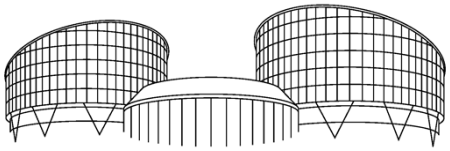

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF C.E. AND OTHERS v. FRANCE

(Applications nos. 29775/18 and 29693/19)

JUDGMENT

Art 8 • Positive obligations • Inability to obtain recognition of legal parent-child relationship between child and biological mother's former female partner • Respect for child's best interests • Family life comparable to that led by most families after separation of couple • Private life • Existence of legal instruments enabling legal recognition of existing parent-child relationship between child and biological mother's former female partner

STRASBOURG

24 March 2022

FINAL

05/09/2022

This judgment became final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of C.E. and Others v. France,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O'Leary, *President*,
Mārtiņš Mits,
Ganna Yudkivska,
Lətif Hüseynov,
Ivana Jelić,
Mattias Guyomar,
Kateřina Šimáčková, *judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the applications (nos. 29775/18 and 29693/19) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five French nationals, C.E., C.B. and M.B. (application no. 29775/18) and A.E. and T.G. (application no. 29693/19) ("the applicants"), on 20 June 2018 and 3 June 2019 respectively;

the decision to give notice to the French Government ("the Government") of the complaint under Article 8 of the Convention and to declare inadmissible the complaints under Article 14 of the Convention taken in conjunction with that provision;

the decision not to disclose the applicants' names;

the parties' observations;

Having deliberated in private on 8 February and 1 March 2022,

Delivers the following judgment, which was adopted on the latter date:

INTRODUCTION

1. The two applications concerned the applicants' inability to obtain legal recognition of a parent-child relationship between a child and the former same-sex partner of that child's biological mother. Relying on Article 8 of the Convention, the applicants complained of a violation of their right to respect for their private and family life.

THE FACTS

2. The applicants C.E., C.B. and M.B. (application no. 29775/18) were born in 1974, 1967 and 2002 respectively and live in France. They were represented by Ms A. Denarnaud, lawyer. The application form was signed by the three applicants and by their lawyer.

3. The applicants A.E. and T.G. (application no. 29693/19) were born in 1980 and 2008 respectively and live in France. They were represented by Ms C. Mécary, lawyer. A.E. declared that she was acting before the Court not

only in her own name and on her own behalf, but also in the name and on behalf of T.G. She clarified that she was authorised to take legal action on behalf of T.G. under a court order for the delegation of parental responsibility on a shared basis (see paragraph 21 below).

4. The Government were represented by their Agent, Mr F. Alabrune, Director of Legal Affairs at the Ministry of Europe and Foreign Affairs.

I. APPLICATION NO. 29775/18

5. On 13 January 2002, when C.E. and C.B. had been living together as a couple for several years, C.B. gave birth to M.B., of whom she was the sole legal parent. The applicants clarified that M.B. had been conceived "with the help of a friend and donor in France".

6. C.E and C.B. raised the child together until the couple separated in 2006.

7. From that time onwards, under an amicable agreement reached with C.B., C.E. enjoyed contact rights with the child, which entailed having her to stay every other weekend and for half the school holidays. In addition, she made monthly payments to C.B. for the child's everyday care and education.

8. In March 2015 C.E. and C.B. agreed before a notary to the full adoption of the child by C.E.

A. The full adoption proceedings

1. *The Aix-en-Provence* tribunal de grande instance*'s judgment of 9 May 2016*

9. On 29 July 2015 C.E. applied to the Aix-en-Provence *tribunal de grande instance* for a full adoption order in respect of M.B. The court was asked to order the adoption while retaining the legal relationship between the child and C.B., and to rule that the child would bear the surnames of both C.B. and C.E.

10. In a judgment delivered on 9 May 2016 the court rejected the application on the following grounds:

> "The provisions of Article 345-1 of the Civil Code concerning the prerequisites for the full adoption of the spouse's child are not applicable in the present case in so far as the applicant is not married to the mother of the child [she] wishes to adopt.
>
> The Court of Cassation has accepted that 'the use of assisted reproductive technology in the form of artificial insemination performed abroad using an anonymous donor does not preclude the adoption, by the mother's spouse, of the child born through such reproductive means, provided that the statutory prerequisites for adoption are met and that such adoption is in keeping with the child's interests', notwithstanding Article L. 2141-2 of the Public Health Code, under which such assistance is not available to same-sex female couples in France.
>
> Thus, although the present application can avail itself of the provisions concerning full adoption on an individual basis, since the child ... has no established legal paternity,

it should be noted that, while the Court of Cassation's ruling is a noteworthy departure from the applicable positive law, it need not be extended to an unmarried, same-sex female couple that has been separated since 2006.

Authorising the full adoption of a child by a person whose separation from the child's mother means that she has not shared in that child's everyday life for several years would be incompatible with the provisions of Article 345, paragraph 1 of the Civil Code and with the spirit of the rules governing full adoption, the purpose of which is to create a material and emotional community around the adopted minor.

In the present case, the application conflicts with the child's interests at the present time.

Although the prerequisites as to the consent of the mother and the child are satisfied, the court considers that [C.B.'s and C.E.'s] separation, since 2006, constitutes a major impediment to a full adoption order in respect of the child ..., especially since [C.B.]'s birth certificate indicates that a civil partnership was registered with the Salon de Provence *tribunal d'instance* on 24 February 2010. ..."

2. *The Aix-en-Provence Court of Appeal's judgment of 24 November 2016*

11. On an appeal lodged by C.E., the Aix-en-Provence Court of Appeal delivered a judgment on 24 November 2016 upholding the judgment of 9 May 2016 on the following grounds:

"... [C.E.], who is not married, is thus acting in an individual capacity [under Article 343-1 of the Civil Code].

Under Article 356 of the Civil Code, '[full] adoption shall confer on the child a legal parent-child relationship that shall replace his or her initial parent-child relationship; the adopted child shall cease to be a member of his or her blood family'.

It is not certain that [C.B.], the child's biological mother, who gave her consent to the adoption, truly understood that her daughter's adoption by [C.E.] would automatically terminate her own legal relationship to her child.

Article 357 of the Civil Code provides that "adoption shall confer on the child the surname of the adoptive parent".

[C.E.], who requested in her application that the child be given a double-barrelled surname composed of [C.B.'s and C.E.'s surnames], also appears not to have realised that the effect of adoption would be to sever the existing legal relationship between the child and her biological mother.

Article 365 of the Civil Code provides that all rights associated with parental responsibility in respect of the adoptee are vested in the adoptive parent alone.

In the present case, it is evident that such a solution is not in the child's interest, especially as [C.E and C.B.] have not lived together for ten years.

In its judgment of 20 February 2007 the Court of Cassation ruled against simple adoption by the mother's cohabiting female partner after noting that it would be contradictory, in the context of adoption, to delegate or share parental responsibility since the adoption of a minor was designed to attribute exclusive parental responsibility to the adoptive parent.

> [C.E.]'s appeals to the principle of equality and non-discrimination are irrelevant. The fact that the applicant is homosexual is immaterial to the resolution of the matter in dispute.
>
> It is [the child's] best interests and the need to maintain a legal relationship with her biological mother – a relationship which [C.B.] has not expressly renounced – which leads this court to uphold the lower court's decision to reject the application for the child's full adoption [by C.E.]."

3. The Court of Cassation's judgment of 28 February 2018

12. C.E. appealed against that judgment on points of law. In her sole ground of appeal, she first stressed that any decision in respect of the child should be guided by the child's best interests and that the State should allow established family ties to develop. She then criticised the Court of Appeal for having confined itself to observing that her application for adoption would have the effect of severing the existing parent-child relationship between the child and her biological mother and that C.E.'s and C.B.'s separation constituted a major impediment to adoption. In so doing, it had failed to examine whether the child's best interests might not require that the application be granted without applying the domestic statutes that restricted adoption to children arriving in the adoptive parent's home and entailing termination of the legal relationship between the child and her biological mother, so as to allow a legal relationship to be established with C.E., in keeping with an existing emotional bond, while preserving the existing legal relationship with C.B. She concluded that the Court of Appeal's decision was devoid of legal basis for the purposes of Article 8 of the Convention.

13. In a judgment delivered on 28 February 2018 the Court of Cassation (First Civil Division) dismissed the appeal on points of law on the following grounds:

> "... while the full adoption of a child by a person over the age of twenty-eight is authorised under Article 343-1 of the Civil Code, its effect, under Article 356 of that same Code, is to confer on that child a legal parent-child relationship that replaces his or her initial parent-child relationship and deprives him or her of any membership of his or her blood family: only full adoption of a spouse's child, as permitted under Article 345-1, leaves the child's initial relationship with that spouse and his or her family intact; the right to respect for private and family life secured by Article 8 of the Convention ... does not require that all emotional bonds be legalised by way of adoption, long-standing and established though they may be;
>
> ... after noting that, as [C.E. and C.B.] were not married, [the child]'s full adoption by [C.E.] would terminate the legal relationship between the child and her mother, who had not renounced it, which would run counter to the child's best interests, which lay in maintaining the legal relationship with her biological mother, the Court of Appeal, which was not required to undertake an examination that fell outside its remit, justified it decision in law."

