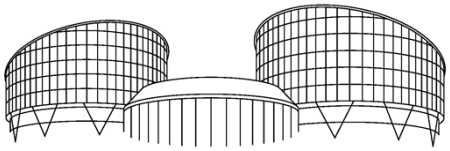

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

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)

STRASBOURG

10 April 2019

This opinion is final. It may be subject to editorial revision.

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Guido Raimondi, *President*,
Angelika Nußberger,
Linos-Alexandre Sicilianos,
Robert Spano,
Vincent A. De Gaetano,
Jon Fridrik Kjølbro,
André Potocki,
Faris Vehabović,
Iulia Antoanella Motoc,
Branko Lubarda,
Yonko Grozev,
Carlo Ranzoni,
Georges Ravarani,
Pauliine Koskelo,
Tim Eicke,
Péter Paczolay,
Lado Chanturia, *judges*,
and Roderick Liddell, *Registrar*,

Having deliberated in private on 20 March 2019,

Delivers the following opinion, which was adopted on that date:

PROCEDURE

1. In a letter of 12 October 2018 sent to the Registrar of the European Court of Human Rights ("the Court"), the French Court of Cassation requested the Court, under Article 1 of Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("Protocol No. 16"), to give an advisory opinion on the questions set out at paragraph 9 below.

2. On 3 December 2018 the panel of five judges of the Grand Chamber of the Court, composed in accordance with Article 2 § 3 of Protocol No. 16 and Rule 93 § 1 of the Rules of Court, decided to accept the request.

3. The composition of the Grand Chamber was determined on 4 December 2018 in accordance with Rules 24 § 2 (h) and 94 § 1.

4. By letters of 7 December 2018 the Registrar of the Court informed the parties to the domestic proceedings that the President of the Grand Chamber was inviting them to submit to the Court written observations on the request for an advisory opinion, by 16 January 2019 (Article 3 of Protocol No. 16 and Rule 94 § 3). Within that time-limit, written observations were submitted jointly by Dominique Mennesson, Fiorella Mennesson, Sylvie

Mennesson and Valentina Mennesson. The Principal Public Prosecutor at the Paris Court of Appeal did not submit written observations.

5. The French Government ("the Government") submitted written observations under Article 3 of Protocol No. 16. The Commissioner for Human Rights of the Council of Europe did not avail herself of that right.

6. Written observations were also received from the Governments of the United Kingdom, the Czech Republic and Ireland, the French Ombudsman's Office and the Center of Interdisciplinary Gender Studies at the Department of Sociology and Social Research of the University of Trento, and from the non-governmental organisations the AIRE Centre, the Helsinki Foundation for Human Rights, ADF International, the International Coalition for the Abolition of Surrogate Motherhood, and the Association of Catholic Doctors of Bucharest, all of which had been given leave by the President to intervene (Article 3 of Protocol No. 16). The non-governmental organisation Child Rights International Network, which had also been given leave to intervene, did not submit any observations.

7. Copies of the observations received were transmitted to the Court of Cassation, which did not make any comments (Rule 94 § 5).

8. After the close of the written procedure, the President of the Grand Chamber decided that no oral hearing should be held (Rule 94 § 6).

THE QUESTIONS ASKED

9. The questions asked by the Court of Cassation in its request for an advisory opinion are worded as follows:

> "1. By refusing to enter in the register of births, marriages and deaths the details of the birth certificate of a child born abroad as the result of a gestational surrogacy arrangement, in so far as the certificate designates the 'intended mother' as the 'legal mother', while accepting registration in so far as the certificate designates the 'intended father', who is the child's biological father, is a State Party overstepping its margin of appreciation under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms? In this connection should a distinction be drawn according to whether or not the child was conceived using the eggs of the 'intended mother'?
>
> 2. In the event of an answer in the affirmative to either of the two questions above, would the possibility for the intended mother to adopt the child of her spouse, the biological father, this being a means of establishing the legal mother-child relationship, ensure compliance with the requirements of Article 8 of the Convention?"

THE BACKGROUND AND THE DOMESTIC PROCEEDINGS UNDERLYING THE REQUEST FOR AN OPINION

10. In its judgment in *Mennesson v. France* (no. 65192/11, ECHR 2014 (extracts)) the Court examined, from the standpoint of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), the inability of two children born in California through a gestational surrogacy arrangement, and their intended parents, to obtain recognition in France of the parent-child relationship legally established between them in the United States. The applicants specified that, in accordance with Californian law, the surrogate mother had not been remunerated but had merely received expenses (see paragraph 8 of the judgment).

