

THE RIGHT TO FAMILY LIFE UNDER THE ECHR – WITH SPECIAL REGARD TO CENTRAL EUROPE



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Abstract

This article delves into the interpretation the right to family life, as enshrined in Article 8 of the European Convention on Human Rights (ECHR), with a particular focus on the Central European context. It seeks to unravel how this right is interpreted and applied amidst the backdrop of evolving societal norms, legal developments, and cultural traditions unique to Central Europe.

The analysis highlights the interplay between changing social attitudes, increased global mobility, economic challenges, and their collective impact on family-related matters. It explores the role of the family in child-rearing, societal advancement, and the personal development of its members, emphasising the deep-rooted connection between family life and cultural values.

Furthermore, the paper examines the principle of the margin of appreciation and the doctrine of dynamic interpretation, as key legal mechanisms that navigate the balance between universal human rights protections and the respect for national sovereignty and cultural diversity. It reflects on the challenges and opportunities presented by the shifting perceptions of what constitutes a family in contemporary society, exploring the potential for legal frameworks to adapt to these changes while safeguarding fundamental rights. By providing an understanding of the right to family life from a Central European perspective, this paper contributes to the ongoing discourse on human rights, family law, and societal development.

Keywords: Family life, protection of families, best interest of the child, children's rights, ECHR, right to family life

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1. Introduction

The protection of the family dates back to prehistoric times. The toolbox of family protection originates in the natural laws that long preceded the establishment of the state and, therefore, the law. The protection of the family is one of the oldest natural and moral codes: self-defence and the protection of family, offspring and community are all manifestations of our most basic instinct – that is, biological survival. Based on this, humans – like all other living organisms – must survive and reproduce so that their ancestors' essence can continue in the lives of their descendants, and their offspring's descendants, and so on. That is the reason a person establishes a marital relationship, starts a family, tries to create security for it, and protects it.¹

All of this is natural, to the extent that we should not even have to question it. And this would be the case if marriage and family worked hand-in-hand with this natural law. However, it appears that modern marriage and the family are no longer working as they once did; indeed, such institutions are changing within Western civilisation. Therefore, we need to have a legal framework to protect families and the right to family life.

The legal framework on which the right to family life and unity is based is contained in numerous provisions in international human rights, humanitarian and refugee laws. As the foundation there is universal consensus that – as the fundamental unit of society – the family is entitled to respect and protection.² A right to family unity is inherent in recognising the family as a group unit: if members of the family did not have a right to live together, there would not be a group to respect or protect. Family protection encompasses a broad spectrum of legal, social, and economic measures designed to preserve the family unit's stability, security, and well-being. This concept is rooted in the recognition of the family as the basic unit of society, deserving of special care and assistance. The underlying family values that inform and guide the legal frameworks for family protection often include notions of mutual respect, solidarity, care for the vulnerable, and the promotion of social cohesion.

The intricate relationship between family protection, family values, and the law's role in safeguarding families is a cornerstone of legal systems worldwide, reflecting a complex interplay between societal norms, ethical considerations, and legal principles. The protection of the family unit, regarded as the fundamental group of society and the natural environment for the growth and well-being of all its members, particularly children, is enshrined in various international legal instruments, national legislations, and judicial interpretations.

A central aspect of the law's role in protecting families is the delicate balance between upholding family values and protecting individual rights within the family unit. Legal systems are often tasked with navigating the tension between collective

1 Lenkovics, 2021.

2 Barzó, 2021.

family interests and the personal freedoms of family members. This balance is critical in cases involving the rights of children, gender equality, and the rights of minority or marginalised family members, where the law must ensure that family protection does not come at the expense of individual autonomy and rights.

Evolving family structures and societal values poses a significant challenge to the law's role in family protection. Legal systems are increasingly required to adapt to diverse forms of family life, including single-parent families, blended families, and other non-traditional family units. This adaptability ensures that the law remains relevant and effective in protecting all families, reflecting contemporary understandings of family life and relationships. Moreover, the law's protective function extends to addressing socioeconomic factors that impact family stability and well-being, such as housing, employment, healthcare, and education. By providing a legal framework that supports families in fulfilling their basic needs, the law plays a crucial role in enhancing family resilience against social and economic challenges. As society continues to evolve, the legal system's capacity to adapt and respond to the changing contours of family life remains a testament to its foundational role in upholding the dignity and integrity of the family unit.

This paper will delve into the right to family life as enshrined in Article 8 of the European Convention on Human Rights (ECHR), with a particular focus on the Central European context. It seeks to unravel the complexities of how this right is interpreted and applied amidst the backdrop of changing societal norms, legal developments, and cultural traditions unique to Central Europe. Through a detailed examination of various facets of family life – including adoption, immigration, reproductive technologies, same-sex relationships, and the nuances of traditional and religious marriages – the paper provides a comprehensive overview of the family rights protection.

Furthermore, the paper examines the principle of the margin of appreciation and the doctrine of dynamic interpretation, as key legal mechanisms that navigate the balance between universal human rights protections and the respect for national sovereignty and cultural diversity. It reflects on the challenges and opportunities presented by the shifting perceptions of what constitutes a family in contemporary society, exploring the potential for legal frameworks to adapt to these changes while safeguarding fundamental rights.

2. Family Life in International Human Rights Law

International human rights frameworks acknowledge the family as the essential building block of society, encapsulating a comprehensive range of rights and duties related to family dynamics. These encompass duties to refrain from intruding into family life, to uphold equality rights within the familial structure, and to safeguard

and support the family unit. Such obligations are fundamental and must be adhered to across all legislative, policymaking, and intervention efforts directed at families. This overarching recognition shows the role of the family in nurturing and sustaining societal health and development, mandating a legal and procedural framework that respects, protects, and facilitates the flourishing of family life. Consequently, it is imperative that all actions and measures concerning the family are designed and implemented with a deep commitment to these principles, ensuring that the integrity and well-being of the family unit are consistently promoted and maintained across diverse societal and cultural contexts.

