



## The Hidden Costs of the European Court of Human Rights' Surrogacy Decision

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In 2000, Sylvie and Dominique Mennesson, French citizens, decided to enlist the help of a surrogate from California to have children. Since the birth of their twins, Valentina and Fiorella, in California, the Mennessons have struggled in a legal battle to move back to France and have their children recognized as French citizens.<sup>1</sup> On April 6, 2011, France's highest court—the Court of Cassation—refused to allow French citizenship for Valentina and Fiorella.<sup>2</sup> Not being recognized as French citizens created obstacles in areas from school registration to healthcare to inheritances. The twins' lack of French citizenship also meant that once they reach the age of majority, they would not have legal status and could be deported from France.<sup>3</sup> Commenting on the Court of Cassation's ruling, Mrs. Mennesson decried: "Once more the rights of our children have not been respected. We feel crushed. Our children are foreigners on French soil."<sup>4</sup> The Mennessons brought their case to the European Court of Human Rights (ECtHR), arguing that the state's denial of citizenship to their children violated Article 8 of the European Convention on Human Rights, which provides a right to respect for one's "private and family life, his home and his correspondence."<sup>5</sup>

On June 26, 2014, the ECtHR issued a groundbreaking decision in the

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1. Nisha Satkunarajah, *Legal Case Brings France's Surrogacy Laws Into Focus*, BIONEWS (April 18, 2011), [http://www.bionews.org.uk/page\\_92561.asp](http://www.bionews.org.uk/page_92561.asp).
2. Cour de cassation [Cass.] [supreme court for judicial matters] 1e civ., April 6, 2011, Bull. civ. II, No. 72 (Fr.).
3. Mark Henaghan, *Sixth World Congress on Family Law and Children's Rights: International Surrogacy Trends: How Family Law is Coping*, 7 AUSTRALIAN J. OF ADOPTION 8, 9 (2013), <http://www.nla.gov.au/openpublish/index.php/aja/article/viewFile/3188/3713>.
4. See Satkunarajah, *supra* note 1.
5. European Convention on Human Rights art 8, Nov. 4, 1950, 213 U.N.T.S. 211.

Mennesson's case,<sup>6</sup> ordering France to recognize and provide French citizenship to children born to surrogate mothers abroad, even though surrogacy is illegal in France.<sup>7</sup> The decision was widely celebrated as a recognition of the "best interests of the child" standard and a sign of progress in France.<sup>8</sup> However, the ECtHR's decision will likely have the unfortunate effect of allowing member states to continue to ban surrogacy within their own borders, while encouraging would-be parents to seek surrogates abroad (often in developing countries without adequate safeguards for surrogates in place) to bear their children. Without international standards for surrogacy, ECtHR's child-centered, seemingly positive decision for children could become a nightmare for surrogates.

## I. BACKGROUND ON INTERNATIONAL SURROGACY

International surrogacy is a contract made between potential parents and a surrogate mother abroad. While these arrangements can be altruistic, they are more often commercial in nature—meaning women are paid for their services. There are no uniform international regulations to which nations must adhere regarding international surrogacy, which has led to a variety of different domestic frameworks. Many countries, including France, Germany, Italy, and Norway ban paid surrogacy.<sup>9</sup> Others—like the United Kingdom and Australia—allow for reasonable medical expenses to be paid, but because commercial surrogacy is banned, there can be a shortage of surrogates.<sup>10</sup> Paying for a woman to carry a child is legal in about nineteen states in the United States, which have laws recognizing compensated surrogacy.<sup>11</sup> However, because of how affordable it is, India and Ukraine are two of the most popular destinations for parents looking for