11. The Court held that there had been no violation of the right of the children and the intended parents to respect for their family life, but that there had been a violation of the children's right to respect for their private life.

12. On the latter point the Court emphasised that "respect for private life require[d]that everyone should be able to establish details of their identity as individual human beings, which include[d] the legal parent-child relationship" and that "an essential aspect of the identity of individuals [was] at stake where the legal parent-child relationship [was] concerned" (see paragraph 96 of the judgment). It added that the "right to respect for ... private life [of children born abroad through surrogacy] – which implie[d] that everyone must be able to establish the substance of his or her identity, including the legal parent-child relationship – [was] substantially affected [by the non-recognition in French law of the legal parent-child relationship between these children and the intended parents]". The Court inferred from this that "a serious question [arose] as to the compatibility of that situation with the children's best interests, respect for which must guide any decision in their regard" (see paragraphs 96 and 99 of the judgment).

13. The Court went on to rule expressly on the issue of recognition of the legal parent-child relationship (*lien de filiation*) between the two children and the intended father, who was their biological father. It found as follows (paragraph 100 of the judgment):

> "[The above] analysis takes on a special dimension where, as in the present case, one of the intended parents is also the child's biological parent. Having regard to the importance of biological parentage as a component of identity ..., it cannot be said to be in the interests of the child to deprive him or her of a legal relationship of this nature where the biological reality of that relationship has been established and the child and parent concerned demand full recognition thereof. Not only was the relationship between the [children] and their biological father not recognised when registration of the details of the birth certificates was requested, but formal recognition by means of a declaration of paternity or adoption or through the effect of *de facto* enjoyment of civil status would fall foul of the prohibition established by

> the Court of Cassation in its case-law in that regard ... The Court considers, having regard to the consequences of this serious restriction on the identity and right to respect for private life of the [children], that by thus preventing both the recognition and establishment under domestic law of their legal relationship with their biological father, the respondent State overstepped the permissible limits of its margin of appreciation."

14. In its request for an advisory opinion the Court of Cassation pointed out that its case-law had evolved in the wake of the *Mennesson* judgment. Registration of the details of the birth certificate of a child born through surrogacy abroad was now possible in so far as the certificate designated the intended father as the child's father where he was the biological father. It continued to be impossible with regard to the intended mother. Where the intended mother was married to the father, however, she now had the option of adopting the child if the statutory conditions were met and the adoption was in the child's interests; this resulted in the creation of a legal mother-child relationship. French law also facilitated adoption by one spouse of the other spouse's child.

15. In a resolution adopted on 21 September 2017 (CM/ResDH(2017)286) the Committee of Ministers of the Council of Europe declared that it had exercised its functions under Article 46 § 2 of the Convention regarding the execution of that judgment, and decided to close its examination of the case.

16. In a decision of 16 February 2018 the French Civil Judgments Review Court granted a request for re-examination of the appeal on points of law submitted on 15 May 2017 under Article L. 452-1 of the Code of Judicial Organisation by Mr and Mrs Mennesson, acting as the legal representatives of their two minor children, against the Paris Court of Appeal judgment of 18 March 2010 annulling the entry in the French register of births, marriages and deaths of the details of the children's US birth certificates.

17. The Court of Cassation's request for an advisory opinion from the Court was made in the context of re-examination of that appeal.

18. The Court of Cassation has adjourned the proceedings pending the Court's opinion.

RELEVANT INTERNATIONAL LAW AND INSTRUMENTS

19. The Court refers in particular to Articles 2, 3, 7, 8, 9 and 18 of the United Nations Convention on the Rights of the Child of 20 November 1989, and to Articles 1 and 2 of the Optional Protocol on the sale of children, child prostitution and child pornography.

20. The Court has also taken into account the activities of the Hague Conference on Private International Law.

21. It has likewise considered, among other materials, the report of 15 January 2018 by the United Nations Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material (A/HRC/37/60).

COMPARATIVE-LAW MATERIALS

22. The Court undertook a comparative-law survey covering forty-three States Parties to the Convention not including France: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, the Netherlands, the Republic of North Macedonia, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine and the United Kingdom.

