



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

GRAND CHAMBER

**ADVISORY OPINION**

on the procedural status and rights of a biological parent in proceedings  
for the adoption of an adult

**Requested by**  
the Supreme Court of Finland

*(Request no. P16-2022-001)*

STRASBOURG

13 April 2023

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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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

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Kateřina Šimáčková, *judges*,

and of Søren Prebensen, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 15 March 2023,

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

## PROCEDURE

1. By a letter of 3 October 2022, sent to the Registrar of the European Court of Human Rights (“the Court”), the Supreme Court of Finland submitted a request under Article 1 of Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms (“Protocol No. 16” and “the Convention”), to give an advisory opinion on the questions set out at paragraph 8 below.

2. This letter was received at the Registry on 10 October 2022 and the request was considered by the Court to have been formally lodged on that date.

3. On 7 November 2022, the panel of five judges of the Grand Chamber of the Court, composed in accordance with Article 2 § 3 of Protocol No. 16 and Rule 93 § 1 of the Rules of Court, decided to accept the request.

4. The composition of the Grand Chamber was determined on 15 November 2022 in accordance with Rules 24 § 2 (g) and 94 § 1.

5. By letters of 16 November 2022, the Registrar informed the parties to the domestic proceedings that the President was inviting them to submit to the Court written observations on the request for an advisory opinion, with a time-limit of 9 January 2023 (Article 3 of Protocol No. 16 and Rule 94 § 3). Within that time-limit, written observations were received from the appellant,

A, in the proceedings before the Supreme Court. Both the Council of Europe Commissioner for Human Rights and the Government of Finland informed the Registrar that they would not be exercising their right to submit written comments (Article 3 of Protocol No. 16).

6. The written observations filed by A were transmitted to the Supreme Court, which informed the Court that it would not be submitting comments on them (Rule 94 § 6).

7. After the close of the written procedure, the President of the Grand Chamber decided that no oral hearing should be held (Rule 94 § 5).

## THE QUESTIONS ASKED

8. The questions asked in the request for an advisory opinion were worded as follows:

“1) Should the Convention on Human Rights be interpreted in such a way that legal proceedings concerning the granting of an adoption of an adult child in general, and especially in the circumstances of the case at hand, are covered by the protection of a biological parent referred to in Article 8 of the Convention on Human Rights?

2) If the answer to the question asked above is affirmative, should Articles 6 and 8 of the Convention on Human Rights be interpreted in such a way that a biological parent of an adult child should in all cases, or especially in the circumstances of this case, be heard in legal proceedings concerning the granting of adoption?

3) If the answer to the questions asked above is affirmative, should Articles 6 and 8 of the Convention on Human Rights be interpreted in such a way that a biological parent should be given the status of a party in the matter, and that the biological parent should have the right to have the decision concerning the granting of adoption reviewed by a higher tribunal by means of appeal?”

## THE BACKGROUND AND THE DOMESTIC PROCEEDINGS GIVING RISE TO THE REQUEST FOR AN ADVISORY OPINION

9. The request arises out of proceedings under Finland’s Adoption Act that concern the adoption of an adult.

10. In December 2018, an application was made to the District Court by a woman, B, to grant the adoption by her of C, who is her nephew and who was born in 1993 to B’s sister, A.

11. C spent his earliest years living with his mother and, as noted by the District Court, there was during this time a tight and close parent-child relationship between them. In January 1997, B was appointed as C’s supplementary custodian. This was done on the petition of A, in light of long-lasting instability in her life at that time, when she was a widow, a single parent with three children under school age, and a student. In the petition, it was indicated that A and B had agreed on the grant of supplementary custody

following lengthy and serious discussions. It was further indicated that adoption had also been considered but had been deemed not possible at that point. When later heard in the adoption proceedings, A stated that she never envisaged C being adopted by her sister.

12. C joined B's household in 1996 when he was just over three years of age. He remained there until 2016, when he moved out to live independently. B was single and did not have any children of her own.

13. Having had sole custody of her son until 1997, A remained his custodian thereafter, with B as supplementary custodian. In 1998, D's paternity of C was formally established. This did not affect the custody arrangements put in place the year before.