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6. A second family, the Labassees, were also named parties in the court case. Halfway across the United States, in Minnesota, Francis and Monique Labassee used the surrogacy process. Juliette, their daughter, was born in 2001, and came back to France with her parents. She faced similar challenges, being denied placement on the French registry and citizenship. *See also* Press Release, European Court of Human Rights, *Totally Prohibiting the Establishment of a Relationship between a Father and his Biological Children Born following Surrogacy Arrangements Abroad was in Breach of the Convention* (June 26, 2014), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145179>.
  7. *Mennesson v. France*, App. No. 65192/11 (Eur. Ct. H.R. June 26, 2014), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145389>.
  8. The "best interest of the child" standard has been used since the 1970s by courts to determine the best possible foster care, visitation, and surrogacy outcomes for children. JOSEPH GOLDSTEIN, ANNA FREUND & ALBERT J. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* 64 (1973). One reason the decision is seen as progressive is because surrogacy in France is a route to parenthood for same-sex couples, a divisive political issue in recent years. Joshua Melvin, *France Told to Recognize Kids Born to Surrogates*, LOCAL (Jun 26, 2014, 5:13 PM), <http://www.thelocal.fr/20140626/ruling-could-undo-surrogacy-ban-in-france>.
  9. Sarah Mortazavi, *It Takes a Village to Make a Child: Creating Guidelines for International Surrogacy*, 100 GEO. L.J. 2249, 2270-73 (2012) (explaining which countries ban commercial surrogacy).
  10. *Id.*
  11. *See generally* Darra L. Hofman, "Mama's Baby, Daddy's Maybe:" *A State-by-State Survey of Surrogacy Laws and Their Disparate Gender Impact*, 35 WM. MITCHELL L. REV. 449 (2009) (compilation of laws by state).

commercial surrogacy.<sup>12</sup> India has now shaped a billion dollar industry around surrogacy, with very few regulations, while Ukraine remains a popular surrogacy hot spot because of its low costs, European location, and Caucasian population.<sup>13</sup>

## II. THE ECtHR DECISION

It was against the backdrop of a burgeoning surrogacy industry that the ECtHR reviewed the *Mennesson*'s case. After five court decisions in the course of ten years, the high court in France ruled that the girls were not French citizens.<sup>14</sup> The *Mennessons* took their case to the ECtHR for relief.

In its decision, the ECtHR court considered two possible grounds for finding a violation of the European Convention on Human Rights, both related to Article 8, which protects the right to respect for private and family life.<sup>15</sup> The court first considered the parents' and children's right to respect for family life, and second, the *children's* right to respect for private life. While acknowledging that the lack of French citizenship posed challenges for the family, the court did not find these challenges insurmountable—the family was still able to live together as a unit, and enjoy family life as most French families do.<sup>16</sup> Additionally, the court stressed that a “wide margin of appreciation” had to be left to the countries in creating surrogacy laws, in view of the difficult ethical issues involved and the lack of consensus on these matters in Europe.<sup>17</sup>

However, with respect to the children's right to respect for private life, the court found that “respect for private life requires that everyone should be able to work out the details of their identity as a human being, which includes the legal parent-child relationship,” and that an “essential aspect of the identity of individuals is at stake where the legal parent-child relationship is concerned.”<sup>18</sup> The Court recognized that it is conceivable that “France may wish to deter its nationals from going abroad to take advantage of methods of assisted reproduction that are prohibited on its own territory.”<sup>19</sup> However, the court

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12. See Jennifer Rimm, *Booming Baby Business: Regulating Commercial Surrogacy in India*, 30 U. PA. J. INT'L L. 1429, 1430 (2009); Claire Biggs & Courtney Brooks, *Ukraine Surrogacy Boom Not Risk-Free*, RADIO FREE EUROPE (June 4, 2011), [http://www.rferl.org/content/womb\\_for\\_hire\\_ukraine\\_surrogacy\\_boom\\_is\\_not\\_risk\\_free/24215336.html](http://www.rferl.org/content/womb_for_hire_ukraine_surrogacy_boom_is_not_risk_free/24215336.html).

13. See, e.g., Mortazavi, *supra* note 9 at 2271 (estimating that surrogacy added \$2 billion to India's GDP in 2012).

14. The Associated Press, *France: Surrogacy Ban Affirmed*, N.Y. TIMES, April 6, 2011, <http://www.nytimes.com/2011/04/07/world/europe/07briefs-Surrogacy.html>; Cour de cassation [Cass.] [supreme court for judicial matters] 1e civ., Apr. 6, 2011, Bull. civ. II, No. 10-19.053, (Fr.), [http://www.courdecassation.fr/jurisprudence\\_2/premiere\\_chambre\\_civil\\_568](http://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civil_568).

15. See *Mennesson v. France*, App. No. 65192/11 (Eur. Ct. H.R. June 26, 2014), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145389>; see also Press Release, European Court of Human Rights, *supra* note 6.

