WRITTEN OBSERVATIONS

Submitted to the European Court of Human Rights

in the case

Schlittner-Hay v. Poland

(Applications nos. 56846/15 and 56849/15)

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1. In the case *Schlittner-Hay v. Poland* (Applications Nos. 56846/15 and 56849/15), two men, Mr Schlittner (Israeli-Polish) and Mr Hay (Israeli), living as a couple in Israel, went to the United States to conclude a surrogacy agreement in 2010 with a married woman, Ms. Kristy Sharee Calkins.
Two twins, Matan and Segev (applicants nos. 1 and 2), were born in California from this surrogacy. They have the American nationality. By judgment of September 7, 2010, a California court stated that Mr. Schlittner and Mr. Hay are the natural, joint and equal parents of the twins, that Mr. Schlittner is the genetic father of the children and that Mrs. Calkins is not their natural mother, neither genetic nor legal and therefore has no right or duty to them, like her husband. The birth certificate states that Mr. Schlittner is the "Father / Parent" and that Mr. Hay is the "Mother / Parent". They all live in Israel.

The Polish authorities refused to grant the children the Polish nationality despite their biological link with Mr Schlittner, a Polish national, because their birth certificate was not transcribed in Poland. The latter also mentioned two men as parents. On the basis of Articles 8 and 14 of the Convention, the applicants (the children) complain of this refusal and accuse the Polish national authorities of basing their decisions on the homosexuality of their "parents".
In this context, the European Center for Law and Justice (ECLJ) wishes to inform the Court of the following observations.

2. As a preliminary point, it should be noted that only the 9-year-old twins, Matan and Segev, are the applicants in this action and that they are represented for this purpose by Mr. Schlittner, their sponsor father. However, the interests invoked by the petition are not necessarily those of the children, but rather those of their "intended fathers". As proof, to organize a surrogacy is in the interests of the sponsors but harms the interests of the children who are born of it because they are deliberately deprived of their mother and of half of their filiation. Consequently, it is a question of taking into account only the interests of the minor applicants since their "sponsor fathers" are not party to the present case.

3. In addition, the applicant's sponsors want, by this appeal before the Court, to question the established and certain principle of maternal descent, applicable in Poland and throughout Europe, according to which "*mater semper certa is*", the mother is the woman who gives birth. Indeed, to ask for the recognition of a double paternal filiation is to remove this principle and thus the natural right to have a mother.
In short, this case raises the question: can a State refuse to grant nationality to a child on the ground that his birth certificate is manifestly false, because it is contrary to reality? In other words, can the respect for the principle "*mater semper certa est*" and the presumption of paternity of the husband of the woman giving birth, from which it follows that surrogacy and double parentage of the same sex cannot be recognized in Poland, legitimately preclude the attribution to the applicants of the nationality of their sponsor father?

ON THE ADMISSIBILITY

Inadmissibility of the complaint for non-exhaustion of domestic remedies

4. In accordance with Article 35.1 of the European Convention on Human Rights, the Court may only deal with the matter after all domestic remedies have been exhausted. This is a condition of admissibility of the request.

5. In the present case, as mentioned in the Court's press release, Mr Schlittner did not apply for registration of the applicants' birth certificates in the Polish register of civil status nor did he brought an action in accordance with Article 1148 of the Polish Code of Civil Procedure to obtain recognition of the California judgment in Poland. However, the recognition of this filiation is a prerequisite for the attribution of nationality.

6. In principle, the Court should therefore declare the application inadmissible for non-exhaustion of domestic remedies, especially since remedies in this regard are effective. In fact, in October 2018, the Polish Supreme Administrative Court ruled that Polish nationality must be granted to a child born to a surrogacy abroad for the benefit of a homosexual couple, if one of its members is Polish.[1] One cannot blame the outcome of these remedies for being still uncertain, because it is a matter in which the law is in transition, as the Court recalled in its decision *S.H. and others v. Austria*.[2] The fact is that these remedies exist, and are not ineffective. As a result, since the applicants have not yet applied for the registration of the US birth certificates in the Polish civil status register, they can still do so. The application therefore appears inadmissible for failure to exhaust the domestic remedies.[3]