14. As found by the District Court in its decision on the adoption of C, his mother remained involved in his upbringing along with B (including contacts with his day-care centre, his school, various medical professionals) and in his daily life. He spent time with her when B was working or away. His relationship with his four siblings – A's other children – was described as relatively tight. He spent weekends and holidays with his mother, his aunt and his siblings. The District Court noted that the relationship between A and C had not been broken at any time while he was a minor, describing it as good and warm. C always referred to A as his mother and addressed B as his aunt or used her first name. The District Court also noted that, as an adult, C's relationship with A involved ordinary contacts between them. There were also some conflicts, in particular on account of the adoption proceedings.

15. The proceedings before the District Court were conducted on the basis of the Adoption Act (see under "Relevant domestic law and practice" below). For the adoption of an adult to be granted, it must be established that at least one of the conditions set down in section 4 is fulfilled, i.e., that while the prospective adoptee was still a minor, he or she was brought up by the prospective adopter, or that a relationship comparable with that of child and parent was otherwise established between them while the adoptee was still a minor.

16. In examining the application, the District Court heard the testimony of B and C. It also heard from A, as well as from C's biological father, D. A stated her objection to the adoption. She maintained that the statutory prerequisites for adoption were not satisfied, given that she had continued in her maternal role until her son had come of age. She submitted that the real motivation for the adoption was to do with inheritance and taxation. For his part, D expressed no opposition to the adoption.

17. In addition, the District Court heard the testimony of a friend of B's, who spoke in support of B's position. It also heard from three persons put forward by A – these were one of C's siblings, a family friend, and a psychologist. These hearings were conducted on the basis of section 53 of the Adoption Act (see the comment of the Supreme Court on this at paragraph 24 below).

18. The District Court gave its decision on 9 March 2021. In light of the testimony taken, and of the documentary evidence that had been produced before it by B and by A, it decided to grant the adoption, reasoning as follows:

“It has been proven in this case that [C] was in the care of and was brought up by [B] while he was a minor. Based on the clarification presented, the District Court finds that [C] and [B] are still in close contact with each other, although [C] lives on his own already. [C] has wanted the adoption to be granted. It has not been demonstrated in the case that the application was submitted for motives that are contrary to the purpose of the Adoption Act. Despite the above circumstances that speak against acceptance of the application, the District Court has given greater importance and significance to the firm desire of the applicant and the adoptee to make official their relationship comparable to that of a child and parent, which was established over a long period of time while the adoptee was in the care of and was brought up by [B] as a minor. The District Court evaluates that a close and continuous relationship prevailed between the adoptee and the prospective adopter while the adoptee was a minor, which has significantly included the kind of care and attention typically related to a relationship between a child and parent.”

19. The District Court indicated in its decision that it could be appealed within seven days. A filed her notice of intent to appeal within the time-limit.

20. The appeal was dismissed by the Court of Appeal on 5 November 2021, without consideration of the merits. That court ruled that it was clear from the wording of the relevant provisions of the Adoption Act that a parent of an adult is not a party to a matter concerning adoption and has no right of appeal against a decision concerning the adoption.

21. The Court of Appeal also referred to Article 8 of the Convention, and to the interpretation by this Court of “family life” as not applying to a relationship between a parent and an adult child unless there are additional factors of dependence other than normal emotional ties. That was not the case between A and C. There were no grounds to give to the analogous provision of the Constitution of Finland (Article 10(1)) a broader interpretation than that given to Article 8 of the Convention by this Court. Thus, the question did not involve a matter covered by the protection of A’s family life, so the question whether the refusal of the right of appeal violated A’s human and fundamental rights should not be evaluated in the matter.

22. A applied to the Supreme Court for leave to appeal against the above decision. These proceedings remain pending while the Court considers the request for an advisory opinion.

23. In its request, the Supreme Court included its own analysis of the issues raised in the questions posed and explained why an advisory opinion was needed. It stated that while the Adoption Act required, where the adoptee is a minor, that the biological parents be heard in the proceedings, with adult adoption there was no requirement to obtain the consent of the biological parents or even to hear them, notwithstanding that the effect of the adoption will be that their parenthood ceases. Nor did they have a right to appeal the grant of adoption, in contrast to the biological parents of a minor, whose right

to appeal was laid down in section 56 of the Adoption Act. While the preparatory materials, whether of the current legislation (adopted in 2012) or the preceding legislation (Acts of 1985 and 1979), did not comment on any procedural rights for the biological parents with respect to adult adoption, it was explicitly stated in the preparatory materials of the 1979 Act that this form of adoption was a personal matter between the adopter and the adoptee. In the view of the Supreme Court, this suggested that the parents of an adult child were not thought to have a need for legal protection and therefore had no procedural status in a matter concerning adoption.