16. *Mennesson*, App. No. 65192/11, ¶ 95.

17. See *id.* ¶ 73.

18. *Id.* ¶ 96.

19. *Id.* ¶ 99.

ultimately granted greater weight to the interests of the child.<sup>20</sup> The ECtHR thus concluded that a violation of the children's Article 8 rights had occurred, and ordered France to pay certain damages to the *Mennesson* children.<sup>21</sup> While provisions that allow for prosecution of surrogacy will remain on the books in France, the government has announced that it "defended the idea that . . . the primacy of the interests of the child must prevail over the choices made by their parents."<sup>22</sup> On June 27, 2014, France announced that it would not appeal the ECtHR decision.<sup>23</sup>

### III. IMPLICATIONS OF THE ECtHR'S DECISION

The effect of the ECtHR's ruling is profound. Strictly speaking, the judgment of the Court is legally binding only on the state concerned,<sup>24</sup> and there is no obligation arising out of the Convention for other states (who are not parties to the specific decision) to implement the decision. However, as a practical matter, the *Mennesson* decision will have far-reaching consequences. Nearly all states that are parties to the European Convention generally conform their practice to the reasoning of a judgment like this one, since refusing to comply risks a finding that they are also in violation of the Article in question.<sup>25</sup> Because many of these states, as the ECtHR details in its decision, currently prohibit surrogacy, the decision is likely to affect many domestic laws.<sup>26</sup>

Thus, the practical effect is that many countries recognize the citizenship of surrogate children, as long as it does not happen within their borders. Cross-border surrogacy is not new: potential parents from restrictive states have long sought surrogacy arrangements in other areas, engaging in the kind of forum shopping that corporations are often accused of.<sup>27</sup> Most of the women who participate in surrogacy—demographically speaking—live in poorer nations of the developing world, where opportunities are scarce and safety protections in the surrogacy market are few and far between.<sup>28</sup> However, until the ECtHR decision, there was a penalty for ignoring the laws of one's host country—the risk that a

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20. *Id.* ¶¶ 99, 101.

21. *Id.* ¶¶ 114-119 (only available in French version), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145389>.

22. *France Accepts EU Rights Ruling on Surrogacy Children*, YAHOO! NEWS (June 27, 2014, 3:41 PM), <http://news.yahoo.com/france-accepts-eu-rights-ruling-surrogacy-children-194123599.html>.

23. *Id.*

24. *See, e.g.*, European Convention on Human Rights art. 46(1), Nov. 4, 1950, 213 U.N.T.S. 222.

25. *See* Georg Ress, *The Effect of Decisions and Judgments of the European Court of Human Rights in the Domestic Legal Order*, 40 TEX. INT'L L.J. 359, 374 (2005).

26. The Court conducted research in comparative law covering thirty-five States that are Parties to the Convention. The Court found that surrogacy is expressly prohibited in fourteen states, with ten other states where there is no regulation on surrogacy, or prohibited under general provisions, or it is not tolerated, or the question of its legality is uncertain. *See Mennesson*, App. No. 65192/11, ¶¶ 78-81.

27. *See* DEBORA L. SPAR, *THE BABY BUSINESS: HOW MONEY, SCIENCE, AND POLITICS DRIVE THE COMMERCE OF CONCEPTION* 85 (2006).

28. *See id.* at 87.

child would not be recognized as a citizen. The Court recognized this disincentive when it found it “conceivable” that France would wish to deter its nationals abroad to use a method of procreation it prohibits in its territory.<sup>29</sup> That disincentive has now disappeared, and in its place, the unfortunate message that surrogacy is fine—just “not in our backyard.”

It is unclear the extent to which the ECtHR decision will increase surrogacy rates in countries that, until now, have banned surrogacy and have not given citizenship to babies born from these contracts. Regardless, the ECtHR decision sends a symbolic message that it is acceptable to protect domestic wombs at the cost of foreign wombs.<sup>30</sup>

#### IV. DANGERS FACED BY INTERNATIONAL SURROGATES

The lack of information and protections for surrogates abroad makes such a stance particularly disturbing. Information and transparency is especially important because the financial incentives in developing countries (even though surrogates often get paid a fraction of what they are paid in developed countries) are much more alluring. A surrogate earning \$20,000 in California is earning only about 40 percent more than a full-time, minimum wage worker.<sup>31</sup> A surrogate from a rural village in India may make the equivalent of *ten* years of salary in one surrogacy.<sup>32</sup> This is not to say that surrogates in developing countries should be paid less, but rather that with such incentives, protections are even more necessary.