ON THE MERITS

7. Historically, the Convention's bodies rejected as incompatible *ratione materiae* with the Convention applications relating to cases of loss or refusal of nationality, on the ground that the Convention does not guarantee a right to a nationality.[4] In recent years, the Court, while recognizing that there is no right to a nationality protected by the Convention, has been able on several occasions to consider that a refusal of nationality may, under certain conditions, pose a problem in the light of Article 8 of the Convention if it is arbitrary and in view of the impact of this refusal on the private life of the person concerned.[5]

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[1] Patrycja Rojek-Socha, NSA: Córki Polaka i jego partnera, urodzone przez surogatkę, są Polkami, *Prawo*, 30 October 2018, https://www.prawo.pl/samorzad/dziecko-z-pary-jednoplciowej-ma-prawo-do-polskiego-obywatelstwa,322405.html

[2] *S.H. and others v. Austria*, no. 57813/00 [GC], 3 November 2011, § 83.

[3] Practical Guide on Admissibility Criteria, European Court of Human Rights, 31 December 2018, p. 27, https://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf

[4] See, for example, *X v. Austria*, no. 5212/71, decision of the Commission, 5 October 1972.

[5] See *Karassev v. Finlane*, no. 31414/96, 12 January 1999; *Slivenko v. Latvia* [GC], no. 48321/99, 9 October 2003 § 77; *Genovese v. Malta*, no. 53124/09, 11 October 2011, § 30.

8. When it comes to nationality cases, the reasoning of the Court is always two-fold.[6] Be the application admissible, it is first necessary to investigate whether the refusal of nationality is arbitrary (I), and if so, to analyse the actual consequences of this arbitrary refusal on the applicant's private and family life (II).

I/ Is the refusal of the Polish State to grant its nationality arbitrary?

9. In accordance with the case-law of the Court, it must be ascertained whether the refusal to grant nationality is arbitrary. This character is established by reference to the reasoning of the decision or by examining the circumstances of the case.[7] For example, in *K2 v. the United Kingdom* concerning a deprivation of nationality, the Court verified whether the measure was provided for by law, whether it was surrounded by sufficient procedural safeguards and whether the person deprived of his nationality had had the opportunity to challenge the decision in the courts which such guarantees and if the authorities had acted with diligence and promptness.

10. In the present case, Articles 4 to 6 of the Polish Nationality Act of 1962, applicable at the time of Mr Schlittner's application in 2012, provided that a child with a Polish parent and a foreign parent acquires Polish nationality at birth. Polish law therefore makes the acquisition of nationality automatically dependent on a relationship of filiation (principle of *jus sanguinis*). The Polish authorities' refusal to grant nationality is therefore based on Polish public order, which makes it impossible to transcribe a double paternal filiation of the applicant children. This refusal was predictable.

11. **Absence of discrimination on grounds of sexual orientation in the refusal to grant Polish nationality.**

The applicants claim that the Polish judges added a condition to the Polish nationality law, namely the heterosexuality of the parents, to refuse their application. According to them, the heterosexuality of filiation preserved in Polish law would discriminate in the access to nationality against children obtained by same-sex couples.
Yet, this claim is false for several reasons. First, Polish law makes the acquisition of nationality dependent on the relationship of filiation: it is therefore necessary for this relationship of filiation to be recognized. However, it is not the homosexuality of the "sponsor fathers" that hinders the recognition of filiation, but the recourse to surrogacy; the fact is very real and foremost that the children are born of a woman, what is more, married. Yet, surrogacy is contrary to the Polish public order.

12. **A heterosexual couple having obtained a child through surrogacy would not have been treated differently from the applicants.** The only difference between homosexual and heterosexual couples, on this point, lies in the natural fact that the former cannot hide their sterility, and therefore their recourse to surrogacy. This difference of fact cannot constitute discrimination.

[6] Reasoning initiated by the decision *Karassev v. Finland* and resumed *mutatis mutandis* concerning the deprivation of nationality in *Ramadan v. Malta*, no. 76136/12, 21 June 2016 and *K2 v. The United Kingdom*, no. 42387/13, 7 February 2017.
[7] H. Fulchiron, « Réflexions sur les évolutions récentes du droit de la nationalité en Europe », in *Mélanges Panayotis Soldatos*, Bruylant, Bruxelles, 2012, p. 291-308, particularly p. 302.