B. The proceedings to establish the *de facto* enjoyment of status as child (*possession d'état d'enfant*)

14. In the meantime, on 31 May 2016, C.E. and C.B. had applied to the Narbonne *tribunal d'instance* requesting a document attesting to a matter of common knowledge (*acte de notoriété*) establishing a legal parent-child relationship between C.E. and the child. They produced, in particular, seven certificates seeking to establish that relationship and a transfer account debit statement showing frequent transfers of funds from C.E.'s account to C.B.

15. On 18 July 2016 that court noted that the child had been "acknowledged to be C.E.'s child in society, by the family and by the public authorities [and] that, in conclusion, she *de facto* enjoyed the status of being C.E.'s child".

16. On 12 October 2017 the public prosecutor at the Narbonne *tribunal de grande instance* nevertheless brought proceedings against the applicants in that court to challenge that *de facto* enjoyment of status.

17. In a judgment of 23 August 2018 (not produced in evidence), the Narbonne *tribunal de grande instance* declared the certificate issued to C.E. null and void as being contrary to law. The applicants did not appeal against that judgment.

18. To justify their failure to pursue a remedy against the judgment of 23 August 2018, the applicants produced an opinion delivered by the Court of Cassation (First Civil Division) on 7 March 2018 in proceedings to which they had not been parties. In response to the following questions: "Do Articles 317 and 320 of the Civil Code authorise the delivery of a document attesting to a matter of common knowledge, namely to *de facto* enjoyment of status, in favour of the cohabiting same-sex partner of a parent with whom a legal relationship has already been established? If not, does the inability [to deliver such a document] run counter to the child's best interests within the meaning of Article 3 § 1 of the International Convention on the Rights of the Child? And can it, in the light of the factual circumstances of the case as assessed by the lower court, constitute disproportionate interference with the right to respect for private and family life as secured by Article 8 of the Convention ..., having regard to the legitimate aim pursued?", the Court of Cassation had delivered the following opinion:

> "In extending marriage to same-sex couples, Law no. 2013-404 of 17 May 2013 expressly excluded the establishment of a parent-child relationship in respect of two individuals of the same sex otherwise than through adoption.
>
> Thus, Article 6-1 of the Civil Code, which codifies that law, provides that marriage and parentage through adoption give rise to the same legally recognised effects, rights and obligations, with the exception of those provided for in Title VII of Book I of that Code, whether the spouses or parents are of the same or opposite sex.
>
> The procedures for establishing the legal parent-child relationship under Title VII of Book I of the Civil Code, such as recognition or presumption of paternity, or *de facto*

enjoyment of status, have therefore not been extended to same-sex spouses, let alone to same-sex partners.

In any event, Article 320 of the Civil Code provides that, unless it has been challenged in the courts, the legally established relationship precludes the establishment of any conflicting parent-child relationship.

These provisions make it impossible to establish two mother-child or two father-child relationships in respect of the same child.

It follows that a legal parent-child relationship cannot be established, on the basis of *de facto* enjoyment of status, in respect of the same-sex partner of a parent with whom a legal parent-child relationship has already been established.

The review of compliance with Article 3 § 1 of the New York Convention of 20 November 1989 and with Article 8 of the Convention ..., falls within the purview of the lower courts' preliminary examination and, as such, falls outside the scope of advisory proceedings.

Consequently,

THE COURT IS OF THE OPINION THAT:

(1) The lower court cannot deliver a document attesting to a matter of common knowledge, namely to *de facto* enjoyment of status, in favour of the same-sex partner of a parent with whom a legal parent-child relationship has already been established.

(2) The second question falls within the purview of the lower court's preliminary examination and, as such, falls outside the scope of advisory proceedings."

II. APPLICATION NO. 29693/19

19. In May 2006 A.E. entered into a civil partnership with K.G., whom she had met in 2001.

20. Having had recourse to assisted reproductive technology (hereinafter "ART") abroad, K.G. gave birth to T.G. on 13 November 2008.

21. On 16 March 2010 K.G. applied to the family-affairs judge of the Rennes *tribunal de grande instance* under Articles 377 and 377-1 of the Civil Code seeking to exercise joint parental responsibility with A.E. After noting, in particular, that A.E. was financially and educationally apt to provide for the child's needs, and that the requested delegation of parental responsibility was in keeping with the child's interests, the family-affairs judge granted that request in a judgment delivered on 27 May 2010, pointing out that A.E. and K.G. were each "deemed to act with the other's consent when acting alone in the usual exercise of parental responsibility in respect of the child".

22. A.E. gave birth to a daughter in October 2011. In May 2012 the same court ordered the delegation of parental responsibility on a shared basis between A.E. and K.G.

23. A.E. and K.G. separated and their civil partnership was dissolved in October 2014. They then set up an alternating custody arrangement for the two children such that they would always be living together at one or the other of the women's homes.

24. On 2 July 2018 A.E. applied to the Rennes *tribunal de grande instance* requesting a document attesting to a matter of common knowledge to establish *de facto* enjoyment of status with regard to T.G. She argued that the statutory prerequisites for the delivery of such a document were satisfied and submitted that the lack of recognition of a legal parent-child relationship between her and T.G. would run counter to the child's best interests within the meaning of Article 3 § 1 of the International Convention on the Rights of the Child and would interfere with their right to respect for their private and family life, resulting in discrimination against her in the exercise of that right. K.G. applied to intervene in the proceedings.

25. In a decision issued on 20 December 2018, against which there lay no appeal, the Vice-President of the court dismissed that request on the following grounds:

> "... On 7 March 2018 the First Civil Division of the Court of Cassation delivered an opinion to the effect that Articles 6-1 and 320 of the Civil Code ... make it impossible to establish two mother-child or two father-child relationships in respect of the same child.
>
> A legal parent-child relationship cannot be established, on the basis of *de facto* enjoyment of status, in respect of the same-sex partner of a parent with whom a legal parent-child relationship has already been established, such that a lower court cannot deliver a document attesting to a matter of common knowledge, namely to *de facto* enjoyment of status, in favour of the same-sex partner of a parent with whom a legal parent-child relationship has already been established.
>
> It follows that French positive law makes no provision for the establishment, on the basis of *de facto* enjoyment of status, of dual parent-child relationships with regard to same-sex partners ...
>
> Concerning the child's best interests:
>
> Under Article 3.1 of the International Convention on the Rights of the Child ...
>
> The child's best interests must be assessed in the light of the particular circumstances of the case. In the present case, the child already enjoys legal recognition of his relationship to [K.G.], his biological mother. Despite the separation, he has very regular contact with [the claimant] since an alternating custody arrangement has been established. [The claimant] points out that she contributes to the child [T.G.]'s everyday care and education.
>
> In view of the very good relations kept up by the claimants, the delegation of parental responsibility on a shared basis between [K.G.] and [the claimant] in respect of the child [T.G.] delivered on 27 May 2010 ... , an appointment as testamentary guardian and the legislation on testamentary gifts would, moreover, allow [T.G.] to be sufficiently integrated into his intended family and his relationship to [the claimant] to be legally secured to a satisfactory extent.
>
> Without in any way calling into question the reality or strength of the emotional bonds formed between [the applicant] and the child since his birth, it has therefore not been shown that, in the particular circumstances of the case, the child's best interests require that a second mother-child relationship be legally established with the biological mother's former female partner.
>
> Concerning the right to respect for private and family life:

Under Article 8 of the Convention ...

Article 6-1 of the Civil Code provides that marriage and parentage through adoption give rise to the same legally recognised effects, rights and obligations, with the exception of those provided for in Title VII of Book I of that Code, whether the spouses or parents are of the same or opposite sex. The procedures for establishing the legal parent-child relationship under Title VII of Book I of the Civil Code, such as recognition or presumption of paternity, or *de facto* enjoyment of status, have therefore not been extended to same-sex spouses, let alone to same-sex cohabiting partners.

For the purposes of *de facto* enjoyment of status, a document attesting to a matter of common knowledge constitutes *ex parte* evidence that is only valid until proof to the contrary is provided. Contrary to what the applicants' counsel asserts, it is therefore a presumption that applies to parent-child relationships based on biological lineage and relates to an individual's personal status. Its purpose is to forestall the conflicts that would otherwise arise from the legal recognition of dual relationships of the same nature in a kinship system based on the principles of sexual difference and biological lineage, whether real or symbolic, which can be derogated from solely in the context of marriage and through adoption.

The statements and testimony produced confirm that [T.G.]'s birth was desired by [K.G.] and [the claimant] when they lived together as cohabiting partners. That birth was made possible through ART administered abroad involving a third-party donor. [K.G.] and [the claimant] raised the child jointly until their separation in 2012 and then set up a system of alternating custody.