In protecting the best interests of children, the international community does not have to choose between children and their surrogates. Indeed, strengthening safeguards for surrogates can *also* lead to better outcomes for children. A lack of standards and a lack of education have resulted in unsafe healthcare decisions that can harm both mother and child—from implanting too many embryos in surrogates to allowing egg donations more frequently than the recommended interval of six months.<sup>33</sup>

Additionally, many surrogacy contracts given to women in developing countries are woefully inadequate. The women may not be literate and may not have the contract explained to them fully.<sup>34</sup> Surrogates are often not told that they will lose the right to make vital decisions concerning their body. Without

29. *Mennesson*, App. No. 65192/11, ¶ 99.

30. *See id.*

31. *See id.*

32. See Nicola Smith, *Inside India's International Baby Farm*, THE TIMES (May 9th, 2010), <http://www.geneticsandsociety.org/article.php?id=5192>.

33. See, e.g., Jenni Millbank, *The New Surrogacy Parentage Laws in Australia: Cautious Regulation or '25 Brick Walls'?*, 35 MELB. U. L. REV. 2, 32 (2011); Fred de Sam Lazaro, *Surrogate Mothers in India*, PBS (Aug. 17, 2012), <http://www.pbs.org/wnet/religionandethics/2012/08/17/august-17-2012-surrogate-mothers-in-india/9612>; Deepa Padmanaban, *Murky Cases, Happy Endings*, THE HINDU (Aug. 19, 2014), <http://www.thehindu.com/books/books-authors/gita-aravamudan-on-her-book-baby-makers-the-story-of-indian-surrogacy/article6331751.ece>.

34. See Iris Leibowitz-Dori, Note, *Womb for Rent: The Future of International Trade in Surrogacy*, 6 MINN. J. GLOBAL TRADE 329, 336 n.11 (1997).

knowing it, mothers sign contracts agreeing that even if they are seriously injured during the later stages of pregnancy, or suffer any life-threatening illness, they will be “sustained with life-support equipment” to protect the fetus.<sup>35</sup> They may have no say if the intended parents choose to have her abort the child she is carrying.<sup>36</sup> Further, they usually agree to assume all medical, financial, and psychological risks—releasing the genetic parents, their lawyers, the doctors, and all other professionals from all liability.<sup>37</sup> The reality is that parties to surrogacy contracts have unequal bargaining power.

## V. PROPOSAL FOR STRICTER REGULATIONS

Given the ethics surrounding surrogacy, some scholars have advocated an outright ban, finding surrogacy similar to prostitution or slavery due to the black market in surrogacy.<sup>38</sup> Others adopt a more permissive approach, fearing paternalistic limitations on a woman’s choice to become a surrogate.<sup>39</sup> Sociologist Amrita Pande, for example, observes that ethical critiques might ignore the reality that surrogate mothers may not have comparable job or income opportunities.<sup>40</sup> But even those who advocate for fewer restrictions would still agree that women should make voluntary, informed decisions to participate in surrogacy.<sup>41</sup> The international community has a moral imperative to create minimum safeguards for surrogacy.

The ECtHR decision is not a wrong one, but an incomplete one. It was not wrong for the Court to protect the best interests of the child. The children who have been living in legal limbo in France—as well as the other countries that ban surrogacy—deserve recognition as full participants in their respective civic

35. Neeta Lal, *Pitfalls of Surrogacy in India Exposed*, ASIA TIMES (May 24, 2012), [http://www.atimes.com/atimes/South\\_Asia/NE24Df02.html](http://www.atimes.com/atimes/South_Asia/NE24Df02.html).

36. See Pamela Laufer-Ukeles, *Mothering for Money: Regulating Commercial Intimacy*, 88 IND. L.J. 1223, 1279 n.72 (2013).

