – complained of a violation of their right to respect for their private and family life, alleging that the measure whereby the child's return to the hospital had been ordered a few hours after his birth was neither lawful nor necessary. They also complained about the lack of an effective remedy, as they had been unable to challenge the interim measure, and, not being able to obtain its annulment, they were not entitled to any redress or damages.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life), and a **violation of Article 13** (right to an effective remedy) of the Convention. It reiterated in particular that the taking into care of a new-born baby at birth was an extremely harsh measure and that there had to be unusually compelling reasons for a baby to be removed from the care of its mother against her will immediately after the birth and following a procedure which involved neither the mother nor her partner. In the present case, the Court found in particular that when the

domestic court was considering the interim measure it should have ascertained whether it was possible to have recourse to a less extreme form of interference with the applicants' family life at such a decisive moment in their lives. It took the view that this serious interference with the applicants' family life and the conditions of its implementation had had disproportionate effects on their prospects of enjoying a family life immediately after the child's birth. While there may have been a need to take precautionary measures to protect the baby's health, the interference with the applicants' family life caused by the interim measure could not be regarded as necessary in a democratic society.

Prenatal medical tests

Draon v. France (no. 1513/03) and Maurice v. France (no. 11810/03)

6 October 2005 (Grand Chamber)

The applicants are parents of children with severe congenital disabilities which, due to medical errors, were not discovered during prenatal medical examinations. They brought proceedings against the hospitals concerned. A new law of 4 March 2002, introduced while their proceedings were pending, meant that it was no longer possible to claim compensation from the hospital/doctor responsible for life-long "special burdens" resulting from the child's disability. The compensation they were awarded did not therefore cover those "special burdens".

The Court found that the law in question was in **violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention concerning proceedings which were pending when the law came into force.

A.K. v. Latvia (no. 33011/08)

24 June 2014

The applicant alleged that she had been denied adequate and timely medical care in the form of an antenatal screening test which would have indicated the risk of her foetus having a genetic disorder and would have allowed her to choose whether to continue the pregnancy. She also complained that the national courts, by wrongly interpreting the Medical Treatment Law, had failed to establish an infringement of her right to respect for her private life.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in its procedural aspect, finding that the domestic court had conducted the proceedings in an arbitrary manner and had failed to examine the applicant's claim properly.

See also, more recently:

Eryiğit v. Turkey, judgment of 10 April 2018, concerning an erroneous prenatal diagnosis, where the Court held that there had been a violation of Article 8 of the Convention in its procedural aspect.

Presence of medical students during child birth and privacy rights

Konovalova v. Russia[8]

9 October 2014

The applicant complained about the unauthorised presence of medical students during the birth of her child, alleging that she had not given written consent to being observed and had been barely conscious when told of such arrangements.

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 relevant national

[8]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

legislation at the time of the birth of the applicant's baby – 1999 – did not contain any safeguards to protect patients' privacy rights. This serious shortcoming had been exacerbated by the hospital's procedure for obtaining consent from patients to take part in the clinical teaching programme during their treatment. In particular, the hospital's booklet notifying the applicant of her possible involvement in the teaching programme had been vague and the matter had in general been presented to her in such a way as to suggest that she had no other choice.

Sterilisation operations

Gauer and Others v. France

23 October 2012 (decision on the admissibility)

This case concerned the sterilisation for the purposes of contraception of five young women with mental disabilities who were employed at a local work-based support centre (*Centre d'aide pour le travail* – CAT). They submitted in particular that there had been an interference with their physical integrity as a result of the sterilisation which had been carried out without their consent having been sought, and alleged a violation of their right to respect for their private life and their right to found a family. They further submitted that they had been subjected to discrimination as a result of their disability.

The Court found that the application had been lodged out of time and therefore declared it **inadmissible** pursuant to Article 35 (admissibility criteria) of the Convention.

G.B. and R.B. v. the Republic of Moldova (no. 16761/09)

18 December 2012

Giving birth to a child in May 2000, the first applicant, aged 32 at the time, had a Caesarean section, during which the obstetrician removed her ovaries and Fallopian tubes without obtaining her permission. She has been in treatment to counteract the effects of early menopause since 2001 and has had health problems ever since, including depression and osteoporosis. The courts found the obstetrician guilty of medical negligence, but eventually absolved him of criminal responsibility in 2005. The first applicant and her husband (the second applicant) brought civil proceedings against the hospital and the obstetrician, and were awarded damages in the amount of 607 euros. Before the Court, they complained of the first applicant's sterilisation and of the low amount of compensation they had been awarded.