24. While A was not a party to the proceedings before the District Court, and there was no obligation to hear her under section 54 of the Adoption Act (see paragraph 32 below), that court had heard her at its own initiative in order to obtain evidence pursuant to section 53. According to domestic case-law, the fact that A had been heard at various stages of the proceedings did not provide her with the status of a party or the right to appeal. Nor did the mere fact of her objecting to the adoption make her a party to the proceedings.

25. Referring to this Court’s case-law on the meaning of the term “family life” in the context of Article 8 of the Convention, notably the point that family ties between adults and their parents or siblings do not come within the scope of this term unless there are additional factors of dependence, the Supreme Court stated that in the proceedings before it, it had not even been alleged that there were any specific dependencies between C and B, or C and A. It therefore considered that the matter should not be evaluated in terms of family life. However, in light of this Court’s case-law with respect to the protection of private life, it considered that the matter should perhaps be evaluated from that standpoint instead.

26. The Supreme Court considered that this Court’s case-law did not make it clear what kind of weight should be given to circumstances related to the protection of a biological parent’s private and family life in such a matter. If it was required by the Convention that the domestic proceedings include the weighing of the private life interests of B and C against those of A, it was not clear to the Supreme Court what weight should be given to the latter, and what procedural requirements were entailed by the rights guaranteed in the Convention.

## RELEVANT DOMESTIC LAW AND PRACTICE

### A. Constitution of Finland

27. Article 1 of the Constitution provides, as relevant:

“The constitution shall guarantee the inviolability of human dignity, the freedom and rights of the individual, and promote justice in society.”

Article 10 protects private life, providing as relevant:

“Everyone’s private life, honour and the sanctity of the home are guaranteed.”

Article 21 concerns protection under the law and provides:

“Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act.”

## **B. The Adoption Act**

28. Section 4 of the Adoption Act lays down the conditions for adult adoption:

“The adoption of an adult may be granted if it has been established that, while still a minor, he or she was in the care of and was brought up by the prospective adopter or that a relationship comparable with that between a child and parent was otherwise established between him or her and the prospective adopter while the adoptee was still a minor.”

29. Section 11 lays down the requirement of obtaining the parents’ consent, but only in relation to the adoption of a minor. Regarding adult adoption, there is no requirement to obtain the consent of the biological parents.

30. As for the legal effects of adoption, section 18 provides as relevant:

“Once an adoption has been granted, the adoptee shall be deemed the child of the adoptive parents and not of the former parents, unless otherwise expressly provided by law or unless otherwise follows from the nature of adoption.”

31. Section 53, on the obtaining of evidence, provides:

“The court shall, on its own initiative, order that all the evidence necessary to resolve a matter concerning the granting of an adoption be produced. The court shall, where necessary, hear all the persons who can provide information on a matter concerning the adoption.”

32. Section 54, which concerns hearings, provides in its first paragraph that the parents of a minor shall be provided with the opportunity to be heard in a matter concerning the granting of an adoption. Section 56, on the right of appeal, provides:

“The prospective adopter, the child and a person to be heard under section 54(1) shall have the right of appeal against the court’s decision in a matter concerning the granting of an adoption.”

As indicated by the Supreme Court (see paragraph 23 above), the Adoption Act does not grant a right of appeal to a person in the position of A, i.e., the biological parent of an adult.

### C. The concept of “legitimacy as the proper party”

33. The Supreme Court explained in its request that this concept means the right to conduct a case in one’s own name for a legal claim made as the subject of legal proceedings, which is usually determined according to the circle of parties and substantive legislation. In matters related to a person, legitimacy as the proper party is determined on the basis of the applicable legal provisions, not the interest associated with the matter. At the same time, it has been held in domestic case-law that it may be necessary, when evaluating the right to be heard in such matters, to take into account provisions and principles concerning the protection of family life.