37. *Id.*

38. See generally Anita L. Allen, *Surrogacy, Slavery, and the Ownership of Life*, 13 HARV. J.L. & PUB. POL’Y 139, 147-48 (1990) (exploring the theoretical usefulness of comparing surrogacy to slavery); Rosalie Ber, *Ethical Issues in Gestational Surrogacy*, 21 THEORETICAL MED. & BIOETHICS 153 (2000) (comparing gestational surrogacy to slavery and prostitution); Vanessa S. Browne-Barbour, *Bartering for Babies: Are Preconception Agreements in the Best Interests of Children?*, 26 WHITTIER L. REV. 429, 467 (2004) (comparing surrogacy to slavery and human trafficking).

39. Compare Lori B. Andrews, *Surrogate Motherhood: The Challenge for Feminists*, in SURROGATE MOTHERHOOD 172 (Larry Gostin, ed. 1990) (providing the feminist argument opposing surrogacy) with Jessica H. Munyon, *Protectionism and Freedom of Contract: The Erosion of Female Autonomy in Surrogacy Decisions*, 36 SUFFOLK U. L. REV. 717, 727-28 (2003) (providing the feminist reaction to how protectionism infringes on a woman’s right to freely contract).

40. Seema Mohapatra, *Stateless Babies & Adoption Scams: A Bioethical Analysis of International Commercial Surrogacy*, 30 BERKELEY J. INT’L L. 412, 450 (2012) (citing Amrita Pande, *Commercial Surrogacy in India: Manufacturing a Perfect Mother-Worker*, 35 SIGNS: J. OF WOMEN IN CULTURE AND SOC’Y 969, 975 (2010)).

41. *But see* Andrews *supra* note 39, at 172-73 (discussing feminist argument there is no such thing as voluntary consent when men as a social group control choices and motivations to choose).

societies. However, in recognizing the child's best interest, the Court missed an opportunity to do so much more and delineate the need for international regulation of surrogacy. The ECtHR considered the parents' rights and children's rights. However, by not recognizing surrogates' rights as a vital part of their decision, the ECtHR neglected the third, vital part of the triad and turned a blind eye to a grave international issue.

Some scholars and politicians might contend that a state's primary obligation is to protect its own citizens, even if it comes at the economic or medical expense of foreigners. However, such a viewpoint ignores the already existing international obligations that are violated when the wealthy cross borders to rent the wombs of the impoverished. The basic concept of reproductive rights as an international human right is more than four decades old, and first appeared in the Teheran Conference on Human Rights in 1968, which recognized the "rights to decide freely and responsibly on the number and spacing of children and to have the access to the information, education and means to enable them to exercise these rights."<sup>42</sup> The Teheran Conference did not explicitly mention surrogacy. However, to the extent that surrogates are not being given the information needed to freely exercise their own reproductive rights, these principles are being violated.

More powerful still are the principles codified in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which many of the nations of the EU—and the world—have signed and ratified.<sup>43</sup> CEDAW guarantees the rights of pregnant women, ensures access to healthcare, and mandates necessary supporting services to enable parents to continue work responsibilities and participation in public life.<sup>44</sup> Article 16 of CEDAW, for example, broadly requires states to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations."<sup>45</sup> CEDAW's expansive language signals a global commitment to maternal health and does not distinguish domestic women as holding rights that foreign women do not.

Furthermore, the international community has already drawn lines, through a number of international treaties, protecting women from sexual exploitation as a violation of the fundamental human rights of people.<sup>46</sup> When surrogacy is not

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42. For a discussion of the evolution of this right, see Proclamation of Teheran art. 16, May 13, 1968, *reprinted in* 1 HUMAN RIGHTS: A COMPILATION OF INTERNATIONAL INSTRUMENTS 51, 54, U.N. Doc. ST/HR/I/Rev.5 (1994).

43. *Signatories to The Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) (last visited Nov. 17, 2014).

44. Convention on the Elimination of All Forms of Discrimination Against Women art. 1, G.A. Res. 34/180, U.N. DOC. A/RES/47/1 (Dec. 18, 1979).

45. *Id.* art. 16.