[T.G.]'s legal parentage is fully established as to his biological mother. Moreover, the State cannot be regarded as overstepping its margin of appreciation by refusing to recognise a second mother-child relationship in respect of [the claimant] as intended parent on the basis of *de facto* enjoyment of status.

European law does not require that a parent-child relationship be recognised in respect of a person who is not the child's biological parent and the judgment in the case of *Kroon and Others v. the Netherlands* (27 October 1994, [Series A no. 297-C]), cited by the applicants, does not provide a relevant point of comparison since the Court merely asserts therein that '"respect" for "family life" requires that biological and social reality prevail over a legal presumption'. The existence of a 'family life' within the meaning of Article 8 ... and as broadly understood by the Court ... is accordingly fully established where the individuals concerned are able to lead a normal family life characterised by close, genuine relationships, while developing emotional bonds.

It follows from all the above considerations that [the claimant's] inability to have *de facto* enjoyment of status recognised in respect of the child [T.G.] does not constitute interference with the right to respect for private and family life. ..."

Whether there has been a violation of Article 14 of the Convention:

Under Article 14 of the Convention ... In the absence of a violation of Article 8 of the Convention, this complaint must be set aside. ..."

RELEVANT DOMESTIC LAW AND PRACTICE

I. PARENTAL RESPONSIBILITY

26. The relevant provisions of the Civil Code read as follows:

Article 6-1 (as in force from 19 May 2013 to 4 August 2021)

"Marriage and legal parenthood through adoption shall give rise to the same legally recognised effects, rights, and obligations, with the exception of those provided for in Title VII of Book I of this Code, whether the spouses or parents are of the same or opposite sex."

Article 320

"So long as it has not been challenged in court, a legally established parent-child relationship shall preclude the establishment of a different, conflicting parent-child relationship."

Article 371-1

"Parental responsibility is a set of rights and duties the purpose of which is to serve the child's interests.

It is vested in the parents until such time as the child reaches the age of majority or has been declared entitled to be treated as such (*la majorité ou l'émancipation de l'enfant*), for the protection of his or her health, safety and morals, and to ensure his or her education and development, with due respect for his or her person ..."

Article 371-4

"The child shall have the right to maintain personal relationships with his or her ascendants. This right may be interfered with only where such interference is in the child's interest.

If the interests of the child so require, the family-affairs judge shall determine the arrangements concerning the relationship between the child and any other person, whether a relative or otherwise, in particular when that person has resided in a stable manner with the child and one of his or her parents, has provided for his or her education, everyday care or accommodation, and has developed a lasting emotional bond with him or her."

Article 377

"Where circumstances so require, the father and mother may apply jointly or separately to the courts to have all or part of their parental responsibility delegated to a third party, whether a family member, a trusted close relative, an accredited institution for receiving children or the child welfare services of the relevant *département* ..."

Article 377-1

"The delegation of parental responsibility, in whole or in part, shall result from a decision of the family-affairs judge.

However, the order delegating parental responsibility may provide, in the interests of the child's upbringing, that one or both parents are to share all or part of their parental responsibility with that third party. Such sharing shall require the consent of the parent or parents in so far as they exercise parental responsibility. The presumption made under Article 372-2 shall apply to the acts performed by the delegating parent or parents and the third party to which responsibility has been delegated.

One or both parents, the third party or the public prosecutor's office may bring before the courts any problems as may arise from the shared exercise of parental authority. The courts shall rule in accordance with the provisions of Article 373-2-11."

Article 377-2

"In every case, the delegation may be terminated or transferred under a new order, where new circumstances have been adduced ..."

II. FULL ADOPTION

27. The relevant provisions of the Civil Code read as follows:

Article 343-1

"Any person over the age of twenty-eight may also apply for adoption.

If the adopting parent is married and not judicially separated, his or her spouse's consent shall be required unless that spouse is unable to make his or her wishes known."

Article 345

"Adoption is allowed only in respect of children under fifteen, who have been received in the home of the adopting parent or parents for at least six months.

However, where the child is older than fifteen and has been received in the home before having reached that age by persons who failed to satisfy the statutory requirements for adoption or where the child was adopted under the simple adoption procedure before having reached that age, full adoption may be applied for, subject to the necessary prerequisites, while the child is a minor and up to two years after reaching the age of majority."

If he or she is older than thirteen, the adopted child must personally consent to his or her full adoption. Such consent shall be given by means of the forms provided for in the Article 348-3, paragraph 1. It may be withdrawn at any time until the adoption decision."

Article 345-1

"Full adoption of the spouse's child is permitted:

1° Where that spouse is the child's only legal parent;

1° bis Where the child has been adopted by that spouse in accordance with the procedure for full adoption and that spouse is his or her only legal parent;

2° Where the parent other than the spouse has had his or her parental responsibility wholly withdrawn;

3° Where the parent other than the spouse is deceased and has left no ascendants in the first degree or where the latter have manifestly taken no interest in the child."

Article 347

"The following are eligible for adoption:

1° Children whose adoption has been validly consented to by the parents or the family council;

2° Wards of the State;

3° Children who have been declared abandoned under the conditions set forth in Articles 381-1 and 381-2."

Article 348-1

"Where a child's parentage is established only with regard to one of his or her parents, consent to the child's adoption shall be given by that parent."

Article 348-3

"Consent to adoption shall be given before a French or foreign notary, or before French diplomatic or consular agents. It may also be received by the child welfare services where the child has been entrusted to them.

Consent to adoption may be withdrawn within two months. Withdrawal of consent must be made by registered letter with acknowledgment of receipt sent to the person or department having received the consent to adoption. The return of the child to his or her parents upon request, including verbal request, shall also constitute proof of withdrawal.

In the event that consent has not been withdrawn upon the expiry of the two-month period, the parents may still request the child's return, provided he or she has not already been placed with a view to adoption. If the person to whom the child has been entrusted refuses to return him or her, the parents may apply to the courts, which shall assess, in the light of the child's interests, whether his or her return should be ordered. The consent to adoption shall lapse by effect of such return."

Article 356

"Adoption shall confer on the child a legal parent-child relationship that shall replace his or her initial parent-child relationship; the adopted child shall cease to be a member of his or her blood family, subject to the prohibitions on marriage referred to in Articles 161 to 164.

However, adoption of the spouse's child shall leave the initial relationship intact with regard to that spouse and his or her family. It shall, moreover, produce the effects of adoption by two spouses."

Article 357

"Adoption shall confer on the child the surname of the adoptive parent.

In the event of adoption of the spouse's child or of adoption of a child by two spouses, the adoptive parent and his or her spouse or the adoptive parents shall choose, by joint declaration, the surname given to the child: either one of their names or their two names side by side in the order of their choice, limited to one surname each. ..."

Article 358

"Within the adoptive parent's family, the adopted child shall have the same rights and obligations as a child whose legal parent-child relationship has been established under Title VII of the present Book."

Article 359

"Adoption is irrevocable."

III. SIMPLE ADOPTION

28. The relevant provisions of the Civil Code read as follows:

Article 360

"Simple adoption is permitted, irrespective of the age of the adopted person.

...

If the adopted person is more than thirteen years of age, he or she must personally consent to his or her adoption."

Article 361

"Articles 343 to 344, the last paragraph of Article 345, Articles 346 to 350, 353, 353-1, 353-2, 355 and the last paragraph of Article 357 are applicable to simple adoption."

Article 363

"Simple adoption shall confer the surname of the adoptive parent on the adoptee by addition to the adoptee's surname. ..."

Article 364

"The adoptee shall remain part of his or her family of origin and shall preserve all the rights associated therewith, in particular inheritance rights.

The prohibitions on marriage provided for in Articles 161 to 164 of the present Code shall apply to the adoptee and his or her family of origin."

Article 365

"All rights associated with parental responsibility shall be vested in the adoptive parent alone ... unless the adoptive parent is married to the adoptee's mother or father. In this case, the adoptive parent and his or her spouse shall have joint parental responsibility, but the spouse shall continue to exercise it alone unless the couple make a joint declaration before the senior registrar of the *tribunal de grande instance* to the effect that parental responsibility is to be exercised jointly ..."

Article 368

"The adoptee and his or her descendants shall have, within the adoptive parent's family, the rights of succession provided for in Book III, Title I, Chapter III.

The adoptee and his or her descendants shall not, however, have the status of mandatory heirs (*héritier réservataire*) with regard to the adoptive parent's ascendants."

29. The Court of Cassation's case-law is well established in that, in the case of an underage child, an application for simple adoption by the female partner of that child's biological mother cannot be granted, even with the

latter's consent, provided she means to keep raising the child, as such an adoption would transfer parental responsibility rights in respect of the child to the adoptive parent alone, thereby depriving the biological mother of her own rights in that regard (Court of Cassation, First Civil Division, 20 February 2007, judgments nos. 224 and 221, *Bulletin civil* 2007 I nos. 70 and 71).