The family unit is universally acknowledged as a cornerstone of societal structure, prompting international human rights documents to delineate specific responsibilities for states to both preserve and support this fundamental institution. This obligation is reflected in a variety of international legal instruments, which articulate the necessity for state action to ensure the protection and assistance of the family. Notably, the Universal Declaration of Human Rights (UDHR), in Article 16(3),³ affirms the family as the natural and fundamental group unit of society, entitled to protection by society and the state. This recognition is foundational, establishing the family not merely as a social construct, but as an inherent and vital component of societal health and stability, warranting dedicated safeguarding measures.

This provision in the UDHR serves as a universal acknowledgment of the family's critical role in nurturing, socialising, and providing for its members, contributing to the overall well-being and development of societies worldwide. By stipulating the entitlement of the family to protection by society and the state, Article 16(3) articulates a dual responsibility. It calls for a collaborative effort between societal entities and governmental structures to ensure that families are supported in their essential functions, emphasising the need for policies, laws, and practices that fortify the family unit against challenges and adversities.

The inclusion of this provision in the UDHR highlights the value placed on the family across cultures and legal systems, advocating for a framework within which families can thrive. It sets a global standard for the treatment and perception of the family, urging states and societies to prioritise the protection and assistance of families as a fundamental human rights obligation. This approach fosters an environment conducive to the growth, security, and prosperity of families, underpinning the broader goals of peace, justice, and human dignity that the UDHR seeks to achieve.

Similarly, the International Covenant on Economic, Social and Cultural Rights (ICESR), particularly in Article 10,⁴ emphasises the importance of family protection as part of broader economic, social, and cultural rights. It requires state parties to accord *“the widest possible protection and assistance [...] to the family [...] particularly*

3 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III)

4 UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

for its establishment and while it is responsible for the care and education of dependent children.”

Article 10’s emphasis on family protection is reflective of an acknowledgment that the well-being of families is integral to the realisation of broader economic, social, and cultural objectives. By specifying the need for protection and assistance, particularly during the family’s establishment and in the period it undertakes the care and education of dependent children, the covenant highlights critical stages in a family’s lifecycle where support is most needed. This encompasses not only financial aid but also access to social services, educational opportunities, and legal protections that collectively enable families to fulfil their roles effectively within society.

The requirement set forth by the ICESCR for state parties to provide such comprehensive support means a commitment to ensuring that families are equipped with the resources and environments conducive to their stability and growth. It recognises that the strength and resilience of families are fundamental to the advancement of economic, social, and cultural rights for all individuals. By advocating for the widest possible protection and assistance to families, Article 10 encourages a holistic approach to family support, integrating economic, social, and cultural policies to promote family well-being. This approach not only enhances the quality of life for family members but also contributes to the broader goals of social equity and cultural richness, reinforcing the interconnectedness of family welfare with societal progress and development.

The International Covenant on Civil and Political Rights (ICCPR), through Article 23(1),⁵ declares the right of men and women of marriageable age to marry and found a family, recognising the family’s entitlement to society’s protection. The Human Rights Committee, established to monitor states’ implementation of the ICCPR, has clarified that: *“the right to found a family implies, in principle, the possibility to procreate and live together.”*⁶ When state parties formulate and implement family planning policies, it is crucial that these policies align with the principles enshrined in the covenant. Specifically, such policies must uphold non-discrimination and voluntariness, ensuring that they do not impose choices on individuals or families. Moreover, the right to family unity necessitates that states adopt effective measures, both domestically and – where relevant, in collaboration with other nations – to facilitate the unity or reunification of families. This is especially pertinent in situations where families are fragmented due to political, economic, or related factors. These measures should aim to mitigate the barriers that prevent family members from living together, recognising the fundamental human right to family unity. States are therefore called upon to review and adjust their legal, administrative, and operational frameworks to cultivate conditions that support family cohesion and reunification. This

5 UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

6 CCPR General comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses

includes addressing legal and bureaucratic obstacles that impede the ability of family members to reside together, ensuring that family planning and reunification efforts are governed by principles of equity, humanity, and respect for individual rights and choices. The committee acknowledges the inherent variability in the understanding of what constitutes a family, recognising that perceptions of family can vary significantly across different states and even within various regions of a single state. This diversity in understanding makes it impractical to prescribe a universal definition of the family. Despite these variations, the committee underscores the principle that any group of individuals recognised as a family under the legal and societal frameworks of a state should be afforded the protections outlined in Article 23. As a result, it is imperative for state parties to provide detailed accounts of how the concept and boundaries of the family are interpreted or established within their own societal and legal contexts. This includes reporting on the criteria and considerations employed to define family units, reflecting the unique cultural, social, and legal landscapes that shape family constructs. Such reporting is crucial for assessing the extent to which states are upholding their obligations to protect the family, ensuring that all forms of family structures, as recognised by respective legal systems, receive the requisite support and protection under international human rights standards.

Moreover, the Convention on the Rights of the Child (CRC),⁷ starting from its preamble, acknowledges the family's vital role in children's growth and well-being, necessitating comprehensive measures for its protection and support. The CRC enshrines provisions aimed at safeguarding the child's right to family life, alongside delineating the corresponding obligations of state parties to uphold these protections. Article 7 of the CRC provides the child with the right, "*as far as possible, to know and be cared for by his or her parents.*" This establishes a foundational principle that emphasises the importance of the parental role in a child's life, and the inherent right of children to maintain a connection with their parents.