## COMPARATIVE LAW MATERIAL

34. In connection with the present proceedings, the Court undertook a comparative survey covering 38 Contracting States. It emerged that, in addition to Finland, the adoption of an adult is provided for in 21 of these States<sup>1</sup>: Austria, Belgium, Czech Republic, Denmark, France, Georgia, Germany, Greece, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Norway, Romania, San Marino, Spain, Sweden, Switzerland, Türkiye and Ukraine.

35. The forms of adult adoption provided for vary among these States. In some of them, only simple adoption is available, i.e., the adoptee’s relationship to their biological family is not severed. Rather, the effect is only to create a legal relationship between the adopter and the adoptee. Other States provide for full or plenary adoption, the effect of which, as in Finland, is to sever the link between the adoptee and the biological family. Some States provide for both types of adoption.

36. In all of the surveyed States that make provision for adult adoption, various conditions are set by law in order for adoption to be granted. These include such matters as: ascertaining that it is in the legitimate interests of the prospective adoptee, or that the adoption is suitable; the existence of a *de facto* parent-child relationship that may have to be of a minimum duration (from one to six years); the existence of a link of biological kinship between the prospective adopter and adoptee; the absence of biological parents, or the lack of parental care for the prospective adoptee when a child; the prospective adoptee’s need for permanent assistance. In two States, it is provided that the interests of the biological parents are taken into account. In the Czech Republic, adoption cannot be authorised if contrary to their legitimate interests, which may be the case where the relationship between the

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<sup>1</sup> The following States make no provision in their domestic law for adult adoption: Albania, Azerbaijan, Bosnia and Herzegovina, Croatia, Estonia, Hungary, Ireland, Latvia, Moldova, Montenegro, the Netherlands, North Macedonia, Poland, Serbia, Slovakia, Slovenia and the United Kingdom.



prospective adoptee and the biological parents is a vital one (e.g., the parent is dependent on their child owing to ill health). In Germany, adoption “in a manner giving rise to the same effects as those arising from the adoption of a minor” cannot be granted if it would be in conflict with the “overriding interests” of the biological parents.

37. In two of the States surveyed<sup>2</sup>, the consent of the biological parents is required, although if this is unjustifiably or unreasonably withheld it can be dispensed with. The biological parents are heard in such proceedings.

38. In another ten States<sup>3</sup>, some procedural status or rights are granted to the biological parents. They may be formally treated as parties to the proceedings (e.g., Germany), or third parties with a qualified right to appeal (e.g., France), or permitted to apply to join the proceedings (e.g., Spain). They may be granted a right to be heard (e.g., Austria, Czech Republic, Liechtenstein) or the right for their opinion to be taken into account (e.g., Belgium, Norway, Sweden, Switzerland).

39. In several States<sup>4</sup>, as in Finland, the biological parents are not granted any status or rights in adult adoption proceedings. In the remainder of the States surveyed<sup>5</sup>, this issue is not clearly addressed in the relevant laws.

40. As for relevant domestic case-law, the survey referred to Austrian decisions holding that the biological parent only has the right to be heard, presupposing that the court was obliged to examine the arguments without being bound by them (Regional Civil Court decisions of 2006 and 2010).

41. The survey also referred to a Belgian decision in a case in which the biological father objected to the adoption of his adult daughter, arguing that the emotional bond between her and the prospective adopter could not be given more weight than his right to respect for family life (Court of Cassation in 2013). The court found that the lower courts had correctly assessed that the balance among the legitimate interests of all concerned tilted in favour of adoption. The advantage represented by the adoption outweighed any moral disadvantage to the father or reduction in his inheritance rights, particularly since the legal bond between the father and his daughter would not be severed (simple adoption).

42. A 2007 decision of the German Constitutional Court was included in the survey, ruling on the complaint of a woman that she had not been informed of adoption proceedings concerning her adult daughter and so had not been able to participate in them. The court found that Articles 2(1) and 20(3) of the Constitution had been violated. It held that, in general, biological parents (who are at the same time the legal parents) have to be informed beforehand about plenary adoption proceedings in order to be able to state

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<sup>2</sup> Italy (which provides for simple adoption) and Malta (which provides for full adoption).