The Court considered that the first applicant had not lost her victim status and 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 amount of compensation awarded by the domestic courts was considerably below the minimum level of compensation generally awarded by the Court in cases in which it has found a violation of Article 8 and required sufficient just satisfaction, as the devastating effects on the first applicant had made this a particularly serious interference with her Convention rights.

Csoma v. Romania

15 January 2013

The applicant complained that as a result of serious medical errors she was no longer able to bear children. While she was in her sixteenth week of pregnancy, the foetus was diagnosed with hydrocephalus and it was decided that the pregnancy should be interrupted. After complications following treatments the applicant received to induce abortion, her doctor had to remove her uterus and excise her ovaries in order to save her life. She alleged that failures in her treatment had endangered her life and had left her permanently unable to bear children. She further complained that, because of the deficiencies of the investigation, doctors' liability had not been established.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It found in particular that by not involving the applicant in the choice of medical treatment and by not informing her properly of the risks involved

in the medical procedure, the applicant had suffered an infringement of her right to private life.

Y.P. v. Russia (no. 43300/13)[9]

20 September 2022[10]

This case concerned the applicant's sterilisation in a public hospital without her consent. She found out, when consulting a gynaecologist because she could not get pregnant, that she had been sterilised two years before during a Caesarean section. Her civil claim against the maternity hospital was later dismissed by the courts.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention in respect of the applicant. It noted, in particular, that it was clear that she had suffered an infringement of her right to respect for her private life as a result of the doctors' failure to seek and obtain her express, free and informed consent as regards her sterilisation, in line with domestic law. Moreover, the national courts had refused to establish the doctors' responsibility for the sterilisation, thereby endorsing the approach which had stood in conflict with the principle of the patient's autonomy, established both in domestic law and at the international level. The Court also observed that the medical intervention with such serious consequences had been performed without respecting the rules and safeguards created by the domestic system itself, which was difficult to reconcile with the procedural safeguards enshrined in Article 8 of the Convention. Lastly, the applicant had not been afforded any redress for the infringement of her right to respect for private life.

G.M. and Others v. the Republic of Moldova (no. 44394/15)

22 November 2022

See above, under "Abortion".

Forced sterilisation of Roma women

K.H. and Others v. Slovakia (no. 32881/04)

28 April 2009

Eight Slovak women of Roma ethnic origin found they were unable to conceive after having caesareans. Suspecting that they were sterilised without their knowledge during the operations, they sued the two Slovak hospitals concerned.

The Court found that the impossibility for the applicants to obtain photocopies of their medical records was in **violation of Articles 8** (right to respect for private and family life) **and 6 § 1** (access to court) of the Convention.

V.C. v. Slovakia (no. 18968/07)

8 November 2011

The applicant, of Roma ethnic origin, was sterilised in a public hospital without her full and informed consent, following the birth of her second child. She signed the consent form while still in labour, without understanding what was meant or that the process was irreversible, and after having been told that, if she had a third child, either she or the baby would die. She has since been ostracised by the Roma community and, now divorced, cites her infertility as one of the reasons for her separation from her ex-husband.

The Court found that the applicant must have experienced fear, anguish and feelings of inferiority as a result of her sterilisation, as well as the way in which she had been requested to agree to it. She had suffered physically and psychologically over a long period and also in terms of her relationship with her then husband and the Roma community. Although there was no proof that the medical staff concerned had intended to ill-treat her, they had acted with gross disregard to her right to autonomy and choice as a patient. Her sterilisation had therefore been in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. The Court further held that there

[9]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.
[10]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

had been **no violation of Article 3** as concerned the applicant's allegation that the investigation into her sterilisation had been inadequate. Lastly, the Court found a **violation of Article 8** (right to respect for private and family life) of the Convention concerning the lack of legal safeguards giving special consideration to her reproductive health as a Roma at that time.

N.B. v. Slovakia (no. 29518/10)

12 June 2012

In this case the applicant alleged that she had been sterilised without her full and informed consent in a public hospital in Slovakia.

The Court concluded that the sterilisation of the applicant had been in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It further held that there had been **no violation of Article 3** as concerned the applicant's allegation that the investigation into her sterilisation had been inadequate. It lastly found a **violation of Article 8** (right to respect for private and family life) of the Convention.

