



## Rulings on the transcription into French birth registers of children born abroad of a surrogate mother

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**Surrogate motherhood alone  
cannot justify the refusal to transcribe into French birth registers  
the foreign birth certificate of a child who has one French parent**

### The Facts

The Court of Cassation was asked to consider two cases. In each of them, a French citizen acknowledged being the father to an unborn child in Russia: the birth certificate drawn up in Russia mentions the man as being the father and the woman who gave birth as being the mother. The man then asked for the transcription of the Russian birth certificate into the French birth registers. But the Public Prosecutor opposed the transcription, suspecting the use of a surrogate mother.

### Legal background

Several rules of law were at stake

**Sections 310-1 *et seq* of the French Civil Code:** filiation is established in particular when the father and the mother recognize the child. Motherhood can be challenged by the prosecution department by bringing evidence that the mother did not give birth to the child; fatherhood can be challenged by establishing that the author of the acknowledgement of paternity is not the actual father.

**Section 18 of the French Civil Code:** a child who has at least one French parent is French.

**Section 47 of the French Civil Code:** faith must be given to the civil status certificate of a French citizen, drawn up in a foreign country in the forms used in the said country, unless the certificate is unlawful or forged or the facts declared therein do not correspond to reality.

**Decree of August 3, 1962:** a French citizen whose civil status certificate was drawn up abroad can have it transcribed into French civil status registers.

**Sections 16-7 and 16-9 of the French Civil Code:** any agreement related to surrogate motherhood is null and void, and such nullity is of public order.

### Jurisprudence of the Court of Cassation

In its rulings of April 6, 2011, September 13, 2013, and March 19, 2014, the Court of Cassation forbid a surrogate motherhood agreement to become effective for such an agreement is null and void as of public order and in contradiction with an essential principle of French law: the principle of the unavailability of personal status. Therefore the foreign birth certificate of a child born under such a surrogate motherhood agreement could not be transcribed into French civil status registers, even where the father and the mother, mentioned on the birth certificate, were the biological father and the woman who gave birth.

### Jurisprudence of the European Human Rights Court

According to the EHRC (rulings in the Menesson and Labassée cases, June 26, 2014), the banning of surrogate motherhood is not in contradiction with the European Convention on the Protection of Human Rights and Fundamental Freedoms, and the refusal to transcribe a birth certificate drawn up abroad on the ground that the birth was the fruit of surrogate motherhood is compatible with the right to respect for family life.

However, the EHRC considered that the refusal to transcribe the filiation of the children as it appeared on the foreign certificate, with respect to the biological father, constitutes a disproportionate prejudice to the children's private life, as it is protected by Article 8 of the Convention. Each individual should have the right to establish the details of his identity as a human being, including his filiation.

## The issue at stake before the Court of Cassation

Could the refusal to transcribe into French birth registers the birth certificate, duly drawn up in a foreign country, of a child who has at least one French parent, be motivated by the sole fact that the birth was the result of a process involving surrogate motherhood?

## The Court of Cassation's ruling

The birth certificates the transcription of which was requested, mentioned as the father the man who had acknowledged being the father to the child, and as the mother the woman who had given birth. Therefore the rules pertaining to transcription into French civil status registers, construed in the light of Article 8 of the European Human Rights Convention, should apply to this case. Therefore the theory of a fraud cannot hinder the transcription of a birth certificate.

The decision which dismissed the request for transcription on the sole basis that the birth resulted from a process involving surrogate motherhood is quashed and reversed.

The appeal against the second decision, which ordered the transcription notwithstanding the existence of a surrogate motherhood agreement, is dismissed.

The cases referred to the Court of Cassation did not deal with the issue of the transcription of filiation established abroad with respect to intended parents: the Court has therefore not ruled in this matter.