<sup>3</sup> Austria, Belgium, Czech Republic, France, Germany, Liechtenstein, Norway, Spain, Sweden and Switzerland.

<sup>4</sup> Denmark, Romania, San Marino and Türkiye.

<sup>5</sup> Georgia, Greece, Iceland, Luxembourg and Ukraine.

their case, as the adoption of an adult under this form affects their rights and legal interests. It reversed the finality of the adoption order and remitted the case to the competent court for a decision on whether or not to reverse the adoption, taking account of the interests of the biological mother.

43. Another decision referred to in the survey was that of the Italian Constitutional Court in 1999, concerning the right of the parent of a minor to appeal against the latter's adoption, which distinguished this form of adoption from that of adult adoption. Regarding the latter form, it observed that the adoptee possesses full procedural capacity, including an autonomous right to appeal. This explained why no right of appeal was provided for the biological parents.

## THE COURT'S OPINION

### I. PRELIMINARY CONSIDERATIONS

44. The Court finds it useful to recall here the following considerations which it has articulated in several of the advisory opinions that it has given to date (see most recently *Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture*, request no. P16-2021-001, Armenian Court of Cassation, §§ 53-55, 26 April 2022). As stated in the Preamble to Protocol No. 16, the aim of the advisory opinion procedure is to further enhance the interaction between the Court and national authorities and thereby reinforce the implementation of the Convention, in accordance with the principle of subsidiarity. The procedure allows the designated national courts and tribunals to request the Court to give an opinion on “questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto” (Article 1 § 1 of Protocol No. 16) arising “in the context of a case pending before [them]” (Article 1 § 2 of Protocol No. 16). The aim of the procedure is not to transfer the dispute to the Court, but rather to give the requesting court guidance on Convention issues when determining the case before it. The Court has no jurisdiction either to assess the facts of a case or to evaluate the merits of the parties' views on the interpretation of domestic law in the light of Convention law, or to rule on the outcome of the proceedings. Its role is limited to furnishing an opinion in relation to the questions submitted to it. It is for the requesting court or tribunal to resolve the issues raised by the case and to draw, as appropriate, the conclusions which flow from the opinion delivered by the Court for the provisions of national law invoked in the case and for the outcome of the case (*ibid.*, § 53).

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

Their value also lies in providing national courts with guidance on questions of principle relating to the Convention applicable in similar cases (*ibid.*, § 54).

46. In formulating its opinion, the Court will take due account of the written observations and documents submitted in the course of the proceedings before it. Nevertheless, the Court’s task is not to reply to all the grounds and arguments submitted to it or to set out in detail the basis for its reply. Under Protocol No. 16, the Court’s role is not to rule in adversarial proceedings on contentious applications by means of a binding judgment but rather, within as short a time frame as possible, to provide the requesting court or tribunal with guidance enabling it to ensure respect for Convention rights when determining the case before it (*ibid.*, § 55).

## II. THE QUESTIONS ASKED BY THE SUPREME COURT

47. By its questions, insofar as they relate to Article 8 of the Convention, the Supreme Court essentially asks whether that provision – under its family or private life aspects – is applicable to legal proceedings concerning the grant of adoption of an adult child. If so, the requesting court asks whether in those proceedings the biological parent of the adoptee has a right to be heard, and whether the biological parent has a right to be granted the status of a party and a right to appeal against the granting of adoption.

48. The Court will consider these questions first in relation to the “family life” aspect of Article 8.

49. In the matter of the adoption of children, the Court’s case-law is extensive. The relevant general principles are set out at length in *Strand Lobben and Others v. Norway* [GC], no. 37283/13, §§ 202-13, 10 September 2019. That line of case-law is premised on an interference by the authorities in the family life of the applicant parent(s), restricting the mutual enjoyment by parent and child of each other’s company. There are in such cases competing interests among which a fair balance must be struck, the cardinal consideration being the best interests of the child. Another constant, since many of the judgments have been handed down in cases in which children have been placed in care, is the duty on the authorities to take measures to facilitate family reunification, to rebuild the family, if and when appropriate. The severance of the child’s ties to the family can only be accepted in very exceptional circumstances. The relevance of these principles to the facts of the case at hand is very limited.