I.G., M.K. and R.H. v. Slovakia (no. 15966/04)

13 November 2012

The case concerned three women of Roma origin who complained in particular that they had been sterilised without their full and informed consent, that the authorities' ensuing investigation into their sterilisation had not been thorough, fair or effective and that their ethnic origin had played a decisive role in their sterilisation.

The Court held that there had been **two violations of Article 3** (prohibition of inhuman and degrading treatment) of the Convention, firstly on account of the first and second applicants' sterilisation, and secondly in respect of the first and second applicants' allegation that the investigation into their sterilisation had been inadequate. The Court further found a **violation of Article 8** (right to respect for private and family life) in respect of the first and second applicants and **no violation of Article 13** (right to an effective remedy) of the Convention. As regards the third applicant, the Court decided to strike the application out of its list of cases, under Article 37 § 1 (c) of the Convention.

See also:

- **R.K. v. the Czech Republic (no. 7883/08)**, decision (strike out) of 27 November 2012
- **G.H. v. Hungary (no. 54041/14)**, decision (inadmissibility) of 9 June 2015

Surrogacy

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.

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.

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.

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.

D v. France (n° 11288/18)

16 juillet 2020

This case concerned the refusal to record in the French register of births, marriages and deaths the details of the birth certificate of a child born abroad through a gestational surrogacy arrangement in so far as the certificate designated the intended mother, who was also the child's genetic mother, as the mother. The child, the third applicant in the case, was born in Ukraine in 2012. Her birth certificate, issued in Kyiv, named the first applicant as the mother and the second applicant as the father, without mentioning the woman who had given birth to the child. The two first applicants, husband and wife, and the child complained of a violation of the child's right to respect for her private life, and of discrimination on the grounds of "birth" in her enjoyment of that right.

The Court held that there had been **no violation of Article 8** (right to respect for family life) of the Convention, finding that, in refusing to record the details of the third

applicant's Ukrainian birth certificate in the French register of births in so far as it designated the first applicant as the child's mother, France had not overstepped its margin of appreciation in the circumstances of the present case. It also held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 8**, accepting that the difference in treatment of which the applicants complained with regard to the means of recognition of the legal relationship between such children and their genetic mother had an objective and reasonable justification. In its judgment, the Court noted in particular that it had previously ruled on the issue of the legal parent-child relationship between a child and its intended father where the latter was the biological father, in its judgments in *Mennesson* and *Labassee* (see above). According to its case-law, the existence of a genetic link did not mean that the child's right to respect for his or her private life required the legal relationship with the intended father to be established specifically by means of the recording of the details of the foreign birth certificate. The Court saw no reason in the circumstances of the present case to reach a different decision regarding recognition of the legal relationship with the intended mother, who was the child's genetic mother. The Court also pointed to its finding in advisory opinion no. P16-2018-001 (see above) that adoption produced similar effects to registration of the foreign birth details when it came to recognising the legal relationship between the child and the intended mother.

Valdís Fjölnisdóttir and Others v. Iceland

18 May 2021

This case concerned the non-recognition of a parental link between the first two applicants and the third applicant, who was born to them via a surrogate mother in the United States. The first and second applicants were the third applicant's intended parents, but neither of them was biologically related to him. They had not been recognised as the child's parents in Iceland, where surrogacy is illegal. The applicants complained, in particular, that the refusal by the authorities to register the first and second applicants as the third applicant's parents had amounted to an interference with their rights.

The Court held that there had been **no violation of Article 8** (right to respect for family life) of the Convention. It considered, in particular, that despite the lack of a biological link between the applicants, there had been "family life" in the applicants' relationship. However, the Court found that the decision not to recognise the first two applicants as the child's parents had had a sufficient basis in domestic law and, taking note of the efforts on the parts of the authorities to maintain that "family life", ultimately adjudged that Iceland had acted within its discretion in the present case.

S.-H. v. Poland (nos. 56846/15 and 56849/15)

16 November 2021 (decision on the admissibility)

The parents of the applicants - twin brothers who were dual Israeli and United States nationals and lived in Israel– were a same-sex couple, who in 2010 had the children conceived via a surrogacy agreement. The applicants were confirmed as children of their parents by the Superior Court of California. The case concerned their application for Polish citizenship (one of their parents was a Polish national). They complained in particular of the refusal by the Polish authorities to recognise their relationship with their biological father, which they alleged had been because their parents were a same-sex couple.