46. *See, e.g.*, U.N. HIGH COMM'R FOR REFUGEES, SEXUAL VIOLENCE AGAINST REFUGEES: GUIDELINES ON PREVENTION AND RESPONSE ii (Mar. 8, 1995); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *opened for signature* Mar. 21, 1950, 96 U.N.T.S. 271 (entered into force July 25, 1951);

regulated and participants are not informed, surrogacy can harm a woman's fertility, contribute to health problems, and force a woman into healthcare choices—such as caesarean sections, abortions, or life support—without her informed consent.<sup>47</sup> It is not an exaggeration to say that when surrogacy goes wrong, it becomes akin to sexual exploitation. Unfortunately, as it stands, the ECtHR decision perpetuates difference and discrimination, instead of recognizing the basic human rights of surrogates.

Incentives to engage in cross-border surrogacy only seem to be increasing, making international guidelines necessary to protect surrogates. Two of the largest surrogacy destinations—India and Ukraine—do not have laws to protect surrogates.<sup>48</sup> Decades ago, the international community faced similar ethical issues with international adoption. Thus, the Hague Convention Regarding Intercountry Adoption was created to establish minimum safeguards and standards to protect children, biological parents, and intended parents.<sup>49</sup> The procedures in the Hague Convention may not be suitable for usage in a surrogacy context, since there are “obvious and important differences between international surrogacy and intercountry adoption.”<sup>50</sup> However, studying a Convention that dictated minimum standards to protect children, biological parents, and adoptive parents is certainly worth learning from, since an international surrogacy agreement faces similar obstacles in responding to a triad of concerns.

Similarly, an international treaty could require, for example, creating central agencies in countries to regulate surrogacy agencies and agreements. Certain countries, such as Israel, have already created commissions to study and regulate surrogacy.<sup>51</sup> The Hague Convention Regarding Intercountry Adoption provides a number of similar guidelines; for example, it authorizes the production of a certified translation of original documents upon request, so that individuals are not signing a document they do not understand, a situation that has led to exploitation of surrogates in the past.<sup>52</sup> An international treaty could also mandate

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Universal Declaration of Human Rights art. 5, G.A. Res. 217 (III), U.N. DOC. No. A/810 at 71 (1948).

47. *See supra* Parts III, IV.

48. Mohapatra, *supra* note 40, at 432 (“Ukrainian law does not mention any rights that the surrogate mother may have. Its focus is to protect the family and the child, but not the surrogate mother.”); Kristine Schanbacher, *India’s Gestational Surrogacy Market: An Exploitation of Poor, Uneducated Women*, 25 HASTINGS WOMEN’S L.J. 201, 218 (2014) (noting that “India has no binding laws regulating the gestational surrogacy market,” although clinics are encouraged to follow certain standards).

49. Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 1870 U.N.T.S. 167 (entered into force May 1, 1995).

50. PERMANENT BUREAU, HAGUE CONFERENCE ON PRIVATE INT’L LAW, A PRELIMINARY REPORT ON THE ISSUES ARISING FROM INTERNATIONAL SURROGACY ARRANGEMENTS (2012), <http://www.hcch.net/upload/wop/gap2012pd10en.pdf>.

51. *See* Abraham Benshushan & Joseph G. Schenker, *Legitimizing Surrogacy in Israel*, 12 HUM. REPROD. 1832, 1832-34 (1997); Pamela Laufer-Ukeles, *Gestation: Work for Hire or the Essence of Motherhood? A Comparative Legal Analysis*, 9 DUKE J. GENDER L. & POL’Y 91, 95 n. 17 (2002).

52. *See* Angie Godwin McEwen, *So You’re Having Another Woman’s Baby: Economics and Exploitation in Gestational Surrogacy*, 32 VAND. J. TRANSNAT’L L. 271, 288 (1999) (discussing the case of *Muñoz v. Haro*, No. 572834 (San Diego Super. Ct. Sept. 19, 1983)).



basic requirements for contracts—for instance, a requirement to spell out payment and the surrogates' rights, all explained through counseling before insemination and throughout the pregnancy.

#### CONCLUSION

The ECtHR decision is laudable in many ways: childrens' personhood, regardless of where and how they are born, should be protected. In recognizing this principle, the Court validated hundreds of stateless children, who had been living in a state of uncertainty. However, the ECtHR's decision left a gap: the protection of surrogates who help make these children's lives a reality. The ECtHR's decision provides the international community a renewed opportunity to protect surrogates and prevent a race to the bottom in terms of protective regulations.