Further expanding on this framework, Articles 8 and 9 of the CRC address the child's right to preserve family relations as legally recognised, safeguarding against any unlawful interference. Article 8 obligates state parties to respect the child's identity - including nationality, name, and family relations as recognised by law - and to promptly provide assistance and protection to re-establish basic aspects of their identity if it is unlawfully deprived. Article 9 goes further by asserting the child's right not to be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such circumstances are strictly defined, including considerations of parental abuse or neglect, or when parents are living separately and a decision must be made regarding the child's place of residence.

7 UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

The principle of the best interest of the child stands as a fundamental human rights doctrine, pivotal in guiding all matters related to the child, including the right to family life. Embedded within the CRC, Article 3 stipulates that in all actions concerning children, “*the best interests of the child shall be a primary consideration.*” This directive highlights the importance of prioritising the child’s welfare in every decision and action affecting them. This principle of the child’s best interest is universal, applying to all children irrespective of their background. It encompasses the substantive right of the child to have their best interests thoroughly assessed and regarded as a primary consideration in all actions and decisions concerning them. This aspect emphasises that the assessment of the child’s best interests should not be superficial, but a detailed evaluation that accounts for the myriad factors affecting their life and development.

Furthermore, the best interest principle serves as an interpretive legal principle, guiding the interpretation and application of all rights enshrined in the CRC. It acts as a tool that ensures the child’s rights are interpreted in a manner that serves their welfare and development optimally. In expanding the understanding and application of this principle, it is imperative that state parties to the CRC adopt a comprehensive approach that incorporates this concept into their legal systems, policies and practices. This involves not only enacting laws and policies that explicitly reflect the best interest principle, but also training professionals involved in child-related matters to apply this principle effectively in their work. Moreover, it requires the establishment of mechanisms to review and monitor the implementation of this principle across all sectors affecting children, from family law to education, health care, and beyond. Its comprehensive application ensures that children’s rights are not just theoretical constructs but living realities that shape their experiences and futures in profound and positive ways.

These provisions collectively underscore the CRC’s commitment to ensuring that children enjoy their right to family life, highlighting the critical role of the family in providing care, affection, and security. The CRC mandates that state parties undertake all appropriate legislative, administrative, and judicial measures to ensure that children are not arbitrarily or unlawfully deprived of their family environment and that, in cases where separation is deemed necessary, all efforts are made to provide alternative care that is in the child’s best interests. In essence, the CRC articulates a framework that not only protects the child’s right to maintain family connections but also sets out the obligations of state parties to actively support and facilitate these rights. This includes creating conditions that favour the cohesiveness of the family unit and ensure that any interventions or decisions affecting the child’s right to family life are carried out with the paramount consideration of the child’s best interests.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, especially in Article 44(1),⁸ focuses on the rights of migrant workers and their families, highlighting the need for measures that facilitate family reunification and safeguard familial rights across borders. This provision reflects a deep understanding of the challenges and hardships faced by migrant workers and their families, acknowledging that family separation can have profound emotional, psychological, and social impacts. The convention calls on state parties to take concrete steps to facilitate family reunification processes, recognising this as a fundamental human right and an essential aspect of ensuring the well-being and stability of migrant workers and their families. This involves creating legal and administrative frameworks that are conducive to family reunification, including streamlining visa processes, reducing bureaucratic hurdles, and providing social and economic support to reunified families.

Moreover, Article 44(1) highlights the necessity of protecting the rights of migrant workers' families across international borders, emphasising the need for cross-border cooperation and coordination among states. This includes respecting the rights of family members to maintain their cultural identity, access to education, health care, and social services, and ensuring their legal protection within host countries.

By focusing on these aspects, the convention seeks to address the broader implications of migration on family life, aiming to mitigate the negative consequences of separation and enhance the positive contributions of migrant workers to their host and home countries alike. It includes the obligation of states parties to adopt a compassionate approach to migration policy, one that recognises the intrinsic value of family unity and the fundamental rights of all family members affected by migration.

In expanding the scope and application of this provision, it is crucial for states to consider not only the legal dimensions of family reunification but also the practical and emotional needs of migrant families. This means providing adequate support for integration, addressing language barriers, and ensuring that policies reflect an understanding of the diverse cultural backgrounds of migrant workers and their families.

Within the realm of international law, the safeguarding of family life is deeply intertwined with the core principles of equality and non-discrimination. This connection is explicitly recognised in key international documents, such as the Beijing Declaration and Platform for Action.⁹ This declaration emphasises the critical importance of interpreting the concept of family through the lens of equality and non-discrimination. This approach is paramount not only for the enhancement of family well-being, but also for the strengthening of democratic societies. By ensuring that

8 UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158

9 United Nations, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995

families are respected and protected in all their diversity, we lay a foundation for more inclusive and equitable societies. The application of the principle of equality and non-discrimination to human rights treaties and frameworks necessitates a comprehensive approach to all legislative, policy, and practical measures concerning the family. This means that laws, policies, and practices related to the family must be designed and implemented in a manner that neither discriminates against any particular family structure, nor prejudices the individual members within families. Whether concerning marital status, family composition, or the roles and responsibilities of family members, these measures should uphold the dignity and rights of all individuals, ensuring that no one is marginalised or disadvantaged.

Lastly, the Convention on the Rights of Persons with Disabilities,¹⁰ through its preamble, recognises the importance of the family in supporting persons with disabilities, and advocates for appropriate measures to strengthen family capabilities to assist members with disabilities.

These provisions collectively underscore a global consensus on the critical role of the family in strengthening societal stability and development. They mandate states to adopt a proactive stance in crafting laws, policies, and interventions that not only protect the family from external infringements but also actively support its welfare and development.