IV. *DE FACTO* ENJOYMENT OF STATUS (*POSSESSION D'ÉTAT*)

30. The relevant provisions of the Civil Code with regard to *de facto* enjoyment of status are as follows:

Article 311-1

"*De facto* enjoyment of status shall be established on the basis of a sufficient set of facts attesting to the parent-child and kinship relations between a person and the family to which he or she is said to belong.

Principal among those facts are the following:

1° That this person has been treated by the nominal parent or parents as their child and that he or she has treated them as his or her parent or parents;

2° That, in that capacity, they have provided for the child's education, everyday care or accommodation;

3° That this person is recognised as being their child in society and by the family;

4° That this person is considered to be their child by the public authorities;

5° That this person bears the name of his or her nominal parent or parents."

Article 317 (as in force at the material time)

"Either parent or the child may request that the *tribunal d'instance* of the child's place of birth or residence deliver a document to them attesting to a matter of common knowledge that shall constitute evidence of *de facto* possession of status until proven otherwise.

The document shall be established on the strength of statements from at least three witnesses and, if the judge deems it necessary, of any other document as may be produced attesting to a sufficient set of facts within the meaning of Article 311-1.

Such a document may only be requested within a period of five years after cessation of the alleged *de facto* enjoyment of status or the death of the putative parent, including when the putative parent died prior to the declaration of birth.

The parent-child relationship established on the basis of *de facto* enjoyment of the status recorded in the document shall be indicated in the margin of the child's birth certificate.

Neither the document nor refusal of delivery thereof shall be subject to appeal."

V. THE BIOETHICS ACT 2021 (LAW OF 2 AUGUST 2021) AND THE CIRCULAR OF 21 SEPTEMBER 2021

31. The first acts of the French legislature in connection with bioethics date back to the Law of 20 December 1988 on the protection of biomedical research subjects and the Law of 29 July 1994 on the donation and use of parts and products of the human body, ART and prenatal diagnosis. Next came the Bioethics Act 2004 (Law of 6 August 2004), one of the titles of which concerned reproduction and embryology. Section 40 of that Act provided that it was to be re-examined as a whole by Parliament within a maximum period of five years after its entry into force, and that its application was to be assessed by the Parliamentary Office for the Assessment of Scientific and Technological Choices (*Office parlementaire d'évaluation des choix scientifiques et technologiques*) within a period of four years. That re-examination resulted in the enactment of the Bioethics Act 2011 (Law of 7 July 2011), section 47 of which similarly provided that it was to be re-examined as a whole by Parliament within a maximum period of seven years after its entry into force and that, within a period of six years, its application was to be assessed by the Parliamentary Office for the Assessment of Scientific and Technological Choices. Moreover, section 46 of the Act provided that any proposed reform concerning the ethical and social issues raised by advances in knowledge in the fields of biology, medicine and healthcare were to be preceded by a public debate in the form of a consultation (*états généraux*).

32. The National Ethics Advisory Committee on Life and Health Sciences thus launched the consultation on bioethics in January 2018. The question of extending ART access to female couples and single women was discussed in that framework. The committee published a summary report in July 2018 and an opinion on 18 September 2018, entitled "2018-2019 contribution of the National Ethics Advisory Committee to the revision of the Bioethics Act", in which it indicated that it was in favour of extending ART access to female couples and single women. Other work was conducted at the same time in the context of which that question was also addressed: Senate meetings on bioethics (March to July 2018); a *Conseil d'État* study entitled "Revising the Bioethics Act: what are the options going forward?" (11 July 2018); assessment by the Parliamentary Office for the Assessment of Scientific and Technological Choices of the application of the Bioethics Act (October 2018); a report by the fact-finding mission set up by the National Assembly (January 2019).

33. Drawing on these various sources, the government tabled a draft bill on 24 July 2019, which provided, in particular, that access to ART be extended to female couples and unmarried women. The legislative process resulted in the passage of the Bioethics Act 2021 on 29 June 2021. On 29 July 2021 the Constitutional Council, to which that Act had been referred by

members of parliament, declared its provisions constitutional. The Act was enacted on 2 August 2021 and came into force on 4 August 2021. Section 41 provided that it was to be re-examined by Parliament within a maximum period of seven years after its enactment and that its application was to be assessed within a period of four years by the Parliamentary Office for the Assessment of Scientific and Technological Choices.

34. The Bioethics Act 2021 (Law no. 2021-1017 of 2 August 2021), which extended access to ART to single women and female couples, created a new procedure for establishing legal parent-child relationships in respect of children conceived in that manner among female couples, who could now be recognised jointly by both women before birth. The new Article 342-11 of the Civil Code provides:

> "The female couple shall jointly recognise the child on obtaining the consent provided for in Article 342-10.
>
> A legal parent-child relationship shall be established, in respect of the birth mother, in accordance with Article 311-25. That relationship shall be established, in respect of the other woman, by joint recognition as provided for in paragraph 1 of the present Article. Such recognition shall be filed by one of the two women or, as the case may be, by the person entrusted with declaring the birth to the registrar, who shall record it on the birth certificate.
>
> So long as the legal parent-child relationship so established has not been challenged in the courts in accordance with Article 342-10, paragraph 2, it shall preclude the establishment of any other parent-child relationship under the present Title."

35. Section 6, subsection IV of the Bioethics Act 2021 provides that, for three years as of the publication of that law (namely, until 4 August 2024), a female couple having had recourse to ART abroad prior to its publication may jointly recognise, before a notary, the child whose legal parent-child relationship has been established only in respect of the woman having given birth, and that such recognition establishes a legal parent-child relationship in respect of the other woman. This joint recognition is recorded on the child's birth certificate, as instructed by the public prosecutor, who must be satisfied that the prerequisites are met.

36. The "Circular presenting the assisted reproduction framework derived from the Bioethics Act 2021" issued by the Minister of Justice on 21 September 2021, (no. C1/2021/1.8.6/202130000921/JF) ("Form No. 2: establishing a second mother-child relationship in respect of the child where a female couple has had recourse to ART abroad prior to publication of the Bioethics Act"), clarifies the following:

> "The couple's separation, as the case may be, after using ART does not affect the application of this framework, provided that, at the time ART was used, the two women were a couple (married, in a civil partnership or cohabiting) and they had recourse to ART with the intention of having a child together. However, this framework requires both women's consent at the time of joint recognition, to confirm their intention of having a child together. In the event of a disagreement between the two women, the legislature has made no provision for that disagreement to be settled through court

proceedings. It can be seen from the parliamentary proceedings that this was not an omission on the part of the legislature, but a deliberate choice to reserve this new transitional means of establishing legal parent-child relationships for cases where both women are in agreement. Those same parliamentary proceedings stressed that the possibility, in the event of disagreement over the establishment of dual mother-child relationships, that court proceedings might enable the court to overrule a refusal on the part of one of the two women and order an adoption would be examined in the context of the draft bill on adoption reform tabled by Member of Parliament Dominique Limon.

By such joint recognition, the two women declare before a notary that they jointly had recourse to ART abroad, as a result of which the child thus recognised was conceived ...

In the absence of any overriding provision, as in the case of voluntary recognition of a child in accordance with Article 316 of the Civil Code, joint recognition does not require the child's consent, even where he or she has reached the age of majority ...

The public prosecutor will ensure compliance with the prerequisites laid down in section 6(IV), paragraph 1 of the Bioethics Act 2021, namely:

– the use of ART abroad by a female couple prior to the publication of the Bioethics Act. In that regard, the public prosecutor must be satisfied that the legalisation in question concerns a child born using ART and not through a surrogacy arrangement. The public prosecutor must also be satisfied that ART was used abroad and not in France, in breach of the applicable statutes.

– the child's legal parentage must be established only with regard to the birth mother ...

If the public prosecutor considers that the requirements of section 6(IV), paragraph 1, of the Bioethics Act 2021 are satisfied, he or she will instruct the registrar entrusted with the child's birth certificate to record therein the date of joint recognition and the references and date of the instructions ...

Joint recognition, as recorded in the margin of the child's birth certificate, shall suffice to establish that child's legal mother-child relationship with regard to the woman who is not the birth mother ..."

THE LAW

I. JOINDER OF THE APPLICATIONS

37. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

38. C.E., M.B. and C.B (application no. 29775/18) alleged a violation of their right to respect for their private and family life as a result of the domestic courts' rejection of the application for M.B.'s full adoption by C.E., the former female partner of the child's biological mother, C.B.

39. A.E, the former female partner of T.G.'s biological mother, and T.G. (application no. 29693/19) alleged a violation of T.G.'s right to respect for

his private and family life as a result of the domestic courts' refusal to deliver a document attesting to a matter of common knowledge (*acte de notoriété*) establishing their legal mother-child relationship on the basis of *de facto* enjoyment of status (*possession d'état*).