It is true that Poland, like most European States, refuses the fiction of a double paternity or maternity. It cannot be blamed on the basis of the European Convention. Indeed, the refusal of this fiction - like that of surrogacy - is perfectly justified, especially with regard to the rights and interests of children. Nevertheless, it is not the direct and primary cause of the refusal of nationality; this remains the incompatibility of surrogacy with the Polish public order.
The Polish judges therefore did not add a condition to the nationality law and did not base their refusal to grant nationality on the homosexuality of the "intended fathers" but on the desire not to enforce surrogacy.

13. It must be ascertained whether this refusal to recognize a double paternal affiliation of the applicants from a surrogacy is justified and proportionate. This assessment follows from the arbitrary or non-arbitrary nature of the refusal to grant nationality. However, three reasons of public interest legitimize this refusal.

The first reason of public interest relating to the protection of the family and marriage

14. As the decisions of the Polish courts report, Polish society and Polish law are based on the natural and traditional conception of the family. It results from the application of the principle "*Mater semper certa est*" and from the presumption of paternity of the husband of the mother. The principle that the mother is the woman who gave birth is registered as such since the law of 6 November 2008, entered into force on 13 June 2009 (Article 61 of the Polish Family and Guardianship Code).[8] Moreover, the inscription of this principle was made in order to avoid any dispute between a woman who would have provided an egg and the woman who would have given birth. The drafting of this article clearly demonstrates the will of the Polish legislature to prevent surrogacy and in particular its consequences on filiation.[9]

15. This conception of family is also promoted and protected in international law which recognizes in the family "*a fundamental unit of society*",[10] "*the natural and fundamental group unit of society*"[11] "f*or the growth and well-being of all its members and particularly children*"[12], it is "*founded primarily by the marriage between a man and a woman*."[13] Atypical family situations are rarely in the interest of the child and therefore cannot be imposed on society. As the Court noted in *X, Y and Z v. The United Kingdom*, "*that 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.*"[14]

16. In the present case, the Polish authorities refuse, in the name of their public policy, to recognize effects to surrogacy. Indeed, a double paternal filiation resulting from this surrogacy

[8] ICCS Report on "Surrogacy and the civil status of the child in ICCS member States", February 2014, p.11.
[9] *Ibid.*
[10] Article 16 of the 1961 European Social Charter.
[11] Article 16 § 3 of the 1948 Universal Declaration of Human Rights; article 23 §§ 1 and 2 of the 1966 International Covenant on Civil and Political Rights, article 10 § 1 of the 1966 International Covenant on Economic, Social and Cultural Rights, Preamble of 1989 the Convention on the Rights of the Child; article 16 of the 1996 (revised) European Social Charter; article 33 of the 1989 Charter of Fundamental Rights of the European Union; article 44 of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
[12] Preamble of 1989 the Convention on the Rights of the Child.
[13] *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, 24 January 2017, joint concurring opinion of judges De Gaetano, Pinto De Albuquerque, Wojtyczek and Dedov, § 3.
[14] *X, Y and Z v. The United Kingdom* [GC], no. 21830/93, 22 April 1997, § 47.

would be contrary, up to its appearances, to the natural reality, of these children, on which is structured Polish law.
As a result, according to the Polish courts, on the day of the applicants' birth, their parents were Mr. and Mrs. Calkins and since none of them had Polish nationality, the children could not claim to have a right to Polish nationality. The decision of the Polish authorities is aimed at the legitimate aims of protecting the filiation and interests of the children.

The second reason of public interest: the legitimate and necessary opposition to surrogacy

17. Poland may legitimately oppose the practice of surrogacy and refuse to recognize effects to it on its territory. This opposition is in line with the European Convention and other norms of international law. Moreover, it is necessary for the respect of the rights of the weakest people: children and surrogate mothers.