50. As already noted in paragraph 25 above, the Supreme Court referred in its request to case-law of this Court to the effect that relationships between parents and adult children do not fall within the protective scope of Article 8 unless additional factors of dependence, other than normal emotional ties, are shown to exist. This interpretation was originally laid down in the context of immigration (see *S. and S. v. the United*

*Kingdom*, no. 10375/83, Dec. 10.12.84, D.R. 40, p. 196) and is followed principally in family reunification and expulsion cases. In the specific context of the expulsion of settled migrants, the Court has made an exception for young adults. As recently reiterated in *Savran v. Denmark* [GC], no. 57467/15, 7 December 2021 (citations omitted):

“174. Whilst in some cases the Court has held that there will be no family life between parents and adult children or between adult siblings unless they can demonstrate additional elements of dependence, in a number of other cases it has not insisted on such further elements of dependence with respect to young adults who were still living with their parents and had not yet started a family of their own. As already stated above, whether it is appropriate for the Court to focus on the “family life” rather than the “private life” aspect will depend on the circumstances of the particular case.”

This interpretation, attaching weight to dependence as a factor, has, however, also been followed in other contexts. For example, in the case of *Emonet and Others v. Switzerland*, no. 39051/03, 13 December 2007, the Court found that there existed, at the time of its examination of the case, *de facto* family ties between the three applicants and that additional factors of dependence other than normal ties of affection were also present, on account of the first applicant’s disability and her consequent need for care and support from the other two applicants (see § 37 of that judgment). More recently, in the case of *Bierski v. Poland*, no. 46342/19, 22 October 2022, the Court found that the relationship at issue in that case between the applicant and his son – by then an adult – represented family life, partly on account of the son’s degree of dependence owing to mental disability (see § 47 of that judgment).

51. As already noted (see paragraph 25 above), there are no factors of dependence between A and C. Nor does it appear from the file, including the submissions received from A, that there is a pecuniary or patrimonial aspect to her relationship with C (on the relevance of this factor when present see *Marckx v. Belgium*, 13 June 1979, § 52, Series A no. 31).

52. In view of the above, which coincides with the analysis of the Supreme Court, it is appropriate to focus on the private life aspect of Article 8 (see *Maslov v. Austria* [GC], no. 1638/03, § 63, ECHR 2008).

53. The Court recalls that Article 8 guarantees a right to “private life” in the broad sense, including the right to lead a “private social life”, that is, the possibility for the individual to develop his or her social identity. Thus, a person’s “private life” embraces multiple aspects of the person’s social identity. For example, the Court has found that a person’s civil status, be it married, single, divorced or widowed, forms part of his or her personal and social identity protected under Article 8 (see most recently *Fedotova and Others v. Russia*, [GC] nos. 40792/10 and 2 others, §§ 141 and 143, 17 January 2023, with further references). Under Article 8 it has referred to the importance of biological parentage as a component of identity (see *Mennesson v. France*, no. 65192/11, § 100, ECHR 2014 (extracts), and *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*, request no. P16-2018-001, French Court of Cassation, § 13, 10 April 2019). The Court has further found that the concept of private life encompasses the right to “personal development” or the right to self-determination, and the right to respect for the decisions both to have and not to have a child (see for example *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 159, 24 January 2017, with further references).

54. The Court refers to the facts of, and the domestic law relating to, the case pending before the Supreme Court, as presented by the latter. A is C’s biological mother and the biological mother of his four siblings. Under domestic law, the adult adoptee is deemed the child of the adoptive parents and not of the former parents (see paragraph 30 above).

55. Insofar as the biological parent’s identity is at stake given the effect of the discontinuation of the legal parental relationship with the adult child, and in the light of the above principles, the Court considers that, in relation to the biological parent, the private life aspects of Article 8 are applicable to legal proceedings such as those pending before the requesting court concerning the grant of adult adoption.

56. It must be emphasised, however, that such proceedings also, and if anything to a greater degree, concern the private life of the adopter and the adult adoptee. As also established in the relevant case-law, personal autonomy is an important principle underlying the interpretation of the Article 8 guarantees (*Fedotova and Others*, cited above, § 141). That principle is especially significant in the context of the adoption of an adult, as such proceedings concern primarily the personal autonomy of adopter and adoptee. Thus, while the biological parent is entitled to due respect for his or her personal autonomy, as a core element of private life, this must be understood as being delimited by the personal autonomy and private life of the adopter and adult adoptee, also protected by Article 8, which applies to “everyone”.