40. The applicants alleged a breach of Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Whether M.B. had legal capacity to lodge a complaint with the Court and whether A.E. had standing to act in the name of T.G.

41. The Court notes that M.B. (application no. 29775/18) and T.G. (application no. 29693/19) were minors when the respective applications concerning them were lodged with the Court: M.B. was some sixteen years and five months old and T.G. was about ten and a half years old.

42. It reiterates that applications alleging violations of the rights and freedoms enshrined in the Convention in respect of minors may be lodged with it by those minors or by their legal representatives (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000-VIII).

43. It observes that application no. 29775/18 was signed not only by C.E. and C.B., but also by M.B. (see paragraph 2 above). M.B. therefore lodged a complaint with the Court in her own name, as she was entitled to do.

44. As to application no. 29693/19, A.E. stated that she was acting before the Court not only in her own name and on her own behalf but also in the name and on behalf of T.G. In that regard, she appropriately pointed out that she exercised parental responsibility with regard to T.G. (see paragraph 3 above).

B. Admissibility

1. Whether C.B. had victim status

45. As to application no. 23775/18, the Government emphasised that the rejection of C.E.'s application for full adoption of M.B. had not affected C.B.'s situation. They concluded from this that she could not claim to be a victim of the alleged violation of the Convention and that the application was inadmissible to the extent that it had been lodged by her.

46. The applicants expressed no view on this point.

47. The Court disagrees with the Government's position on this point. It reiterates that in order to claim to be the victim of a violation of the Convention, within the meaning of Article 34, an individual must be able to show that he or she was "directly affected" by the measure complained of. There must at least be reasonable and convincing evidence of the likelihood of an occurrence of that violation affecting him or her personally; mere suspicion or conjecture is insufficient in this respect (see *Zambrano v. France* (dec.), no. 41664/21, §§ 40-42, 7 October 2021, and the authorities cited therein). Such is the case for C.B., whose right to respect for her private and family life is directly affected by the inability to establish a legal parent-child relationship between her daughter and her former partner. She is a stakeholder in the family life out of which a mother-daughter bond developed between her daughter, M.B., and C.E., as the relationship that has developed between the three of them since M.B.'s birth is an integral part of their social and personal identity (compare *Kalacheva v. Russia*, no. 3451/05, 7 May 2009). This is as true of C.B. as it is of M.B. and C.E. C.B. can therefore claim to be a victim of the violation of Article 8 alleged in application no. 23775/18.

2. Applicability of Article 8 of the Convention.

48. The Court notes that the Government stated that they did not dispute that the relationships at issue in the present applications fell within the scope of the private and family life of C.E. and M.B. (application no. 23775/18) and that of T.G. (application no. 29693/19). While it agrees on this point, the Court nevertheless considers it necessary to provide the following clarifications.

(a) The "family life" aspect of Article 8 of the Convention

49. The Court reiterates that the existence or non-existence of "family life" is essentially a question of fact, depending upon the existence of close personal ties. The notion of "family" in Article 8 concerns not only marriage-based relationships, but also other *de facto* "family ties" where the parties are living together outside marriage or where other factors demonstrate that the relationship has sufficient constancy. The Court thus accepts, in certain situations, the existence of *de facto* family life between an adult or adults and a child in the absence of biological ties or a recognised legal tie, provided that there are genuine personal ties (see in particular *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, §§ 140 and 148, 24 January 2017, and the authorities cited therein, and *Honner v. France*, no. 19511/16, § 50, 12 November 2020). In particular, it has found that the relationship between two women who were living together and had entered into a civil partnership, with a child conceived by one of them using assisted reproductive technology ("ART") but who was being brought up by both of them, constituted "family life" within the meaning of Article 8 of the Convention (see *Honner*, cited

above, §§ 50-51; *X and Others v. Austria* [GC], no. 19010/07, § 95, ECHR 2013; and *Gas and Dubois v. France* (dec.), no. 25951/07, 31 August 2010, and the authorities cited therein). In the *Honner* case (cited above), it considered that, in a situation where the former female partner of a child's biological mother had been involved in the child's upbringing for four and a half years and had taken leave of absence when the child was four months old to take care of him and her biological son on a daily basis, the bond that had developed between them during their life together constituted "family life" within the meaning of Article 8.

50. As to application no. 23775/18, the Court notes that C.E. raised M.B. jointly with her partner, C.B., who is the child's biological mother, for four years from the child's birth in 2002 until the couple separated in 2006. With C.B.'s consent, C.E. then enjoyed contact rights with the child, which entailed having her to stay every other weekend and for half of the school holidays. In addition, C.E. made monthly payments to her former partner for M.B.'s everyday care and education.

51. As to application no. 29693/19, the Court notes that A.E. raised T.G. jointly with the child's biological mother, K.G., with whom she was in a civil partnership, for six years from T.G.'s birth in 2008 until the couple separated in 2014. It notes that K.G. agreed to a delegation of parental responsibility on a shared basis and to an alternating custody arrangement under which A.E. continued to contribute to T.G.'s upbringing. In addition, A.E. also agreed to a delegation of parental responsibility on a shared basis with K.G. and to an alternating custody arrangement with regard to the child to which she gave birth in 2011. The two children thus live together, alternating between the two women's homes.

52. It follows from the above considerations that there are genuine personal ties between M.B. and C.E. and between T.G. and A.E., deriving from a *de facto* parent-child relationship and thus amounting to family life for the purposes of Article 8 of the Convention.

(b) The "private life" aspect of Article 8 of the Convention

53. The Court would point out that there is no valid reason to understand the concept of "private life" as excluding the emotional bonds created and developed between an adult and a child in situations other than the classic situations of kinship. This type of bond pertains to individuals' life and social identity. In certain cases involving a relationship between an adult and a child where there are no biological or legal ties the facts may nonetheless fall within the scope of the "private life" of both the adult and the child (see in particular *Paradiso and Campanelli*, cited above, § 161).

54. This is particularly true with regard to the child concerned, as an individual's parent-child relationship constitutes an essential aspect of his or her identity (see in particular *Mennesson v. France*, no. 65192/11, §§ 46 and 96, ECHR 2014 (extracts)).

55. In view of the above considerations (see paragraphs 50-51 above), the Court finds that the bonds formed between M.B. and C.E. and between T.G. and A.E. fall within the scope of their private life, within the meaning of Article 8 of the Convention.

3. Conclusion as to admissibility

56. The Court notes that the complaint under Article 8 of the Convention is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. The parties' submissions

(a) Application no. 29775/18

(i) The applicants

57. The applicants explained that M.B. had been raised by her two mothers, that a strong emotional bond had been forged between her and C.E. and that C.B. had agreed to her adoption by C.E. They wished to legalise that relationship and have it recognised through the establishment of a legal parent-child relationship. They submitted that it was in the child's best interests that M.B. be legally recognised as being C.E.'s daughter on the grounds that C.E. had behaved like a mother towards her, had wished for her birth as much as C.B. had, had lived through C.B.'s pregnancy, had been present at M.B.'s birth, had raised and educated her, still provided for her needs and was her second mother in the eyes of close friends and family.

58. Referring in particular to the *Mennesson* judgment (cited above), the applicants pointed out that the right to private life included the right to one's identity and required that everyone should be able to establish the constituent elements of their identity as individual human beings, which included the legal parent-child relationship. They submitted that the inability to establish a legal parent-child relationship with C.E. placed M.B. in a position of legal uncertainty, as her *de facto* family situation no longer corresponded to her legal situation. She was thus deprived of the right to bear her second mother's name, of the right to be acknowledged by all as C.E.'s legitimate child, and of her share in C.E.'s estate.

59. The applicants further complained that C.E. and M.B. were being denied the right to lead a normal family life, which had been recognised by the Court as a right enjoyed by families with parents of the same sex. They submitted that this situation created uncertainty for M.B., in so far as joint parental responsibility was not granted to C.E. even though she took part in decisions that affected the child, had her to stay every other weekend and for half of the school holidays, and made monthly payments for her everyday care. Since she did not enjoy parental responsibility, C.E. would be unable to

authorise a doctor to perform emergency surgery on M.B. in the event of an accident. Moreover, in the event of C.B.'s death, M.B. would be entrusted to her maternal grandparents rather than to C.E. Lastly, they submitted that by failing to take the child's best interests into account, the domestic courts had breached the principle of proportionality and had failed in their duty to comply with the Convention.

60. In addition, the applicants submitted that, since M.B. had not been conceived using ART abroad, they were unable to make a declaration of joint recognition, as provisionally authorised by section 6(IV) of the Bioethics Act 2021 (see paragraph 35 above).

(ii) The Government

61. The Government stated that they did not dispute that the refusal to grant C.E.'s application for full adoption of M.B. constituted interference with the right to respect for private and family life. They nonetheless argued that it had been in accordance with the law, referring in that regard to Articles 343 and 345-1 of the Civil Code, from which the impossibility of adopting a former partner's child out of wedlock purportedly followed directly. They added that this interference had sought to protect the best interests of the child, M.B., and had thus pursued one of the legitimate aims set out in the second paragraph of Article 8, namely "the protection of the rights and freedoms of others".