3. The Right to Family Life and Family Unity in Regional Law

The principles governing the rights to family life and family unity are consistently reflected across various regional human rights instruments, underscoring the universal recognition of the family as a pivotal societal unit deserving of comprehensive protection and support. This concept is not only a staple of international law, but also finds resonance within regional human rights frameworks, highlighting the global consensus on the critical role of the family.

In the Americas, the American Convention on Human Rights explicitly acknowledges the family's fundamental importance, stating that “*the family is entitled to protection by society and the state.*”¹¹ This provision emphasises the dual responsibility of society and governmental entities in safeguarding the family unit, illustrating a commitment to creating a supportive environment for families. The convention also solidifies the fundamental right to marry and establish a family within its provisions,

10 UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106

11 Organization of American States (OAS), American Convention on Human Rights, “Pact of San Jose”, Costa Rica, 22 November 1969

specifically through Article 17(2). This article serves as a clear affirmation of the importance placed on the personal freedoms associated with marital union and family life, emphasising the recognised autonomy and dignity of individuals in making such profound life choices.

Article 17(2) not only includes the liberty of individuals to enter into marriage and create family units but also implicates a broader commitment to safeguarding these rights from undue restrictions. This commitment reflects an understanding of the intricate ways in which the rights to marry and found a family intersect with various aspects of human rights, including privacy, equality, and non-discrimination. It ensures that individuals can pursue these fundamental aspects of human existence without facing arbitrary or discriminatory barriers, thereby promoting the principles of freedom and equality enshrined in the convention.

The inclusion of this right within the convention signifies the collective agreement among member states to honour and protect the personal choices of individuals regarding marriage and family life. It represents a commitment to creating legal and social environments that respect and nurture the family unit, recognising its critical contribution to society. Furthermore, by codifying this right the convention provides a legal framework for challenging laws or practices that unjustly impede the ability to marry and establish a family, offering protection and recourse for individuals whose rights are violated.

In expanding upon the right to marry and to found a family, the convention not only affirms the value of these personal decisions but also encourages states to adopt measures that facilitate the realisation of these rights for all individuals, free from discrimination. This approach aligns with the broader objectives of the convention to promote human dignity, equality, and justice, reinforcing the essential nature of marriage and family as cornerstones of both individual fulfilment and societal well-being.

Europe presents a parallel commitment through the European Social Charter, specifically in Article 16, which delineates the rights related to family life, advocating for the protection and assistance of the family.¹² This highlights the European commitment to fostering conditions that support the familial unit, recognising its essential role in social cohesion and individual well-being.

In examining the European context, it becomes evident that the rights articulated in the Convention on the Rights of the Child have been integrated into European legal frameworks, notably through the Charter of Fundamental Rights of the European Union (EU charter).¹³ Specifically, Article 24 enshrines the principle of the best interests of the child, mirroring the foundational tenets of the CRC. This article explicitly declares that *“every child shall have the right to maintain on a regular basis*

12 Council of Europe, European Social Charter, 18 October 1961, ETS 35

13 European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02

a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.”

This provision in the EU charter underscores the importance of encouraging and preserving the child’s relationship with both parents as a fundamental aspect of the child’s welfare, except in circumstances where such contact would not serve the child’s best interests. The charter acknowledges the value of these relationships in the child’s development and well-being.

Furthermore, the inclusion of the best interest principle within the EU charter signifies a commitment to child welfare at the heart of EU policies and legislation. It ensures that all actions and decisions impacting children within the EU are guided by a consideration of what will best serve the child’s needs and rights. This alignment with the CRC not only reinforces the universal principles of child protection and welfare, but also provides a clear legal mandate for EU member states to prioritise the well-being of children in their national laws and practices.

Expanding on this, the EU charter’s emphasis on maintaining personal relationships and direct contact with both parents reflects a broader understanding of the complex dynamics of family life and the diverse challenges that can arise in safeguarding these essential relationships. It highlights the need for legal and social mechanisms that support families in fulfilling the child’s right to family connections, while also equipping authorities to intervene protectively when the child’s best interests require it.¹⁴

The integration of the CRC’s principles into the EU charter represents a significant step in ensuring that children’s rights to family life, care, and protection are upheld across Europe. It affirms the collective responsibility of EU member states to create environments where children can thrive, underpinned by laws and policies that recognise the paramount importance of their best interests.

Similarly, in Africa the African Charter on Human and Peoples’ Rights declares the family as the natural unit and basis of society, mandating state parties to extend protection and assistance to uphold the family’s integrity and welfare.¹⁵ This is further reinforced by the African Charter on the Rights and Welfare of the Child, which not only reiterates the family’s foundational societal role but also explicitly states that the family “*shall enjoy the protection and support of the State for its establishment and development.*”¹⁶ Such provisions highlight a focus the family’s needs, from its formation to its ongoing development, emphasising the state’s role in ensuring a supportive and nurturing environment for all families.

14 Pascual and Torres Pérez, 2019.

15 Organization of African Unity (OAU), African Charter on Human and Peoples’ Rights (“Banjul Charter”), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

16 Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990)

Lastly, we need to address the European Convention on Human Rights (ECHR), the main focus of this article, with its Article 8 specifically articulating the right to respect for private and family life.¹⁷

This article declares:

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

Through this provision, the ECHR enshrines the fundamental importance of protecting individuals' privacy and family relationships from arbitrary or unjustified interference by the state. Article 8 not only demonstrates the intrinsic value of personal and familial autonomy but also establishes a legal framework within which the privacy and integrity of family life are safeguarded. This includes the right to live free from unwarranted intrusions into one's family affairs, and the assurance that any actions by public authorities that impact this right must be legally justified and proportionate to a legitimate aim.