57. The guidance sought by the requesting court in its second and third questions relating to Article 8 of the Convention concerns essentially the procedural requirements to be complied with in the domestic proceedings. The Court recalls that although Article 8 contains no explicit procedural requirements, where an individual’s interests as safeguarded by that provision are at stake, he or she must be involved in the decision-making process, seen as a whole, to a degree that affords the requisite protection of those interests (see, among many others, *Lazoriva v. Ukraine*, no. 6878/14, § 63, 17 April 2018, with further references). However, due account must be taken of the fact that the domestic proceedings concern the sphere of relations of individuals between themselves. The choice of the means calculated to secure compliance with Article 8 in this sphere is, in principle, a matter that falls within each Contracting States’ margin of appreciation. There are different

ways of ensuring respect for private life and the nature of the State's obligation will depend on the particular aspect of private life that is at issue (see *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 112, 17 October 2019; also *Odièvre v. France* [GC], no. 42326/98, § 46, ECHR 2003-III).

58. It appears to the Court, from the provisions of the Adoption Act and the explanations given by the Supreme Court, that the fact that the biological parents are not given the right to be heard as a party in proceedings for the adoption of an adult or to bring an appeal reflects the position of the Finnish legislature that such proceedings are essentially different to those involving the adoption of a minor, in which both of those rights are recognised. For its part, the Court has indicated (at paragraph 49 above) that its case-law pertaining to the adoption of minors is of very limited relevance to the circumstances of the domestic proceedings here.

59. Furthermore, the conditions for granting adult adoption in Finland, set out in section 4 of the Adoption Act, appear to be essentially factual, i.e., the procedure involves an assessment by the courts of the character of the relationship that existed between adopter and adoptee while the latter was a minor. In keeping with the position in domestic law that this form of adoption is essentially a personal matter, the interests of other parties – notably those of the biological parents – are not treated as relevant considerations. Having regard to the importance of the notion of personal autonomy in the interpretation of Article 8, the Court considers that this approach to adult adoption proceedings can be regarded as coming within the margin of appreciation of the domestic authorities.

60. From the comparative survey referred to above, it does not appear that in this specific regard there is a common practice among the States that permit adult adoption. Indeed, it seems that in few legal systems are the interests of the biological parents expressly taken into account (see the Czech and German examples mentioned at paragraph 36 above). However, it is more common than not for the biological parents to have some formal standing and/or procedural rights in such proceedings, usually the right to be heard by the court (see the twelve States mentioned in this respect at paragraphs 37-38 above). This is not provided for in the Finnish Adoption Act. The Court would stress here that its task is not to assess, in a general way, the rationale and structure of the applicable domestic law. It is to give guidance to the requesting court, so that it can ensure that the proceedings before it are conducted in accordance with the requirements of the Convention as they may arise in the specific circumstances (see paragraph 44 above).

61. Where an individual's interests protected by Article 8 are at stake, an elementary procedural safeguard is that he or she be given the opportunity to be heard and that the arguments made are taken into account by the decider to the extent relevant. The Court observes that that is what appears to have happened before the District Court. That court heard the biological mother in

person as well as several more witnesses proposed by her and expressly referred to this evidence in its assessment of whether the conditions for granting the adoption were satisfied. The relevant provisions of domestic law provided for the views of the biological mother to be considered as those of a witness rather than of a party. Bearing in mind the parameters laid down by section 4 of the Adoption Act, it can be said that the form and degree of her involvement in the proceedings was in keeping with their nature. In particular, it appears that she was able to put in evidence the nature and quality of her relationship with her adult child throughout his childhood. It also appears from the decision of the District Court (see paragraph 18 above), that it examined the circumstances weighing for and against acceptance of the adoption application. While the biological mother may view this as insufficient, the Court does not consider that additional and specific safeguards such as the right to be treated as a party to the proceedings and the right to appeal are required in order to satisfy the procedural requirements of Article 8 from her perspective. It may be that in certain other legal systems the biological parents are accorded such standing or rights in adult adoption proceedings (see paragraphs 37-38 and 40-42 above), but, as recalled above, that choice of means comes within the State's margin of appreciation, which in an area such as this is wide.