62. As to the proportionality of the interference complained of, the Government considered first of all that the respondent State had to be afforded a wide margin of appreciation where matters concerning adoption were at issue (they referred to the judgment in *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01, § 128, 28 June 2007). They argued that full adoption out of wedlock was a sensitive social issue with regard to which there was no common ground in Europe.

63. The Government then observed that C.E. had not been left in a position such that it was impossible for her to maintain a close relationship with M.B. since, with the agreement of the child's biological mother, she enjoyed contact rights, including overnight stays, without any particular difficulties having been reported in that regard. According to the Government, the adoption's rejection had not prevented them from enjoying a family life in conditions largely similar to those in which other families lived following a separation. The Government also disputed the applicants' argument to the effect that C.E.'s lack of parental responsibility with regard to M.B. might put the child in danger as a result of her inability to authorise emergency medical treatment, emphasising that in such cases, the doctor could lawfully intervene on his or her own initiative. They further pointed out that the applicants could have agreed to a delegation of parental responsibility on a shared basis under Article 377 of the Civil Code, since Article 371-4 of that same Code made that option available to the intended parent, in certain

circumstances, after separating from the legal parent. They added that French law also made it possible to appoint a testamentary guardian and to rely on the legislation on testamentary gifts in order to enable the child's integration into his or her intended family and to legalise his or her relationship with the intended parent.

64. With regard specifically to M.B.'s right to respect for her private life, the Government argued that her situation was not comparable to that of the children in the *Mennesson* case (cited above): her relationship with her biological mother was legally established, there was no question as to her French nationality and C.B.'s legal parenthood was not recognised in any other legal system. Moreover, since M.B. had now reached the age of majority, she and C.E. could apply for simple adoption, the effect of which would be to establish a legal parent-child relationship between them and to confer the adoptive parent's name on the adoptee, along with inheritance rights.

65. The Government also emphasised that the domestic courts had given substantiated reasoning, based on relevant and sufficient grounds with regard, in particular, to the Convention, for their decision to deny the request for full adoption. They pointed out that the Court had held that where the balancing exercise was undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts.

66. The Government furthermore explained that the mechanism of *de facto* enjoyment of status did not permit recognition of a legal parent-child relationship in circumstances such as those in the present case. They clarified that this mechanism was used extremely rarely as a means of establishing parent-child relationships (currently fewer than ten cases per year) and was mainly used to obtain recognition of one's status as an heir with regard to one's father when he had not legally recognised his children, and in the case of children born out of wedlock whose father had died before they were born, without having legally recognised them. They argued that *de facto* enjoyment of status, which appeared under Book 1, Title VII of the Civil Code, entitled "legal parent-child relationships", had been designed and developed with reference to blood ties or, at the very least, on the basis of the heterosexual reality of parent-child relationships. They submitted that it was thus designed, in principle, for the legal recognition of a pre-existing parent-child relationship and not to establish a relationship the sole basis for which was the claimants' wishes. According to them, this was a presumption applicable to relationships based on biological ties, to prevent conflicts arising from the recognition of dual relationships of the same nature, which only made sense within the framework of kinship by blood. The Government referred to the opinion delivered by the Court of Cassation on 7 March 2018 to the effect that the lower court could not deliver a document attesting to a matter of common knowledge establishing *de facto* enjoyment of status in favour of the

same-sex partner of a parent with whom a legal parent-child relationship had already been established (see paragraph 18 above), and pointed out that the creation of dual relationships with parents of the same sex was only possible through adoption.

67. Lastly, the Government emphasised that, under the transitional provisions of section 6(IV) of the Bioethics Act 2021 (see paragraph 35 above), where a female couple had had a child using ART abroad prior to the publication of that Act, the persons concerned had the option, until 4 August 2024, of having the parent-child relationship legally established by way of joint recognition before a notary, even if they had since separated. They added that a bill that was currently being debated in Parliament further provided, in the case of female couples having had recourse to ART abroad prior to the Bioethics Act 2021, for the woman who had not given birth to have recourse to adoption, and do so despite the couple's having separated, if the birth mother refused to avail herself of the transitional framework of section 6(IV). They concluded from this that the applicants no longer had grounds to complain of a violation of Article 8.

(b) Application no. 29693/19

(i) The applicants' submissions

68. The applicants disputed the Government's analysis of *de facto* enjoyment of status. They emphasised that, although it was rarely used, it was a means of establishing legal parent-child relationships that was provided for by law and was the only such means available to separated female couples, when they did not have access to adoption. They submitted that, although it had not originally – in 1804 – been designed as a solution for families with parents of the same sex, there was nothing to prevent the relevant provisions from being construed in that way. They further argued that *de facto* enjoyment of status was no more tenuous as a means of establishing legal parent-child relationships than the presumption or recognition of paternity, which could be challenged within a strict legal framework, under the same provisions of the Civil Code (they referred in particular to Article 310-3 of the Civil Code).

69. The applicants then pointed out that the Government had admitted that T.G.'s right to respect for his private and family life had been interfered with. As to the question whether that interference had been in accordance with the law, they submitted that they disputed neither the existence of Articles 6-1 and 320 of the Civil Code, nor the Court of Cassation's opinion of 7 March 2018 (see paragraph 18 above). However, they emphasised that, in that opinion, the Court of Cassation had clarified that the review of Convention compliance, in particular with regard to Article 8 of the Convention, fell within the purview of the lower courts' examination of the merits. They also argued that in its judgments of 18 December 2019 (appeal no. 18-14751) and 18 March 2020 (appeal no. 18-15368) the Court of Cassation had accepted

the legal recognition of the birth certificates of children conceived within female couples, with both mothers listed, thereby agreeing that two women could be mothers at the same time, contrary to the provisions of Article 320 of the Civil Code. The applicants also rejected the Government's argument to the effect that the refusal to establish a parent-child relationship on the basis of *de facto* enjoyment of status had pursued the legitimate aim of protecting the rights of the child. They disputed that it could be seen as legitimate to deprive a child of a second legal parent in this way, which meant that this parent could not transfer her name to the child or exercise parental responsibility, and that the child had no inheritance rights with regard to her. According to the applicants, the conflicting parent-child relationships mentioned by the Government were purely hypothetical.

70. As to the proportionality of the interference complained of, the applicants argued that, while A.E. and T.G. had maintained *de facto* family ties, those ties were not protected by law. The child's biological mother could unilaterally decide to sever them, which would require A.E. to apply to the courts to have them maintained, with no guarantee of success. Similarly, the biological mother could ask the courts to put an end to the joint parental responsibility. The applicants further disputed the Government's assessment of the reasoning of the judgment delivered in their case and pointed out that the court could just as well have found that the refusal to recognise their *de facto* enjoyment of status entailed a violation of T.G.'s right to respect for his private and family life and was discriminatory, since such recognition would not have been refused in the case of heterosexual parents. The applicants also emphasised that legal parent-child relationships were elements of a person's identity and that the Court had regularly reiterated how essential it was to enable a person's identity to be recognised and protected.

71. As to the change in domestic law mentioned by the Government, the applicants pointed out that T.G.'s biological mother had refused joint recognition of maternity as provisionally authorised by section 6(IV) of the Bioethics Act 2021 (see paragraph 35 above).

(ii) The Government's submissions

72. The Government did not dispute that the refusal to deliver a document attesting to a matter of common knowledge constituted interference with the right to respect for private and family life. However, they submitted that this interference had been in accordance with the law, referring to Articles 6-1 and 320 of the Civil Code and to the Court of Cassation's opinion of 7 March 2018 (see paragraph 18 above). They disputed the applicants' construal of the Court of Cassation's judgments of 18 December 2019 and 18 March 2020 as abandoning the principle according to which the mother was the woman who gave birth to the child, arguing that these judgments concerned a different question from the one presently in dispute, namely the transcription of foreign birth certificates of children born through a surrogacy arrangement abroad,

which was not a means of establishing legal parent-child relationships. The Government emphasised that those judgments had in any event been subsequent to the events of the present case.

73. The Government then submitted that the interference complained of had pursued a legitimate aim, namely the protection of the rights and freedoms of others – in the present case, those of T.G. They observed that excluding the option, for same-sex couples, of establishing a legal parent-child relationship through adoption or *de facto* enjoyment of status was designed to ensure legal certainty. Rehearsing the same clarifications concerning the legal framework of *de facto* enjoyment of status as they had provided in their observations in response to application no. 29775/18, they emphasised that this was a rarely used and tenuous method of having parent-child relationships recognised. They added that the point was to avoid conflicting parent-child relationships, given that, in the event that the couple separated, *de facto* enjoyment of status might only be established after years of proceedings, only then to be challenged under Article 310-3 of the Civil Code, primarily to the detriment of the child.