Furthermore, the inclusion of this right within the ECHR reflects a broader commitment to the principles of dignity, autonomy, and security, recognising the central role that family life plays in an individual's existence and well-being. It mandates that member states of the Council of Europe take all necessary measures to protect these rights, ensuring that their legal and policy frameworks respect and uphold the sanctity of private and family life. Expanding on this, Article 8 also implies a positive obligation on the part of states to actively facilitate the conditions under which family life can flourish. This includes not only preventing undue interference, but also adopting measures that support the maintenance and development of family relationships, particularly in cases where family unity might be threatened by legal or administrative barriers.

In essence, Article 8 represents a cornerstone in the protection of private and family life within the human rights jurisprudence of Europe. It affirms the obligation of states to both respect and protect family life, emphasising the balance between individual rights and societal interests. This provision ensures that the fundamental rights to privacy and family are central considerations in the development and application of European human rights law, contributing to the overarching aim of promoting human dignity and freedom.

17 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5

These regional instruments collectively affirm the importance of the family across diverse legal and cultural landscapes, advocating for family protection that encompasses legal recognition, social support, and economic assistance. The convergence of these regional commitments reflects a shared global vision for the protection of family life, demonstrating an understanding that the well-being of families is inseparable from the broader objectives of human rights protection, social stability, and development. It calls for a concerted effort among states to implement these provisions, ensuring that families, in all their diverse forms, receive the protection and support necessary to fulfil their role within society.

4. The Right to Family Life under the ECHR

The right to family life, as enshrined in Article 8 of the ECHR, represents a foundational principle in the protection of personal and familial integrity within the member states of the Council of Europe. This provision, deeply embedded within the ECHR, underscores the human need to establish and maintain personal relationships, thereby facilitating individual development through the prism of family bonds. The significance of Article 8 extends across various dimensions of legal and social life, impacting both the jurisprudential landscape and the legislative frameworks of European countries.

Article 8 mandates the right of every individual to respect for their private and family life, their home, and their correspondence. It delineates a clear boundary against arbitrary interference by public authorities, ensuring that any encroachment upon this right is strictly justified on legitimate grounds such as national security, public safety, or the protection of health or morals. This provision thus serves as a guardian of intimate personal relationships, acknowledging the broad spectrum of family structures and the evolving understanding of what constitutes a family in contemporary society.

The overarching importance of the right to family life lies in its role in balancing individual rights against the collective interests of society. Through the principles of proportionality and the doctrine of the margin of appreciation, Article 8 grants states a certain latitude to navigate the complex interplay between safeguarding personal freedoms and upholding public interests. This nuanced balance ensures the adaptability of the right to family life to the diverse cultural, social, and legal contexts across Europe, making it a versatile tool in the protection of human rights.

Moreover, the evolving jurisprudence of the European Court of Human Rights (ECtHR) on Article 8 has influenced the understanding and application of this right. Through its decisions, the ECtHR has addressed a wide array of issues, from family reunification and parental rights to adoption, surrogacy, and the rights of sexual minorities. These rulings have not only clarified the scope and content of Article 8

but also prompted member states to reform their laws and practices to align with modern human rights standards.

The impact of Article 8 extends into the domestic legal systems of Council of Europe member states, compelling them to amend legislation and judicial practices that contravene the principles enshrined in this article. Such reforms have touched upon various aspects of family law, including child custody arrangements, immigration laws, and the recognition of diverse family formations. This illustrates the direct and tangible influence of Article 8 on national legal frameworks, fostering legal environments that respect and protect the right to family life.

Furthermore, the right to family life under Article 8 is connected to other fundamental rights protected by the convention, such as the right to marry and the rights of children. This interconnectedness highlights the comprehensive approach of the ECHR in safeguarding human dignity and freedoms, emphasising the interdependent nature of human rights.

Article 8 stands as a testament to the enduring importance of the right to family life in the European human rights landscape. Its broad interpretation by the court has been instrumental in advancing the protection of family life, reflecting changing societal norms and values. Through its ability to mediate between individual rights and societal interests, Article 8 continues to shape the legal recognition and protection of family relationships in their diverse forms, marking a pivotal contribution to the development of human rights jurisprudence in Europe.

Building upon the foundational significance of Article 8, the jurisprudence of the ECtHR has been instrumental in shaping the evolving interpretation of what constitutes family life. This evolution reflects a balance between societal values and individual rights, a central theme in the court's approach to cases involving family matters. The ECtHR's expansive interpretation of family life means a recognition of the diverse realities of families in contemporary society, marking a significant departure from traditional notions of the family.

Traditionally, the concept of family life was understood within a narrow framework, typically encompassing relationships based on marriage and blood ties. However, as societal norms and values have shifted, so too has the ECtHR's interpretation of family life. The court has progressively adopted a more inclusive approach, recognising that family bonds can form in various contexts beyond the traditional nuclear family structure. This broader interpretation includes *de facto* relationships, cohabitations and other forms of social and emotional bonds that manifest the essence of family life.

This evolving interpretation reflects the ECtHR's efforts to reconcile the diverse forms of family life with the principle of non-discrimination, ensuring that all individuals enjoy the rights and protections afforded by the convention, regardless of the nature of their family relationships. The court's jurisprudence emphasises the importance of considering the factual reality of personal bonds and commitments over formal or traditional definitions of family.

Over the past fifteen years, the ECHR has significantly broadened the protective ambit of Article 8. This reflects the article's inherent characteristics, which stands as an example of the convention's qualified rights. The essence of these rights lies in the necessity to strike a careful balance between safeguarding individual human rights and acknowledging the discretion afforded to contracting states, known as the margin of appreciation. Article 8, which guarantees the right to respect for private and family life, has been subject to a dynamic interpretation by the ECtHR, evolving to address the complexities of modern life and the diverse challenges facing individuals and families across Europe. This evolution is emblematic of the provision's flexibility and its capacity to adapt to changing societal norms, technological advancements, and shifts in legal and ethical understandings of privacy and family life. This evolution showcases the court's role in shaping a common European standard for the protection of human rights, while respecting the unique traditions and legal systems of its member states. By engaging in this balancing act, the court ensures that the application of Article 8 remains relevant and responsive to contemporary challenges, thereby reinforcing the living instrument doctrine that characterises the ECHR.