23. The survey shows that surrogacy arrangements are permitted in nine of these forty-three States, that they appear to be tolerated in a further ten and that they are explicitly or implicitly prohibited in the remaining twenty-four States. Furthermore, in thirty-one of the States concerned, including twelve in which surrogacy arrangements are prohibited, it is possible for an intended father who is the biological father to establish paternity in respect of a child born through surrogacy. In nineteen of the forty-three States (Albania, Andorra, Armenia, Azerbaijan, Belgium, the Czech Republic, Finland, Georgia, Germany, Greece, Luxembourg, the Netherlands, Norway, Russia, Slovenia, Spain, Sweden, Ukraine and the United Kingdom), including seven which prohibit surrogacy arrangements (Finland, Germany, Luxembourg, Norway, Slovenia, Spain and Sweden), it is possible for the intended mother to establish maternity of a child born through a surrogacy arrangement to whom she is not genetically related.

24. The procedure for establishing or recognising a legal parent-child relationship between children born through a surrogacy arrangement and the intended parents varies from one State to another, and several different procedures may be available within a single State. The avenues available include registration of the foreign birth certificate, adoption or court proceedings not involving adoption. In particular, registration of the foreign birth certificate is possible in sixteen of the nineteen member States surveyed in which surrogacy arrangements are tolerated or permitted (Albania, Andorra, Armenia, Azerbaijan, Belgium, Georgia, Greece, Moldova, the Netherlands, the Republic of North Macedonia, Poland, Portugal, Romania, Russia, Ukraine and the United Kingdom) and in seven of the twenty-four States which prohibit such arrangements (Austria,

Finland, Germany, Iceland, Malta, Norway and Turkey), at least in so far as the certificate designates an intended parent with a genetic link to the child. It is possible to have a legal parent-child relationship established or recognised by means of court proceedings not involving adoption in the nineteen States which permit or tolerate surrogacy arrangements and in nine of the twenty-four States which prohibit them. Meanwhile, adoption is possible in five of the States which permit or tolerate surrogacy arrangements (Albania, Belgium, the Czech Republic, the Netherlands and Portugal) and in twelve of the twenty-four States which prohibit them (Bulgaria, Croatia, Estonia, Finland, Germany, Iceland, Luxembourg, Norway, Slovenia, Spain, Sweden and Turkey), particularly in respect of parents who are not genetically related to the child.

THE COURT'S OPINION

I. PRELIMINARY CONSIDERATIONS

25. The Court observes that, as stated in the Preamble to Protocol No. 16, the aim of the advisory-opinion procedure is to further enhance the interaction between the Court and national authorities and thereby reinforce implementation of the Convention, in accordance with the principle of subsidiarity, by allowing the designated national courts and tribunals to request the Court to give an opinion on "questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto" (Article 1 § 1 of Protocol No. 16) arising "in the context of a case pending before [them]" (Article 1 § 2 of Protocol No. 16). The aim of the procedure is not to transfer the dispute to the Court, but rather to give the requesting court or tribunal guidance on Convention issues when determining the case before it (see paragraph 11 of the Explanatory Report). The Court has no jurisdiction either to assess the facts of a case or to evaluate the merits of the parties' views on the interpretation of domestic law in the light of Convention law, or to rule on the outcome of the proceedings. Its role is limited to furnishing an opinion in relation to the questions submitted to it. It is for the requesting court or tribunal to resolve the issues raised by the case and to draw, as appropriate, the conclusions which flow from the opinion delivered by the Court for the provisions of national law invoked in the case and for the outcome of the case.

26. The Court also infers from Article 1 §§ 1 and 2 of Protocol No. 16 that the opinions it delivers under this Protocol must be confined to points that are directly connected to the proceedings pending at domestic level.

Their value also lies in providing the national courts with guidance on questions of principle relating to the Convention applicable in similar cases.

27. The present request for an advisory opinion was made in the context of domestic proceedings designed to re-examine the appeal on points of law by the applicants in the case of *Mennesson*, in which the Court held that there had been no violation of the applicants' right to respect for their family life, but found a violation of the children's right to respect for their private life (see paragraph 11 above). Hence, it appears that the domestic proceedings concern the recognition in the French legal system – regard being had to the children's right to respect for their private life – of a legal parent-child relationship between an intended mother and children born abroad through a gestational surrogacy arrangement and conceived using the gametes of the intended father and a third-party donor, in a situation where registration of the details of the foreign birth certificate is possible in so far as the certificate designates the intended father where he is the children's biological father.