18. As underlined by Judges De Gaetano, Pinto de Albuquerque, Wojtyczek and Dedov in their concurring opinion in the Grande Chamber judgment *Paradiso and Campanelli*, surrogacy treats persons "*not as ends in themselves, but as means to satisfy the desires of other persons*", this practice "*whether remunerated or not, is incompatible with human dignity. It constitutes degrading treatment, not only for the child but also for the surrogate mother.*" and therefore opposes the "values underlying the Convention" (CO § 7). As for commercial surrogacy, they declare it "*illegal under international law*" prohibiting the sale of children.
As Judge Dedov noted, human rights are based on values, the foremost among which are the dignity and freedom of the human person, which are the essence of the Convention. The Court's mission is to extend its respect, and not to see in national borders and *forum shopping* a way to violate them with impunity. For the ECLJ, the Court would be worthy of its mission if it had the courage to declare surrogacy contrary to the rights and dignity of individuals, and if it helped stem the trade rather than liberalize it.

19. To date, the Court has only recognized as legitimate and important the will of a government to dissuade its nationals from resorting to a foreign - even legally - practice illegal on its territory and that poses serious ethical problems[15] and described as "complex and sensitive" the question of the relationship between intended parents and a child born abroad in the context of surrogacy with gamete donation. The Court also recognized that surrogacy is a source of risk of child trafficking.[16]

20. As for her, Ms. Maud de Boer-Buquicchio, the UN Special Rapporteur on the sale and sexual exploitation of children, details precisely in her report of January 2018[17] the problems caused by surrogacy.

21. The fact that Poland prohibits surrogacy should not be merely "tolerated" under its national margin of appreciation, as if the prohibition were a restriction on the exercise of a right or freedom guaranteed by the Convention. There is no right to a child, nor a right to be a parent.[18] Moreover, Poland may legitimately consider that the prohibition of this practice is necessary for the respect of fundamental rights and human dignity.

[15] *Paradiso and Campanelli v. Italy* [GC], *op. cit.*, § 203.
[16] *Paradiso and Campanelli v. Italy* [GC], *op. cit.*, § 202; *D. and others v. Belgium*, no. 29176/13, 8 July 2014.
[17] Human Rights Council, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, A/HRC/37/60, 15 January 2018.
[18] See notably *Paradiso and Campanelli v. Italy* [GC], *op. cit* § 215.

Thus, the choice of the Polish legislator does not affect the rights guaranteed by the Convention, but on the contrary ensures a higher degree of protection than the Court has done so far. If the doctrine of the margin of appreciation is to be applied in this respect, it would be much more to justify the fact of tolerating this practice than to prohibit it.

22. This being said, the Court recognised that "*the States must in principle be afforded a wide margin of appreciation, regarding the decision not only whether or not to authorise this method of assisted reproduction but also whether or not to recognise a legal parent-child relationship between children legally conceived as the result of a surrogacy arrangement abroad and the intended parents.*"[19]

The third reason of public interest: the best interest of the child as the purpose of the refusal of the registration of the double paternal filiation

23. Firstly, surrogacy is not in the best interests of the child. According to the 1989 Convention on the Rights of the Child (CRC), "*The child shall be registered immediately after birth and shall have the right from birth … to know and be cared for by his or her parents*." (Article 7 § 1). States parties must ensure that children are not separated from their parents (article 9 § 1) but also take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form (section 35).
However, a surrogacy agreement organizing the procreation and sale of a child and thereby the abandonment of that child by his biological mother - the one who gave birth - violates all the rights mentioned.

24. Secondly, the child has the right "*to a 'normal family life' (...) (including) the establishment of his double maternal and paternal affiliation*".[20] The Court has already emphasized "*the importance of biological parentage as a component of identity*".[21] Incidentally, the Court admitted the relevance of measures aimed at the "*the legitimate aim of (...) protecting children – not merely the child in the present case but also children more generally*".[22]
In addition, this manipulation of filiation orchestrated by the surrogacy agreement only favors the interest of the adult sponsors to obtain a child from third parties. If the best interests of the children were the first concern of adults, they would not impose to them such a birth. No one can wish a child to be fatherless or motherless. The interests of adults differ in this case from those of children, which alone should be considered, especially since they are the only applicants here.

25. Consequently, the refusal to recognize a wilfully false and truncated filiation is in the best interest of the applicants and the children in general.