The Court declared the applications **inadmissible**, finding that there was no factual basis for concluding that there had been an interference with the right to respect for private and family life in the present case. While it acknowledged, in particular, that the applicants would not have Polish and European citizenship as a result of those decisions, it pointed out that they would still enjoy free movement in Europe. For the Court, they had not put forward any claims of hardship they had suffered as a result of the decisions, either before the Court or the domestic authorities. In particular, the parent-child link in this case, although not recognised by the Polish authorities, was recognised in the State where the applicants resided. Legal recognition in the United States had

meant that the applicants had not been left in a legal vacuum both as to their citizenship and as to the recognition of the legal parent-child relationship with their biological father.

A.L. v. France (no. 13344/20)

7 April 2022

This case concerned the compatibility with the right to respect for private life of the domestic courts' refusal to legally establish the applicant's paternity *vis-à-vis* his biological son – who had been born in the framework of a gestational surrogacy contract in France – after the surrogate mother had entrusted the child to a third couple. The applicant submitted that the dismissal of his application to establish his paternity in respect of his biological son amounted to a disproportionate interference with his right to respect for his private life, lacking any legal basis.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, on account of the French State's failure to honour its duty of exceptional diligence in the particular circumstances of the case. It emphasised, however, that the finding of a violation should not be interpreted as questioning the Court of Appeal's assessment of the child's best interests or its decision to dismiss the applicant's requests, as upheld by the Court of Cassation. In the present case, the Court noted, in particular, that the Court of Appeal, backed up by the Court of Cassation, had duly prioritised the best interests of the child, which it had been careful to characterise in practical terms having regard to the biological reality of the paternity claimed by the applicant. In balancing the applicant's right to respect for his private life, on the one hand, with his son's right to respect for his private and family life, which required compliance with the principle of prioritising the child's best interests, the Court considered that the grounds set out by the domestic courts to justify the impugned interference had been relevant and sufficient for the purposes of Article 8 § 2 of the Convention. Nevertheless, the Court noted that the proceedings had taken a total of six years and about one month, which was incompatible with the requisite duty of exceptional diligence. The child had been about four months old when the case had gone to court, and six-and-a-half years old when the domestic proceedings had ended. In cases involving a relationship between a person and his or her child, the lapse of a considerable amount of time could lead to the legal issue being determined on the basis of a *fait accompli*.

D.B. and Others v. Switzerland (nos. 58817/15 and 58252/15)

22 November 2022

This case concerned a same-sex couple who were registered partners and had entered into a gestational surrogacy contract in the United States under which the third applicant had been born. The applicants complained in particular that the Swiss authorities had refused to recognise the parent child relationship established by a US court between the intended father (the first applicant) and the child born through surrogacy (the third applicant). The Swiss authorities had recognised the parent child relationship between the genetic father (the second applicant) and the child.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention in respect of the applicant child and **no violation of Article 8** (right to respect for family life) in respect of the intended father and the genetic father. Regarding the child, it noted in particular that, at the time he was born, domestic law had afforded the applicants no possibility of recognition of the parent-child relationship between the intended parent and the child. Adoption had been open to married couples only, to the exclusion of those in registered partnerships. Not until 1 January 2018 had it become possible to adopt the child of a registered partner. Thus, for nearly seven years and eight months, the applicants had had no possibility of securing definitive recognition of the parent child relationship. The Court therefore held that for the Swiss authorities to withhold recognition of the lawfully issued foreign birth certificate in so far as it concerned the parent-child relationship between the intended father and the child born through surrogacy in the United States, without providing for alternative means of recognising that relationship, had not been in the best interests of

the child. In other words the general and absolute impossibility, for a significant period of time, of obtaining recognition of the relationship between the child and the first applicant had amounted to a disproportionate interference with the third applicant's right to respect for private life. Switzerland had therefore overstepped its margin of appreciation by not making timely legislative provision for such a possibility. Regarding, on the other hand, the first and second applicants, the Court first observed that the surrogacy arrangement which they had used to start a family had been contrary to Swiss public policy. It went on to hold that the practical difficulties they might encounter in their family life absent recognition under Swiss law of the relationship between the first and third applicants were within the limits of compliance with Article 8 of the Convention.

K.K. and Others v. Denmark (no. 25212/21)

6 December 2022

This case concerned the refusal to allow the first applicant to adopt the two other applicants, who were twins, as a "stepmother" in Denmark. The twins were born to a surrogate mother in Ukraine who had been paid for her service under a contract concluded with the first applicant and her partner, the biological father of the children. Under Danish law, adoption was not permitted in cases where payment had been made to the person who had to consent to the adoption.