28. Consequently, the domestic proceedings do not concern a situation in which a child born through a gestational surrogacy arrangement abroad was conceived using the eggs of the intended mother.

29. It also follows from the above that the opinion will not address situations involving traditional surrogacy arrangements, that is to say, where the child was conceived using the eggs of the surrogate mother. Moreover, the questions put by the Court of Cassation do not refer to such situations.

30. It further follows that the opinion will not address the right to respect for family life of the children or the intended parents, or the latter's right to respect for their private life.

31. Accordingly, the Court's opinion will deal with two issues.

32. Firstly, it will address the question whether the right to respect for private life, within the meaning of Article 8 of the Convention, of a child born abroad through a gestational surrogacy arrangement, which requires the legal relationship between the child and the intended father, where he is the biological father, to be recognised in domestic law, also requires that domestic law provide a possibility of recognition of a legal parent-child relationship with the intended mother, who is 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.

33. Secondly, if the first question is answered in the affirmative, it will address the question whether the child's right to respect for his or her private life within the meaning of Article 8 of the Convention requires 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, or

whether it might allow other means to be used, such as adoption of the child by the intended mother.

34. In formulating its opinion the Court will take due account of the written observations and documents produced by the various participants in the proceedings (see paragraphs 4-6 above). Nevertheless, it stresses that its task is not to reply to all the grounds and arguments submitted to it or to set out in detail the basis for its reply; under Protocol No. 16, the Court's role is not to rule in adversarial proceedings on contentious applications by means of a binding judgment but rather, within as short a time frame as possible, to provide the requesting court or tribunal with guidance enabling it to ensure respect for Convention rights when determining the case before it.

II. THE FIRST ISSUE

35. According to the Court's case-law, Article 8 of the Convention requires that domestic law provide a possibility of recognition of the legal relationship between a child born through a surrogacy arrangement abroad and the intended father where he is the biological father. As stated previously, the Court expressly found in *Mennesson*, cited above, that the lack of such a possibility entailed a violation of the child's right to respect for his or her private life as guaranteed by Article 8 (see *Mennesson*, cited above, §§ 100-01; see also *Labassee v. France*, no. 65941/11, 26 June 2014; *Foulon and Bouvet v. France*, nos. 9063/14 and 10410/14, 21 July 2016; and *Laborie v. France*, no. 44024/13, 19 January 2017).

36. In connection with the foregoing the Court notes that, to date, it has placed some emphasis in its case-law on the existence of a biological link with at least one of the intended parents (see the judgments cited above, and also the judgment in *Paradiso and Campanelli v. Italy* ([GC], no. 25358/12, § 195, 24 January 2017)). It observes in that regard that the question to be addressed in the present case explicitly includes the factual element of a father with a biological link to the child in question. The Court will limit its answer accordingly, while making clear that it may be called upon in the future to further develop its case-law in this field, in particular in view of the evolution of the issue of surrogacy.

37. In order to determine in the context of the present request for an advisory opinion (see paragraphs 32, 34 and 36 above) whether Article 8 of the Convention requires domestic law to provide a possibility of recognition of the relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, two factors will carry particular weight: the child's best interests and the scope of the margin of appreciation available to the States Parties.

38. As regards the first factor, the Court refers to the essential principle according to which, whenever the situation of a child is in issue, the best interests of that child are paramount (see, in particular, *Paradiso and*

Campanelli, cited above, § 208; *X v. Latvia* [GC], no. 27853/09, § 95, ECHR 2013; *Mennesson*, cited above, §§ 81 and 99; *Labassee*, cited above, §§ 60 and 78; and *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01, § 133, 28 June 2007).

39. The Court recognised in *Mennesson* (cited above, § 99) and *Labassee* (cited above, § 78) that "France [might] wish to deter its nationals from going abroad to take advantage of methods of assisted reproduction that are prohibited on its own territory". Nevertheless, it observed that the effects of the non-recognition in French law of the legal parent-child relationship between children thus conceived and the intended parents were not limited to the parents alone, who had chosen a particular method of assisted reproduction prohibited by the French authorities. They also affected the children themselves, whose right to respect for their private life was substantially affected.