26. To summarize, in the name of the three reasons of public interest developed, the Polish authorities have legitimately refused to grant effects to a surrogacy. It is therefore just as legitimate that Poland refused to grant the applicants the Polish nationality as long as their

[19] *Mennesson v. France*, no. 65192/11, 26 June 2014, § 79.
[20] Nathalie Bettio, Le « Droit à l'enfant » nouveau droit de l'Homme, *Revue du droit public et de la science politique en France et à l'Étranger*, 2010-2-008, 0301 no. 2, p. 473. See ECHR, *Marckx v. Belgium*, no. 6833/74, 13 June 1979 (maternal filiation); *Johnston v. Ireland*, no. 9697/82, 18 December 1986 (paternal filiation).
[21] *Mennesson v. France*, *op. cit*., § 100.
[22] *Paradiso and Campanelli v. Italy*, [GC], *op. cit.*, § 197.

affiliation with a Polish parent is not recognized in Poland. This refusal, based on public order, was foreseeable; it cannot be described as arbitrary. Apart from any arbitrary refusal, the Court can only reject the applicants' claim since the Convention does not confer any right to nationality. Moreover, nationality is a sovereign prerogative of the State and, except to use it arbitrarily, it is free to determine who is part of its people.[23]

27. Moreover, the manoeuvring of the "sponsor fathers" of the applicants must be denounced. Indeed, the adage states that: "*nemo auditur propriam turpitudinem allegans*" (no one shall be heard, who invokes his own guilt). Yet the sponsors have voluntarily circumvented Polish public order by resorting to surrogacy in the United States, and are now complaining about the consequences of their own circumvention of the law. To voluntarily place oneself in a situation of fact contrary to national law and then to seek the conviction of that State is a fraudulent intent. As a result, the application of the applicants should not be considered well-founded and could even be dismissed as an abuse of rights.
Similarly, Mr Schlittner relies on his genetic link with the children to compel Poland to recognize the applicants' false filiation while depriving them of any biological connection and filiation with their mother. Mr Schlittner cannot rely on his genetic link with children since he denies any value to this same genetic link with their mother.
It is also disturbing to note that the sponsors deny any value to the maternal affiliation of children, even though the latter enjoy the American nationality because of their birth.

28. If the Court were to characterize this refusal to attribute nationality as arbitrary, it would be necessary to study the actual - and not possible - impact of such a refusal on the applicants' private and family life.

II. The lack of effective consequences on the applicants' private and family life of the refusal to grant Polish nationality

29. The Convention does not guarantee a right to a nationality. Thus, for the refusal of access to a nationality to fall within the scope of the Convention, this refusal must not only be arbitrary, but must also significantly infringe on the applicant's private and family life.[24]

30. In the *Genovese v. Malta* case, the Court found a violation of Article 8 of the Convention even though the Maltese State's refusal to grant Maltese nationality to the applicant had no impact on the life of the applicant. In the context of this case, the applicant already had a British citizenship and could therefore already live and work in the Maltese State as a European citizen

31. In order to justify its position, the Court had stated, in a new way, that the right to privacy embraced the different aspects of "social identity" and that a refusal to grant nationality therefore affected the private life of the applicant.[25] This reasoning of the Court was criticized

[23] J.-F. Flauss, « L'influence du droit international des droits de l'Homme sur la nationalité », in *Perspectives du droit public*, Études offertes à J.-C.Hélin, 2004, p. 269 : « *Il est de tradition de considérer que le droit de la nationalité relève du domaine réservé de l'État ou de sa compétence nationale exclusive* » (It is customary to consider that the law of nationality falls within the exclusive domain of the State or its exclusive national jurisdiction); Article 3.1 of the 1997 European Convention on Nationality: "Each State shall determine under its own law who are its nationals".
[24] *Genovese v. Malta, op. cit.*, § 30, *Ramadan v. Malta, op. cit.*, § 85-86.
[25] *Genovese v. Malta, op. cit.*, § 33: "*However, as the Court has observed above, even in the absence of family life, the denial of citizenship may raise an issue under Article 8 because of its impact on the private life of an individual,*

for its lack of relevance and rigor not only by the doctrine but also by the dissenting opinion of one of the judges of the case. As one author explains: "*That the concept of privacy is so broad that it encompasses all aspects of social identity is acceptable, but not sufficient to demonstrate that the denial of a particular nationality compromises the constitution and development of this social identity. Is it really the same thing from the point of view of privacy, identity and social relations to deprive an individual of the nationality with which he has lived for many years as to deny an individual access to a nationality that is* a priori *of no help to him?*"[26]