74. As to the proportionality of the impugned interference, the Government considered that the respondent State had to be recognised as having a wide margin of appreciation as to the question whether an intended parent-child relationship could be established through *de facto* enjoyment of status, since this was a social issue with regard to which there was no common ground within Europe or internationally.

75. Concerning T.G.'s right to respect for his family life, the Government referred to the *Mennesson* judgment (cited above) and pointed out that the situation complained of had to be assessed in the light of the particular circumstances of the case. In that connection, they argued that A.E. and T.G. maintained a close relationship despite the refusal to deliver the document attesting to a matter of common knowledge since the child lived with her and with his biological mother on an alternating basis, and that, at their request, the Rennes *tribunal de grande instance* had granted joint parental responsibility on 27 May 2010, which, under Article 377-2 of the Civil Code, could only be withdrawn by a court decision, in case of new circumstances and having regard to the child's interests.

76. The Government next emphasised that the domestic courts had given substantiated reasoning, based on relevant and sufficient grounds with regard, in particular, to the Convention, for their decision to deny the request for a document attesting to a matter of common knowledge. They pointed out that the Court had held that where the balancing exercise was undertaken by the national authorities in conformity with the criteria laid down in its case-law, it would require strong reasons to substitute its view for that of the domestic courts.

77. Lastly, as it had in the context of application no. 29775/18 (see paragraph 63 above), the Government inferred from the transitional

framework provided for in section 6(IV) of the Bioethics Act 2021 (see paragraph 35 above) that the applicants no longer had grounds to complain of a violation of Article 8.

2. The Court's assessment

(a) Whether the applications concern a negative or a positive obligation

78. The Court notes, first of all – as the evidence provided by the Government shows – that at the time the applicants applied to the domestic courts, and then to the Court, French law made no provision for a legal parent-child relationship to be established between a minor and the former female partner of his or her biological mother without the latter's legal status being affected. Regardless of the relationship that had developed between them, the individuals concerned could not have recourse, for that purpose, to full or simple adoption or to an application for *de facto* enjoyment of status. It should also be noted that the Government did not allege that any other avenue had been available for that purpose.

79. The Court next observes that, in respect of both applications, the Government and the applicants agreed that there had been interference with the applicants' right to respect for their private and family life on the part of a public authority and that the complaint should be examined from the standpoint of the States Parties' negative obligations under Article 8.

80. The Court does not share this view. It thus notes that in neither application did the complaints under Article 8 allege active interference by a public authority with the applicants' right to respect for their private and family life. Instead, they concerned alleged shortcomings in the French legislation which, according to the applicants, had resulted in the rejection of their respective requests and undermined effective respect for their private and family life.

81. Admittedly, in the *Mennesson* and *Wagner and J.M.W.L.* cases (see also *Negrepontis-Giannisis v. Greece*, no. 56759/08, 3 May 2011), which were cited by the parties in relation to other matters, the Court examined the refusal to recognise under the law the relationship between children born through a surrogacy arrangement abroad, or adopted abroad, and their intended or adoptive parents from the standpoint of the negative obligations derived from Article 8. The applicants' situation in those cases, in which the parent-child relationships at issue had previously been established under the law of another country, was nevertheless different from those at issue in the present applications.

82. The Court will therefore examine the applicants' complaints from the standpoint of the States Parties' positive obligation to secure to everyone within their jurisdiction effective respect for their private and family life, rather than the standpoint of their obligation not to interfere with that right.

83. The applicable principles are similar when assessing the positive and the negative obligations of a State under Article 8. In both cases, regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, the aims in the second paragraph of Article 8 being of a certain relevance. The notion of "respect" as understood in Article 8 is not clear cut, especially as far as the positive obligations inherent in that concept are concerned: the diversity of practices followed and the situations obtaining in the Contracting States mean that the notion's requirements will vary considerably from case to case (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 72, ECHR 2002-VI). Nonetheless, certain factors have been considered relevant for the assessment of the content of those positive obligations on States. Some of them relate to applicants, for example the importance of the interest at stake and whether "fundamental values" or "essential aspects" of their private life are in issue (see *X and Y v. the Netherlands*, 26 March 1985, § 27, Series A no. 91, and *Gaskin v. the United Kingdom*, 7 July 1989, § 49, Series A no. 160), or the impact on them of a discordance between the social reality and the law, the coherence of the administrative and legal practices within the domestic system being regarded as an important factor in the assessment carried out under Article 8 (see *B. v. France*, 25 March 1992, § 63, Series A no. 232-C, and *Christine Goodwin*, cited above, §§ 77-78). Other factors relate to the impact of the alleged positive obligation at stake on the State concerned, for example whether the alleged obligation is narrow and precise or broad and indeterminate (see *Botta v. Italy*, 24 February 1998, § 35, *Reports of Judgments and Decisions* 1998-I), or the extent of any burden the obligation would impose on the State (see *Rees v. the United Kingdom,* 17 October 1986, §§ 43-44, Series A no. 106, and *Christine Goodwin*, cited above, §§ 86-88).

84. Moreover, as in the case of negative obligations, States enjoy a certain margin of appreciation in implementing their positive obligations under Article 8 (for a summary of these principles, see, for example, *Hämäläinen v. Finland* [GC], no. 37359/09, §§ 65-67, ECHR 2014).

(b) Margin of appreciation

85. A number of factors must be taken into account when determining the breadth of the margin of appreciation. Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will be narrow. Where, however, 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 will be wider. It will in general be wider where the State is required to strike a balance between competing private and public interests or Convention rights (see, in particular, *A.P., Garçon and Nicot v. France*, nos. 79885/12 and 2 others,

§ 121, 6 April 2017; *Hämäläinen*, cited above, § 67, and the authorities cited therein; and the *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* [GC], request no. P16-2018-001, French Court of Cassation, §§ 43-44, 10 April 2019).

86. The Court observes that the present applications, which concern the recognition of a legal parent-child relationship between children and individuals to whom they are not biologically related, raise a number of ethical issues. It further notes that the applicants did not dispute the Government's statement to the effect that there was no European consensus on the establishment of a legal parent-child relationship between a child and his or her biological mother's former female partner.

87. These considerations speak in favour of affording the State a significant margin of appreciation.

88. However, regard should also be had to the fact that an essential aspect of individual identity is at stake where the legal parent-child relationship is concerned. This is especially the case with regard to the legal relationship between an individual and his or her parent, particularly where the individual is a minor.

89. The respondent State therefore had a narrower margin of appreciation when it came to examining the situation of the children, M.B. and T.G. (compare *Mennesson*, cited above, § 80; see also the *Advisory opinion*, cited above, §§ 44-45).

90. Moreover, the choices made by the State – even within the limits of this margin – are not beyond the scrutiny of the Court, to which it falls to examine carefully the arguments taken into consideration and leading to the solution reached and to determine whether a fair balance has been struck between the competing interests at stake. In doing so, it must have regard 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, for example, *Mennesson*, cited above, § 81).

(c) Whether a fair balance was struck between the public interest and the applicants' interests

91. As to the public interest, the Court observes that French legislation on adoption and *de facto* enjoyment of status is centred on the child's best interests. As it has emphasised elsewhere, the community as a whole has an interest in maintaining a coherent system of family law which places the best interests of the child at the forefront (see *X, Y and Z v. the United Kingdom*, 22 April 1997, § 47, *Reports of Judgments and Decisions* 1997-II).

92. That being so, the Court considers it appropriate, in assessing whether a fair balance was struck, to draw a distinction between the applicants' right to respect for their family life and their right to respect for their private life.

(i) Right to respect for family life

93. The Government rightly pointed out that, in the *Mennesson* case (cited above, §§ 92-94), the Court ruled in the light of the applicants' particular circumstances (see also *Labassee v. France*, no. 65941/11, §§ 71-73, 26 June 2014, and *X, Y and Z v. the United Kingdom*, cited above, §§ 48-50).

94. With that in mind, the Court notes that, in both applications, since the couples' separation, despite the lack of legal recognition of a parent-child relationship between the children and their biological mother's former female partner, the applicants have led a family life comparable to that led by most families after a separation of parents. C.E., in agreement with her former partner, has enjoyed contact rights in respect of M.B., including overnight stays. K.G. and A.E. have opted for joint parental responsibility, in accordance with domestic law, and have set up an alternating custody arrangement.

95. Furthermore, in neither application did the applicants report any difficulties in the daily organisation of their family life and, as will be explained below, the respondent State has implemented legal instruments to protect the ties between them (see *Valdís Fjölnisdóttir and Others v. Iceland*, no. 71552/17, §§ 71-75, 18 May 2021, and compare *Mennesson*, cited above, §§ 87-94, and *Labassee*, cited above, §§ 66-73). The fact that C.E. waited nine years after separating from C.B. before seeking to institute adoption proceedings would tend to suggest that her relationship with M.B. was not called into question during that time. The same observation applies to A.E., who filed her request for a document attesting to a matter of common knowledge with a view to establishing *de facto* enjoyment of status in respect of T.G. almost four years after the dissolution of her civil partnership with K.G. Moreover, should any such problems arise, they could be remedied on the basis of Article 371-4 of the Civil Code, which provides that "[i]f the interests of the child so require, the family-affairs judge shall determine the arrangements concerning the relationship between the child and any other person, whether a relative or otherwise, who has resided in a stable manner with the child and one of his or her parents, has provided for his or her education, everyday care or accommodation, and has developed a lasting emotional bond with him or her".