40. The lack of recognition of a legal relationship between a child born through a surrogacy arrangement carried out abroad and the intended mother thus has a negative impact on several aspects of that child's right to respect for its private life. In general terms, as observed by the Court in *Mennesson* and *Labassee*, cited above, the non-recognition in domestic law of the relationship between the child and the intended mother is disadvantageous to the child, as it places him or her in a position of legal uncertainty regarding his or her identity within society (§§ 96 and 75 respectively). In particular, there is a risk that such children will be denied the access to their intended mother's nationality which the legal parent-child relationship guarantees; it may be more difficult for them to remain in their intended mother's country of residence (although this risk does not arise in the case before the Court of Cassation, as the intended father, who is also the biological father, has French nationality); their right to inherit under the intended mother's estate may be impaired; their continued relationship with her is placed at risk if the intended parents separate or the intended father dies; and they have no protection should their intended mother refuse to take care of them or cease doing so.

41. The Court is mindful of the fact that, in the context of surrogacy arrangements, the child's best interests do not merely involve respect for these aspects of his or her right to private life. They include other fundamental components that do not necessarily weigh in favour of recognition of a legal parent-child relationship with the intended mother, such as protection against the risks of abuse which surrogacy arrangements entail (see *Paradiso and Campanelli*, cited above, § 202) and the possibility of knowing one's origins (see, for instance, *Mikulić v. Croatia*, no. 53176/99, §§ 54-55, ECHR 2002-I).

42. Nevertheless, in view of the considerations outlined at paragraph 40 above and the fact that the child's best interests also entail the legal identification of the persons responsible for raising him or her, meeting his

or her needs and ensuring his or her welfare, as well as the possibility for the child to live and develop in a stable environment, the Court considers that the general and absolute impossibility of obtaining recognition of the relationship between a child born through a surrogacy arrangement entered into abroad and the intended mother is incompatible with the child's best interests, which require at a minimum that each situation be examined in the light of the particular circumstances of the case.

43. As regards the second factor, and as observed by the Court in *Mennesson* (cited above, § 77) and *Labassee* (cited above, § 57), the scope of the States' margin of appreciation will vary according to the circumstances, the subject matter and the context; in this respect one of the relevant factors may be the existence or non-existence of common ground between the laws of the Contracting States. Thus, where there is no consensus within the member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin of appreciation will be wide. The above-mentioned comparative-law survey shows that, despite a certain trend towards the possibility of legal recognition of the relationship between children conceived through surrogacy abroad and the intended parents, there is no consensus in Europe on this issue (see paragraph 23 above).

44. However, the Court also observed in the same judgments (§§ 77 and 80, and §§ 56 and 59 respectively) that, where a particularly important facet of an individual's identity was at stake, such as when the legal parent-child relationship was concerned, the margin allowed to the State was normally restricted. It inferred from this that the margin of appreciation afforded to the respondent State needed to be reduced (ibid.).

45. In reality, the issues at stake in the context of recognition of a legal parent-child relationship between children born through surrogacy and the intended parents go beyond the question of the children's identity. Other essential aspects of their private life come into play where the matter concerns the environment in which they live and develop and the persons responsible for meeting their needs and ensuring their welfare (see also paragraphs 40-42 above). This lends further support to the Court's finding regarding the reduction of the margin of appreciation.

46. In sum, given the requirements of the child's best interests and the reduced margin of appreciation, the Court is of the opinion that, in a situation such as that referred to by the Court of Cassation in its questions (see paragraphs 9 and 32 above) and as delimited by the Court in paragraph 36 above, the right to respect for private life, within the meaning of Article 8 of the Convention, of a child born abroad through a gestational surrogacy arrangement 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".

47. Although the domestic proceedings do not concern the case of a child born through a gestational surrogacy arrangement abroad and conceived using the eggs of the intended mother, the Court considers it important to emphasise that, where the situation is otherwise similar to that in issue in the present proceedings, the need to provide a possibility of recognition of the legal relationship between the child and the intended mother applies with even greater force in such a case.

III. THE SECOND ISSUE

48. The second issue concerns the question whether the right to respect for private life of a child born through a gestational surrogacy arrangement abroad, in a situation where he or she was conceived using the eggs of a third-party donor, requires 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, or whether it might allow other means to be used, such as adoption of the child by the intended mother.