Moreover, the ECtHR has navigated the delicate balance between societal values and individual rights by employing the principles of proportionality and the margin of appreciation. This allows member states a degree of discretion in determining how best to reconcile local norms and values with the convention's requirements. However, this discretion is not unfettered; the court has consistently held that any interference with the right to family life must be justified by a pressing social need and must be proportionate to the legitimate aim pursued. The significance of the margin of appreciation becomes particularly pronounced when examining Article 8 through the lens of Central Europe. In regions where societal norms and cultural values deeply influence legal and social frameworks, the leeway granted to states under the margin of appreciation doctrine can be notably broad. This is especially true for matters lacking a pan-European consensus, often due to their deeply ingrained social and cultural implications. In such instances, it is acknowledged that state parties possess a closer affinity with and understanding of their societal dynamics, positioning them as the most appropriate entities to evaluate and address the specific needs and preferences of their communities.

When issues arise that touch on sensitive areas of social and cultural life, the court defers to the judgment of national authorities, recognising their superior capacity to gauge the public sentiment and ethical standards prevailing within their territories. This deference is rooted in the principle that national governments and legislatures, being on the front lines of societal change and cultural contexts, are in a better position to navigate the interplay between human rights protections and societal values.

This approach is of critical importance in Central Europe, where countries may exhibit unique historical, social, and cultural landscapes that shape public attitudes and legal norms. For instance, issues related to family life, reproductive rights, and

the recognition of non-traditional family structures often evoke varied responses across the continent, reflecting divergent cultural and moral values. In such contexts, the ECtHR's application of the margin of appreciation allows for a nuanced recognition of these differences, ensuring that the interpretation and application of Article 8 are sensitive to the regional specificities of Central European states.

Moreover, this tailored application of the margin of appreciation underscores the principle of subsidiarity inherent in the European human rights system, which posits that decisions should be made as closely as possible to the citizens they affect. By permitting a broader margin of appreciation in areas where there is no consensus, the court not only respects the diversity of European societies but also encourages a dialogue between national legal systems and European human rights standards. This dialogue is essential for advancing a balanced approach to human rights protections, one that harmonises the universal principles enshrined in the convention with the rich tapestry of cultural and social norms present across Europe.

The margin of appreciation is a foundational principle within the framework of the Convention, granting states a certain level of discretion, especially in matters of deep sensitivity. Crucially, however, this principle does not provide states with unfettered freedom to act as they please. As a consensus begins to form, particularly on sensitive issues or those where legal norms are evolving, the scope of this discretion narrows. Eventually, it becomes untenable for a state to act in ways that diverge from the rights outlined in the convention, as interpreted through the lens of common European practices.

This brings us to a crucial question regarding family life, a domain deeply enmeshed with cultural norms and values that markedly differ between Central and Western Europe. The question arises: can a consensus on these delicate matters ever be achieved across such diverse cultural landscapes?

Family life presents a complex arena for the application of universal human rights principles. The variations in cultural and social norms between Central and Western Europe underscore the challenge of reaching a consensus on issues related to family life. These differences not only reflect distinct historical and cultural trajectories but also influence contemporary attitudes towards marriage, parenthood, and the legal recognition of various family forms.

Given the deeply rooted nature of these cultural and societal norms, achieving a comprehensive consensus on family-related matters may seem daunting. However, the changing societal values and the ongoing dialogue facilitated by the convention's framework suggest that convergence in certain areas is possible. As states engage with each other and with the ECHR, they contribute to a dynamic process of mutual influence and adaptation. This process, while respectful of national sovereignty and cultural diversity, encourages a gradual alignment with fundamental human rights principles, including those related to family life.

Countries in Central and Eastern Europe are bound by a shared historical background, which sets them apart from the political and welfare cultures characteristic of 'Western' democracies. This distinct historical context has given rise to divergent

value systems and interpretations of fundamental concepts, including that of family life. The unique experiences and developments these nations have undergone influence their societal norms and legal frameworks, leading to perceptions and definitions of family life that may contrast with those prevalent in Western societies. This difference in historical experience contributes to a varied landscape of cultural and social values, reflecting in the distinct approaches to and understandings of key societal constructs such as family.

In conjunction with the principle of dynamic interpretation, the margin of appreciation aims to ensure that the essence of rights aligns with current moral standards. However, the question arises: do contemporary moral values in Hungary, Poland, and Slovakia mirror those in Belgium, the Netherlands, or the United Kingdom? It appears unlikely. The varying historical, cultural, and social backgrounds of these countries contribute to distinct moral landscapes, suggesting that a uniform application of contemporary morality across such diverse contexts may not be feasible.

The objective of the protections afforded by Article 8 is to safeguard individuals from arbitrary interference by public authorities. This goal is realised by defending the four facets of an individual's personal autonomy: private life, family life, home, and correspondence.

Like other qualified rights within the convention, Article 8's framework is bifurcated: the initial paragraph delineates the scope of the right being guaranteed, while the subsequent derogation clause outlines the broad conditions and particular justifications a state party might cite to justify limitations on the rights and freedoms concerned.

While the court often does not question the legitimacy of a state's legal intervention into an individual's exercise of their rights, it does mandate the state to demonstrate that the contested measure is necessary in a democratic society. This necessity is gauged by whether the measure addresses a pressing social need and aligns with collective values, with proportionality being a crucial aspect of this necessity. Thus, the concept of necessity, incorporating proportionality, frequently becomes the arena where disputes between individuals and states are contested.