32. The dissenting opinion read that "*The Court, however, does not define social identity nor does it explain how citizenship defines the applicant's identity. The concept of private life is so vast that it embraces everything, even things pertaining to public law. Denial of citizenship always has an impact in a general way on any person, so this alone cannot be taken as the reason why social identity has been affected*."[27]

33. It seems that in the more recent cases regarding nationality, the Court has, on the contrary, adopted a very rigorous approach to the assessment of the impact of a refusal to grant nationality to private and family life. Indeed, in the case of *Ramadan v. Malta*,[28] the Court found no violation of Article 8 of the Convention even though the person concerned had probably become stateless as a result of the deprivation of nationality. According to the Court, this situation of statelessness did not prevent him from having a normal family life and from working. Similarly, in the *K2 v. the United Kingdom* case,[29] the Court observed that as the applicant's wife and children residing in Sudan, a State of which the applicant had kept his nationality, there was no violation of his private life and family.

34. In the current case, the applicants and their "sponsor fathers" all reside in Israel. The applicants are both US nationals and may also have Israeli nationality. They may therefore already have a dual nationality. Thus, the refusal of the Polish State to grant the applicants the Polish nationality does not entail any risk of statelessness. In addition, the applicants do not provide evidence of the actual impact of the deprivation of Polish nationality on their private life and social identity. Moreover, the applicants are not prevented from living a normal family life.

35. The applicants rely on the *Mennesson and Labassée v. France* case to justify, according to them, a violation of their right to respect for private and family life. But the situation of children born of surrogacy in the aforementioned cases is different from the current situation. Indeed, in these, the children, brought up by a French couple, usually resided in France and could not acquire the French nationality. In this case, the applicants do not live in Poland, but live in Israel with two Israeli citizens.
Moreover, if the applicants really wished to acquire Polish nationality one day, that would always be possible. It would be enough for them to reside uninterruptedly for three years on the Polish territory (Article 30.1.1 of the Polish Nationality Act).

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which concept is wide enough to embrace aspects of a person's social identity. While the right to citizenship is not as such a Convention right and while its denial in the present case was not such as to give rise to a violation of Article 8, the Court considers that its impact on the applicant's social identity was such as to bring it within the general scope and ambit of that Article."

[26] F. Marchadier, « L'attribution de la nationalité à l'épreuve de la Convention européenne des droits de l'Homme - réflexions à partir de l'arrêt Genovese C/ Malte », *Rev. crit. DIP*, 2012, p. 69.

[27] *Genovese v. Malta, op. cit.*, Dissenting opinion of Juge Valenzia.

[28] *Ramadan v. Malta, op. cit.*, § 89-92.

[29] *K2 v. the United Kingdom, op. cit.*, § 62.

CONCLUSION

36. Consequently, the Polish State's refusal to grant the applicants the Polish nationality has no impact on the applicants' private and family life. If an interference with the right guaranteed by Article 8 of the Convention were to be upheld, it would be fully justified by reasons of the public interest previously stated.

37. If, however, the Court were to find a violation of Articles 8 and 14, it would have many adverse consequences, with regard to both the legislation relating to surrogacy and to nationality law.

38. Regarding the first point, condemning Poland would be *de facto* tantamount to accepting surrogacy by means of a *fait accompli*. In fact, if a State prohibits this practice on its territory but recognizes on its soil the effects of such a procedure practiced abroad, the ban is then emptied of its substance. In addition, only the wealthiest couples could afford the luxury of going abroad to "treat themselves" with a child, which would amount to promoting a two-tier justice: the rich who allow themselves to break the law and the poor who must respect it.
The Court would then also encourage reproductive tourism even though the sale and trafficking of children is contrary to the rights of the child. At the expense of its subsidiary role, the Court, by a decision of condemnation, would align the most restrictive legislation with the most liberal and would defeat the national policy of fight against surrogacy. In such a sensitive area, the Court should, on the contrary, support this effort.

39. Regarding the second point, if the Court condemned Poland for its refusal to grant nationality, and implicitly for its refusal to transcribe the applicants' birth certificates, it would compel that State to choose between executing that judgment and abandoning the most essential provisions of its public policy in the field of family law.

40. That being said, the fact that the applicants have not exhausted domestic remedies should be sufficient to dismiss the application.