62. In light of the foregoing, the Court considers that legal proceedings concerning the grant of adoption of an adult child may be regarded as affecting a biological parent's private life, thereby bringing certain rights under Article 8 of the Convention into play. That parent must be given the opportunity to be heard and the arguments made must be taken into account by the decider to the extent relevant. However, having regard to the wide margin of appreciation to which the State is entitled in the regulation of the procedure for adult adoption, respect for Article 8 does not require that a biological parent be granted the status of a party or the right to appeal the granting of the adoption.

63. The second and third questions of the Supreme Court also refer to Article 6 of the Convention. In its own practice, where applicants complain under Article 8 of the decision-making process that affected their rights and make a similar complaint under Article 6, the Court has often chosen to focus on the former provision only (see for example *Sommerfeld v. Germany* [GC], no. 31871/96, § 100, ECHR 2003-VIII (extracts), or *Lazoriva*, cited above, § 75). However, such a practice may not be appropriate to the context of Protocol No. 16, where, in order to provide useful guidance, all of the elements raised by the requesting court may need to be addressed.

64. As recently recalled in *Grzęda v. Poland* [GC], no. 43572/18 (see §§ 257-64, 15 March 2022, with many further references), for Article 6 § 1 in its civil limb to be applicable there must be a "dispute" over a right which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether that right is protected under the Convention. The

dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, lastly, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play.

65. The Court reiterates that the aim of Protocol No. 16 is not to transfer a dispute to the Court, which has no jurisdiction in this context either to assess facts or evaluate the merits of the parties' views on the interpretation of domestic law in light of Convention law (see paragraph 44 above).

66. For the purposes of the applicability of Article 6, it appears to the Court that what the biological mother in the case pending at domestic level is effectively asserting is a "right" for a biological parent, in the context of adult adoption, to have their rights and interests weighed in the balance by the competent domestic court, and the right to appeal the balance struck if it is adverse to her. However, the substantive grounds for adult adoption laid down in section 4 of the Adoption Act appear to be essentially factual, with the role of the competent court being to ascertain that the relations between adopter and adoptee were indeed of the prescribed nature. In this exercise there is no scope for consideration of the interests of any other party. It seems that the biological mother's dispute is essentially with the clear wording of the Adoption Act. It is settled case-law, however, that the Court may not create by way of interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned (see *Grzęda*, cited above, § 258). Moreover, in order to decide whether the right in question has a basis in domestic law, the starting point must be the provisions of the relevant law and their interpretation by the domestic courts (*ibid.*, § 259). Bearing in mind the explanations given by the Supreme Court about the content and rationale of the relevant statutory provisions (see paragraph 23 above), it appears that the right claimed by the biological mother does not exist, even on arguable grounds, in domestic law (compare *M.S. v. Sweden*, 27 August 1997, § 49, *Reports of Judgments and Decisions* 1997-IV). It is, however, for the requesting court to determine whether, with reference to domestic law and the facts of the pending dispute, that is the case.

67. In the event that the requesting court so confirms, the answer to the questions posed in relation to Article 6 of the Convention must be that the legal proceedings concerning the grant of adult adoption do not involve any right of the biological mother that is recognised under domestic law, with the result that from her perspective Article 6 of the Convention is not applicable.



FOR THESE REASONS, THE COURT, UNANIMOUSLY,

*Delivers* the following opinion:

1. Legal proceedings concerning the grant of adoption of an adult child may be regarded as affecting a biological parent's private life under Article 8 of the Convention. That parent must be given the opportunity to be heard and the arguments made must be taken into account by the decider to the extent relevant. However, having regard to the wide margin of appreciation to which the State is entitled in the regulation of the procedure for adult adoption, respect for Article 8 does not require that a biological parent be granted the status of a party or the right to appeal the granting of the adoption.
2. If the requesting court determines that the right claimed by the biological mother does not exist, even on arguable grounds, in domestic law, it would follow that, from her perspective, Article 6 of the Convention is not applicable to the proceedings for the adoption of an adult.

Done in English and French and delivered at a public hearing in the Human Rights Building, Strasbourg, on 13 April 2023.

Søren Prebensen  
Deputy to the Registrar

Síofra O'Leary  
President