96. There is therefore no basis for finding, in the circumstances of the two applications, that the respondent State has failed to fulfil its obligation to secure effective respect for the applicants' family life.

97. Accordingly, there has been no violation of the right to respect for family life under Article 8 of the Convention.

(ii) Right to respect for private life

98. As the Court has already clarified (see paragraph 78 above), at the time when the applicants applied to the domestic courts, and then to the Court,

French law made no provision for a legal parent-child relationship to be established between a minor and the former female partner of his or her biological mother without the latter's legal status being affected, irrespective of the bond between them.

99. The question is whether, in the circumstances of the present applications, that impossibility constituted a failure on the part of the respondent State to fulfil its positive obligation to secure effective respect for the applicants' private life.

100. The Court would observe that, in the particular case of children born through a gestational surrogacy arrangement abroad using the gametes of the intended father, it has found that the child's right to respect for his or her private life requires that domestic law provide a possibility of recognition of a legal parent-child relationship not only between the child and the intended father, where he is the biological father, but also, where the legal parent-child relationship with the intended father is recognised in domestic law, with the intended mother who has been designated in the birth certificate legally issued abroad as the "legal mother", even where she is not genetically related to the child (see, in particular, the judgments in *D v. France*, no. 11288/18, §§ 45-54, 16 July 2020, and *Mennesson*, cited above, §§ 63-101, and the *Advisory opinion*, cited above, § 47 and point 1 of the operative part). In that context, it has considered that two factors carry particular weight: the child's best interests – reiterating in that regard the essential principle according to which, whenever the situation of a child is in issue, the best interests of that child are paramount – and the scope of the margin of appreciation afforded to the States Parties, which is narrow in such cases.

101. Regard being had, in particular, to the fact that the child's best interests entail the legal identification of those responsible for raising him or her, meeting his or her needs and ensuring his or her welfare, together with the child's ability to live and develop in a stable environment, the Court has found 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 (see the *Advisory opinion*, cited above, §§ 35-47). The Court has clarified that the child's best interests require recognition of that relationship, legally established abroad, to be possible at the latest when it has become a practical reality, it being understood that it is first and foremost for the national authorities to assess whether and when, in the specific circumstances, the said relationship can be characterised as such. The individuals concerned should then have access to an effective mechanism enabling such recognition, having regard to the child's best interests and the circumstances of the case (ibid., §§ 52 and 54).

102. M.B.'s and T.G.'s respective situations cannot be compared to the above-mentioned scenario as they were not born through a surrogacy

arrangement and their respective relationships with C.E. and A.E. had not previously been established under the law of another country. It is nonetheless true that, since their birth – in 2002 for the former and in 2008 for the latter –a mother-child bond has in practice developed between them and the two women. Noting that, like the domestic courts, the Government did not call into question the existence of that bond, the Court finds that the above considerations relating to the child's best interests are relevant to M.B. and T.G., all other things being equal.

103. The Court finds that both M.B. and T.G. were permanently deprived of the possibility of obtaining legal recognition of the mother-child relationship they had developed with C.E. and A.E., respectively, as a result of the women's emotional investment and involvement in their upbringing.

104. Accordingly, and regard being had to the strength of the bonds formed between the individuals concerned, their inability, as complained of in their applications, to obtain legal recognition of the parent-child relationship between them as a means of legitimising that relationship raises a serious issue with regard to the principle of the paramountcy of the child's best interests and the right to respect for private life.

105. However, the Court first emphasises that, in situations such as the applicants', there are legal instruments in France enabling the relationship between a child and an adult to be recognised. Thus, the child's biological mother can obtain a court order for the exercise of joint parental responsibility on a shared basis with her partner or former partner. While an order of that kind does not entail the establishment of a legal parent-child relationship between that person and the child, it nevertheless allows the partner or former partner to exercise certain rights and duties associated with legal parenthood in respect of the child, and thus amounts to a form of legal recognition of the relationship.

106. In that connection, the Court notes that, as T.G.'s biological mother had availed herself of that option, she and A.E. had exercised joint parental responsibility in respect of T.G. since 2010 (see paragraph 21 above). It further notes that, while such was not the case with C.E. and C.B., it was not alleged that the latter would object to sharing parental responsibility, which would moreover be inconsistent with the fact that she had agreed to M.B.'s adoption by C.E. in 2015 (see paragraph 8 above) despite the fact that the couple had separated.

107. Furthermore, in the event of separation, where the former partners fail to reach an agreement, the family-affairs judge may, if the child's interests so require, determine the arrangements concerning his or her relationship with the mother's former partner (Article 371-4 of the Civil Code; see paragraph 26 above). This too can be likened to some extent to legal recognition of their relationship.

108. Secondly, the Court notes that, since publication of the Bioethics Act 2021, female couples having had recourse to ART abroad prior to 4 August

2021 have the option, for a three-year period, of jointly recognising a child whose legal parent-child relationship has been established solely with regard to the birth mother, the effect of which is to establish a legal parent-child relationship with regard to the other woman as well. The fact that the couple subsequently separate has no bearing on the application of this mechanism. It is sufficient for the two women to have been a couple (married, in a civil partnership or cohabiting) when recourse to ART was had and to have made use of it with the intention of having a child together (see paragraph 36 above).

109. The Court notes that this transitional framework forms part of the extension of access to ART to female couples and single women, which is the result of a process of legislative reforms seeking to integrate changes in behaviour and social expectations in the area of bioethics into French law (see paragraphs 31-35 above). The new legal framework seeks to address situations in which the individuals concerned might otherwise suffer from the discrepancy between the statutory rule and social reality.

110. The Court observes that, in the absence of a European consensus on the establishment of a legal parent-child relationship between a child and his or her biological mother's former female partner, the respondent State cannot be reproached for not having brought about such a development any earlier (see, *a fortiori*, *Schalk and Kopf v. Austria*, no. 30141/04, § 106, ECHR 2010).

111. Next, the Court notes that such an option is available in the case of T.G., since he was born using ART abroad with the intention – on the part of his biological mother, K.G., and of A.E. – of having a child together. In that connection, it notes the applicants' submission to the effect that the child's biological mother has refused to seek joint recognition of the child (see paragraph 71 above). The fact remains that, since 4 August 2021, when T.G. – who was born on 13 November 2008 – was approximately twelve years and eight months old, a procedure has been in place under French law enabling a legal parent-child relationship to be established between him and A.E. That option therefore came into being just three years after their request for a document attesting to a matter of common knowledge (see paragraph 24 above).

112. Thirdly, while that procedure is not legally available in the case of M.B., who was not born using ART abroad, it would nevertheless appear that her adoption by C.E. under the simple adoption procedure is now possible. Although that was not the case when she was still a minor, as her biological mother would have been deprived of parental responsibility as a result (see paragraph 29 above), M.B. reached the age of majority on 13 January 2020. Since that time, there has thus been a procedure in place enabling a legal parent-child relationship to be established between her and C.E. While it is true that this option only became available belatedly, once the children concerned had reached the age of majority, the Court nevertheless considers

that, in the specific circumstances of the present case, it is apt to satisfy the applicants' legitimate expectations. The Court observes that C.E. and C.B. waited until March 2015 before taking steps to obtain legal recognition of a parent-child relationship between C.E. and M.B., when M.B. was already thirteen years old (see paragraph 8 above), and that the avenue of simple adoption became available to them just a year and a half after their application was lodged with the Court.

113. That being stated, the Court stresses that the transitional framework's exclusion of minors who were not conceived using ART abroad and who, like M.B., were born without recourse to ART in France, is liable to raise a serious issue under Article 8 of the Convention, whether taken alone or in conjunction with Article 14.

114. In the circumstances, and regard being had to the margin of appreciation afforded to the respondent State – narrow though it may be where children's bests interests are at issue – the Court finds that a fair balance was struck between the interests at stake with regard to M.B.'s and T.G.'s right to respect for their private life.

115. In the Court's view, this applies with even greater force to C.E.'s and C.B.'s right to respect for their private life, and to that of A.E. and K.G., the relevant interests in each case coinciding with those of M.B. and T.G. respectively.

116. Accordingly, the respondent State did not fail in its obligation to secure effective respect for the applicants' private life. It follows that there has been no violation of the right to respect for private life under Article 8.

(a) Conclusion

117. There has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been no violation of Article 8 of the Convention.

Done in French, and notified in writing on 24 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Síofra O'Leary President