The Court held that in the present case there had been **no violation of Article 8** (right to respect for family life) of the Convention, finding that there had been no damage to the family life of the applicants, who lived together with the children's father unproblematically. It also held that there had been **no violation of Article 8** (right to respect for private life) of the Convention as regards the mother's right to respect for her private life as the domestic authorities had been correct in ruling so, in order to protect the public interest in controlling paid surrogacy, over the first applicant's right to respect for private life. The Court held, however, that there had been a **violation of Article 8** as regards the right to respect for the private lives of the two applicant children, finding that the Danish authorities had failed to strike a balance between their interests and the societal interests in limiting the negative effects of commercial surrogacy, in particular as regards their legal situation and legal relationship to the first applicant.

C v. Italy (no. 47196/21)

31 August 2023[11]

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

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention with regard to the establishment of a legal parent-child relationship between the applicant and her biological father, and **no violation of Article 8** of the Convention with regard to the establishment of a legal parent-child relationship between the applicant and her intended mother. The Court recalled in particular that, as it had found in previous cases, under Article 8 of the Convention, domestic law had to provide a possibility of recognition of the legal relationship between a child born through a surrogacy arrangement abroad and the intended father where he was the biological father. Concerning, firstly, legal parent-child relationship between the applicant and her biological father, the Court noted that in the present case the domestic courts had been unable to take a swift decision to protect the applicant's interest in having her legal relationship with her biological father established. The applicant, aged four, had been kept since birth in a state of protracted uncertainty as to her personal identity and, as she had no legally established parentage, was considered a stateless person in Italy. The Court therefore held that, despite the margin of appreciation afforded to the State, the Italian authorities had failed to fulfil their positive obligation to ensure the applicant's right to respect for her private life under the Convention. As to

[11]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

legal parent-child relationship between the applicant and her intended mother, the Court found that while Italian law did not allow for the details of the birth certificate to be registered concerning the intended mother, it nevertheless afforded her the possibility of legally recognising the child by means of adoption. By refusing to enter the details of the applicant's Ukrainian birth certificate in the relevant Italian civil register in so far as it designated the intended mother as her mother, the respondent State had thus not exceeded its margin of appreciation.

See also, recently:

A.M. v. Norway (no. 30254/18)
24 March 2022

Bonzano and Others v. Italy, Modanese v. Italy and Nuti and Others c. Italy
30 May 2023 (decisions on the admissibility – Committee)

Unborn child and right to life

Vo v. France
8 July 2004 (Grand Chamber)
Owing to a mix-up with another patient with the same surname, the applicant's amniotic sack was punctured, making a therapeutic abortion necessary. She maintained that the unintentional killing of her child should have been classified as manslaughter.
The Court held that there had been **no violation of Article 2** (right to life) of the Convention. It found that it was not currently desirable or possible to rule on whether an unborn child was a person under Article 2 of the Convention. And, there was no need for a criminal law remedy; remedies already existed allowing the applicant to prove medical negligence and to seek compensation.

Use of surgical symphysiotomy

L.F. v. Ireland (no. 62007/17), K.O'S v. Ireland (no. 61836/17) and W.M. v. Ireland (no. 61872/17)
10 November 2020 (decisions on the admissibility)
In the 1960s each of the applicants underwent surgical symphysiotomies[12] in maternity hospitals either during or in advance of labour. Before the Court, they complained that the use of the procedure in Ireland had not been the subject of a Convention-compliant domestic investigation and that, in addition, they had been unable to fully litigate their claims at the domestic level. One applicant also complained that in allowing symphysiotomies to take place the State had failed in its obligation to protect women from inhuman and degrading treatment.
The Court declared the applications **inadmissible**. In the case of K.O'S, in particular, the Court found the complaint to be inadmissible as the applicant had failed to exhaust domestic remedies. In the other two cases it found the applicants' complaints to be manifestly ill-founded, indicating that a question regarding the exhaustion of domestic remedies also arose.

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[12]. A surgical symphysiotomy involves partially cutting through the fibres of the pubis symphysis (the joint uniting the pubic bones) so as to enlarge the capacity of the pelvis. The procedure allows the pubis symphysis to separate so as to facilitate natural childbirth where there is a mechanical problem.