49. It is in the child's interests in such a situation for the uncertainty surrounding the legal relationship with his or her intended mother to be as short-lived as possible. As stated previously, unless and until that relationship is recognised in domestic law, the child is in a vulnerable position as regards several aspects of his or her right to respect for private life (see paragraph 40 above).

50. However, it cannot be inferred from this that the States Parties are obliged to opt for registration of the details of the birth certificates legally established abroad.

51. The Court notes that there is no consensus in Europe on this issue: where the establishment or recognition of a legal relationship between the child and the intended parent is possible, the procedure varies from one State to another (see paragraph 24 above). The Court also observes that an individual's identity is less directly at stake where the issue is not the very principle of the establishment or recognition of his or her parentage, but rather the means to be implemented to that end. Accordingly, the Court considers that the choice of means by which to permit recognition of the legal relationship between the child and the intended parents falls within the States' margin of appreciation.

52. In addition to this finding regarding the margin of appreciation, the Court considers that Article 8 of the Convention does not impose a general obligation on States to recognise *ab initio* a parent-child relationship between the child and the intended mother. What the child's best interests – which must be assessed primarily *in concreto* rather than *in abstracto* – require is for recognition of that relationship, legally established abroad, to

be possible at the latest when it has become a practical reality. It is in principle not for the Court but first and foremost for the national authorities to assess whether and when, in the concrete circumstances of the case, the said relationship has become a practical reality.

53. The child's best interests, thus construed, cannot be taken to mean that recognition of the legal parent-child relationship between the child and the intended mother, required in order to secure the child's right to respect for private life within the meaning of Article 8 of the Convention, entails an obligation for States to register the details of the foreign birth certificate in so far as it designates the intended mother as the legal mother. Depending on the circumstances of each case, other means may also serve those best interests in a suitable manner, including adoption, which, with regard to the recognition of that relationship, produces similar effects to registration of the foreign birth details.

54. What is important is that at the latest when, according to the assessment of the circumstances of each case, the relationship between the child and the intended mother has become a practical reality (see paragraph 52 above), an effective mechanism should exist enabling that relationship to be recognised. Adoption may satisfy this requirement provided that the conditions which govern it are appropriate and the procedure enables a decision to be taken rapidly, so that the child is not kept for a lengthy period in a position of legal uncertainty as regards the relationship. It is self-evident that these conditions must include an assessment by the courts of the child's best interests in the light of the circumstances of the case.

55. In sum, given the margin of appreciation available to States as regards the choice of means, alternatives to registration, notably adoption by the intended mother, may be acceptable in so far as the procedure laid down by domestic law ensures that they can be implemented promptly and effectively, in accordance with the child's best interests.

56. The Court of Cassation stated in its request for an opinion that French law facilitated adoption of the spouse's child (see paragraph 14 above). This may be full adoption (*adoption plénière*) or simple adoption (*adoption simple*).

57. The French Government submitted that, between 5 July 2017 and 2 May 2018, virtually all applications for adoption of the spouse's child concerning children born through surrogacy abroad had been granted. The Court observes, however, that this procedure is available only to intended parents who are married. Furthermore, it is apparent from the observations of the French Ombudsman in particular that uncertainty remains as regards the arrangements for adopting the spouse's child in this context, for instance regarding the need to obtain the prior consent of the surrogate mother.

58. That being said, it is not for the Court to express a view in the context of its advisory opinion on whether French adoption law satisfies the

criteria set forth at paragraphs 54 to 55 above. That is a matter for the domestic courts to decide (see paragraph 25 above), taking into account the vulnerable position of the children concerned while the adoption proceedings are pending.

59. Lastly, the Court is aware of the complexity of the issues raised by surrogacy arrangements. It observes that the Hague Conference on Private International Law has been working on a proposal for an international convention designed to address these issues on the basis of principles to be accepted by the States acceding to that instrument (see paragraph 20 above).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

Delivers the following opinion:

In a situation where, as in the scenario outlined in the questions put by the Court of Cassation, 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 within the meaning of Article 8 of the Convention 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 provided that the procedure laid down by domestic law ensures that it can be implemented promptly and effectively, in accordance with the child's best interests.

Done in English and in French, and delivered in writing on 10 April 2019, pursuant to Rule 94 §§ 9 and 10 of the Rules of Court.

Roderick Liddell
Registrar

Guido Raimondi
President