Over time, the boundaries of this arena have shifted, reflecting ongoing social and economic evolution within society. Consequently, the practical enforcement of Article 8 poses a significant challenge, particularly in forecasting its application in situations of social controversy. This challenge is accentuated when considering the divergent value systems between Western Europe and Central and Eastern Europe. In this light, Article 8 emerges as one of the convention's most flexible provisions, having expanded over the years to encompass an increasingly broad array of issues and extend its protection to interests not explicitly covered by other articles. This flexibility is partly due to the Strasbourg bodies' deliberate avoidance of a comprehensive definition of key concepts under Article 8, such as family life or the family itself, allowing these concepts to evolve with changing societal norms. In recent years, there have been concerted efforts to broaden the scope of Article 8 even further.

A key aspect to address when examining the family life element of Article 8 is the interpretation of the term ‘family’. The definition employed by the court has evolved over time, mirroring shifts in the societal attitudes of Europe, and will surely continue to adapt in response to further changing social norms. The court has consistently articulated in its jurisprudence that the concept of family life under Article 8 extends beyond traditional marriage-based families to include various *de facto* relationships.

In determining whether a relationship qualifies as family life, several criteria may be considered significant - such as cohabitation, the duration of the relationship, and evidence of commitment between the partners, which could be demonstrated through having children together or through other means. This adaptable approach by the court acknowledges the diverse forms of family configurations present across the Council of Europe’s member states and their ongoing evolution.

Thus, *de facto* family arrangements are recognised under the convention just as formally established familial bonds are. Given that the court evaluates the presence of family life on an individual basis by examining the intimate connections between individuals involved, it is impractical to catalogue all possible relationships that might be deemed as constituting family life. Nevertheless, in instances where a particular situation does not meet the criteria for family life, it may still be afforded protection under Article 8 through the provision related to private life.

Within the court’s body of law, the interpretation of family life under Article 8 extends beyond the traditional marriage-based family framework to include various *de facto* familial relationships. This broader interpretation accommodates arrangements outside the conventional marriage structure. Jurisprudential examples demonstrating the ECtHR’s inclusive approach to family life under Article 8 include:

- The relationship between children and their grandparents, as established in the case of *Marckx v. Belgium*.¹⁸
- Sibling relationships, irrespective of age, highlighted in *Olsson v. Sweden*,¹⁹ and in the context of adult siblings, as seen in *Boughanemi v. France*.²⁰
- Bonds between an uncle or aunt and their nephew or niece, recognised in *Boyle v. the United Kingdom*.²¹
- Connections between parents and children from subsequent relationships or those resulting from extramarital relationships, especially when paternity is acknowledged and there exists a close personal relationship, as noted in *X v. Switzerland*.²²
- The relationship between adoptive or foster parents and their children, as seen in *Jolie and Lebrun v. Belgium*.²³

18 *Marckx v. Belgium*, Application No. 6833/74, Eur. Ct. H.R. (1979)

19 *Olsson v. Sweden*, Application No. 10465/83, Eur. Ct. H.R. (1988)

20 *Boughanemi v. France*, Application No. 15432/89, Eur. Ct. H.R. (1996)

21 *Boyle v. the United Kingdom*, Application No. 9659/82, Eur. Ct. H.R. (1988)

22 *X v. Switzerland*, Application No. 16744/14, Eur. Ct. H.R. (2017)

23 *Lebrun v. Belgium*, Application No. 15576/89, Eur. Ct. H.R. (1996)

These instances reflect the ECtHR's commitment to recognising the complexity and diversity of family life, acknowledging that meaningful familial bonds extend beyond the confines of marriage and traditional family structures.

The core element of family life encompasses the right to cohabit, facilitating the natural development of familial relationships (*Marckx v. Belgium*, § 31) and allowing family members to cherish each other's presence. The principles of maintaining family unity and facilitating family reunification in case of separation are integral to the right to respect for family life under Article 8.

The concept of family life is understood as an autonomous notion within the court's jurisprudence. Thus, the existence of family life is primarily a matter of fact, hinging on the actual presence of close personal bonds in practice. Consequently, the court evaluates *de facto* family connections, such as cohabitation, even in scenarios where the law does not formally recognise these as a family. Other considerations may include the duration of the relationship and, for couples, evidence of commitment, such as having children together. Therefore, Article 8's definition of family encompasses not only marital relationships but also other *de facto* family ties, where individuals coexist outside of marriage or exhibit other signs of enduring partnership (*Paradiso and Campanelli v. Italy*, §140²⁴ and *Oliari et al. v. Italy*, §130).²⁵

Merely having a biological connection between a natural parent and a child, without additional legal or factual evidence of a close personal relationship, does not guarantee the application of Article 8's protections. Typically, family life under Article 8 presupposes living together. However, there can be exceptional circumstances where other aspects might reveal that a relationship possesses enough stability to constitute *de facto* family ties. Furthermore, the court has acknowledged that in certain situations, intended family life may exceptionally come under Article 8's protection, particularly in instances where the inability to fully establish family life cannot be ascribed to the applicant.

Therefore, is a biological connection necessary or adequate for the establishment of family life? A biological link between a parent and a child, by itself, does not automatically equate to family life under the court's scrutiny. Conversely, the lack of genetic ties does not inherently exclude a relationship from being considered as family life. In essence, the court posits that the simple existence of biological kinship, without additional legal or factual indicators of a close personal bond, is insufficient to warrant the protection afforded by Article 8.

