

Adoption and surrogacy in France



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- **International adoptions** (2009 : **3017**; 2013 : **1343**; 2016 : **953**) / Foster care in France
➔ **Surrogacy ?**
- **Legal context** : General prohibition (surrogacy agreement = void) + criminal penalties (liaising + false representation)
- **Two questions** :
 - Recognition of the parent/child relationship constituted abroad (*transcription*) ≠ Creation of a parent/child relationship in France
- **French case law before ECHR decisions**:
 - French Supreme Court, April 6, 2011: Prohibition = international public order
 - French Supreme Court, September 13, 2013: Fraud

Diapositive 2

IM2 Chiffres du ministère des affaires étrangères
Isabelle MONTFORT; 28/09/2017

- **ECHR : article 8 violation of the child's right to private and family life (biological parent)**

- ECHR, June 24, 2016, « Mennesson et Labassée » c/ France
- ECHR, January 16, 2015, Laborie (n°44024/13) c/ France
- ECHR, July 21, 2016, Foulon (9063/14) and Bouvet (10410/14) c/ France

- **French Supreme Court, July 3, 2015**

- Fraud = no longer sufficient base for non-recognition : *“as long as the foreign birth certificate is regular and its mentions accurate”*
- Reality ? Legal or factual ? / For the mother, birth or biological ?
- Biological father / surrogate mother : no mention of the intended parent

- **Who can adopt in France ?**

- A married couple (including same-sex marriage since May 2013) or ;
- A single person or ;
- Adoption of the husband or wife's child.

- **From refusing the adoption...**

- CA Dijon, March 24, 2016 (n° 15/00057)
- Senate's Law Commission Information report n° 409 (2015-2016) issued on Feb. 17, 2016
- DIY : Delegation of parental authority

- **... To agreeing to it**

- July 5, 2017 (n° 15-28.597 & n° 16-16.901)
 - *no for the intended mother if not birth mother – only for biological father = partial transcription*
- July 5, 2017 (n° 16-16.455)
 - *same + suggests adoption*
- July 5, 2017 (n° 16-16.495)
 - *≠ void because of false documentation (intended mother said that she had given birth)*

Most recent case law

- **TGI Nantes, December 14, 2017, n°16/04.096 : surrogacy**
 - *TGI Nantes, January 12, 2017 et March 23, 2017 : full transcription > appeal > see below (CA Rennes, Dec. 18, 2017)*
 - *full transcription – appeal ?*
- **CA Rennes, December 18, 2017 (n°17/02387, n°17/02444, n°16/09525, n°17/00578) : surrogacy**
 - *follows Cass, July 5, 2017 : transcription only for the biological father*
- **Civ. 1ère, Cass., March 14, 2018, n°17-50.021 : surrogacy**
 - *confirms Cass, July 5, 2017 : transcription only for the biological father*
- **CA Paris, pole 1 ch.1, January 30, 2018 : surrogacy**
 - *adoption possible but refused : not in the best interest of the child*
- **CA Versailles, February 15, 2018, n°17/05285 & n°17/05286 : AMP**
 - *adoption is possible if the donor does not wish to recognize the child (reverse TGI Versailles June 29, 2017 n° 17/01099)*
- **Decisions of reexamination (law of modernization of the justice of 18/11/2016) n° 17 RHD 001 & n° 17 RHD 002 of February 16, 2018 : surrogacy**
 - *Right to a reexamination (including Mennesson)*
- **View, March 7, 2018 n°15003 of the French Supreme Court : same sex = only adoption**