Is it essential for marriage to exist for the establishment of family life? The existence of a lawful and authentic marriage automatically qualifies for the protection under Article 8 for all associated parties: children are deemed to be part of such a relationship from their birth. Although a valid marriage is a sufficient condition for the recognition of family life, it is not a prerequisite: the bond between a mother and her child is protected by the convention, irrespective of the mother's

24 *Paradiso and Campanelli v. Italy*, Application No. 25358/12, Eur. Ct. H.R. (2015)

25 *Oliari et al. v. Italy*, Application No. 18766/11, Eur. Ct. H.R. (2015)

marital status. The court has consistently indicated that unmarried couples living together in a stable and continuous manner with their children are generally recognised as having family life, making them socially comparable to married couples. Furthermore, living together is not a mandatory criterion for the existence of family life. The court has stated that the definition of family life in Article 8 encompasses the relationship between a parent and child, even in the absence of cohabitation, and this applies regardless of the child's legitimacy. While such a bond can be dissolved under extraordinary circumstances – events like a father's delayed acknowledgment of a child, lack of financial support, or decision to leave the child with relatives upon moving to a convention state – are considered exceptional situations that do not inherently end family life.

It is elucidated that formal marriage is not an indispensable factor for constituting family life under the convention. It is pertinent to note the societal shifts and the increasing divergence between Western European nations and those in Central and Eastern Europe regarding this issue. In the latter region, the traditional definition of marriage as a union between a man and a woman is deeply embedded. The court has recognised that some states have broadened the definition of marriage to include same-sex couples, attributing this to their individual perceptions of marriage's societal role, rather than deriving directly from a conventional interpretation of fundamental rights as established by the convention's signatories. Slovakia provides a compelling example of how legal instruments in Central Europe often not only protect but also prioritize certain forms of family structures. The Slovak Family Act explicitly establishes in its Art.2. that *“the family founded on marriage is the fundamental unit of society”*. This legislative declaration illustrates a clear normative preference for families formed through marriage, while also acknowledging other forms of family life. Slovak law uses specific terminology that reinforces the privileged position of marital families within the broader legal framework. In Slovakia, marriage is defined both in the Family Act and in the Constitution as a monogamous union between a man and a woman, formalized in a manner prescribed by law. Although the Family Act extends its protective reach to all forms of family life, the deliberate use of terminology suggests a legislative inclination to favor families based on traditional marriage. This approach reflects broader societal attitudes in Slovakia and other Central European nations, where traditional family values remain influential. These norms stand in contrast to the evolving definitions of family life seen in many Western European countries, where legal recognition of non-traditional family structures, including same-sex unions and cohabitation, has expanded significantly. While the ECtHR emphasizes the autonomy of states in interpreting the concept of family life under the ECHR, Slovakia's legislative framework illustrates how national laws can simultaneously adhere to the Convention's principles while reflecting deeply ingrained societal values. This duality highlights the ongoing tension between universal human rights standards and regional particularities in Central Europe.

In recent times shifts in societal attitudes, an expanded conception of family, increased global mobility, and the impacts of economic crises have significantly

influenced all matters related to family, including how the right to family life is understood and applied. The family unit plays an indispensable role in raising children, shaping future generations, and facilitating the social and personal growth of its members. Hence, it is deeply intertwined with cultural values and national traditions. This connection underscores the importance of considering these foundational elements when delving into the right to family life, emphasising the need to respect and understand the diverse manifestations of family across different societies.

The considerable extension of the protective scope of Article 8 over the last fifteen years highlights the ECtHR's commitment to ensuring that the convention remains a dynamic tool for the protection of human rights in Europe. It exemplifies the court's proactive approach in interpreting the provisions in light of evolving societal values and legal developments, thereby contributing to the ongoing development of human rights standards across the continent.

The court's approach to family life underlines the dynamic nature of human rights jurisprudence, reflecting an understanding that legal interpretations must evolve in tandem with societal changes. By fostering a jurisprudence that respects the diversity of family forms and the depth of personal relationships, the court contributes to the broader aim of the ECHR: to protect fundamental human rights and freedoms in a manner that is both meaningful and relevant to the lives of individuals across Europe.

In conclusion, the ECtHR's evolving interpretation of family life serves as a testament to its commitment to balancing societal values with the protection of individual rights. Through its case law, the court has expanded the scope of Article 8, ensuring that the right to family life remains a living instrument, capable of accommodating the complex and varied forms of family relationships that exist in modern society.

5. Conclusions

The exploration of the right to family life, particularly within the context of Central Europe, reveals an area where legal interpretations, societal values, and cultural traditions intersect. This article has sought to illuminate the right to family life as protected under Article 8 of the ECHR, highlighting the interplay between evolving societal norms and established legal frameworks. Through examining issues such as adoption, immigration, reproductive technologies, and the recognition of various forms of relationships, we gain insight into the broader implications of the right to family life and its critical role in ensuring the well-being and development of individuals and societies.

As societal attitudes continue to shift and legal paradigms evolve, the interpretation of family life remains a vital area of discourse and legal examination.

The challenges posed by changing social dynamics, technological advancements, and global mobility call for a responsive and thoughtful legal approach that respects the diversity of family configurations while upholding fundamental human rights. The role of the family in nurturing the next generation, guiding societal progress, and supporting the personal development of its members is undeniable, which is why we need to protect and promote the right to family life across all cultures and legal systems.

This article advocates for a balanced and informed approach to the right to family life, one that acknowledges all family forms and the varying cultural and legal landscapes across Europe. As we move forward, it is crucial for legal scholars, policy-makers, and societies to engage in continuous dialogue and reflection to ensure that the protection of family life remains adaptable, inclusive, and reflective of contemporary values. By doing so, we can better support the diverse needs of families and create environments where every individual has the opportunity to thrive within the context of their own familial relationships. Hopefully this article prompts the readers to delve deeper into the comprehensive understanding of the right to family life from a Central European perspective, hoping to contribute to a broader conversation on how we view the right to family life.

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