CHAPTER 7

Family Life- and Identity-Related Rights of the Child

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ABSTRACT

This study addresses the issue of family life in the context of private life – the issue of identity. The study aims to provide insights regarding the challenges associated with ensuring the right to family life and identity prevalent today. The analysis is conducted based on regional standards of the Council of Europe, mainly the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court of Human Rights case law, which has developed from it. The scope of the analysis includes the right to family life and right to identity in the European Court of Human Rights, the origin of the child and its relation to the right to family life and identity, child registration and its relation to the right to family life and identity, the child's name and surname as elements shaping the child's identity, nationality, and identity, parent-child contact, and the right to maintain identity. The study highlights key trends and challenges related to respect for identity in the context of existing and new phenomena occurring in the societies of Central European countries.

KEYWORDS

family life, child, best interests of the child, right to privacy, identity, European Court of Human Rights, European Convention of Human Rights, parental rights

1. Introduction

The right to family life and rights related to identity are firmly linked, mainly because identity is formed at an early stage of an individual's life and develops throughout life within the framework of considerably strong links with members of the immediate family. Hence, in the context of the child, the relationship between these two rights takes precedence as the most fitting and legitimate in terms of the scope of consideration.

From the perspective of human rights, as understood under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the right to family and private life and the right to identity are closely related. However,

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while the former is articulated in the wording of Article 8 of the ECHR, the latter is not explicitly mentioned in the wording of the Convention but is an immanent part of the right to private and family life and is so considered by the European Court of Human Rights (ECtHR) in its case law.

This study situates the issue of the right to family life and the right to identity in the context of the rights and situation of the child and the right to identity. This is particularly significant at this stage because most identity issues are shaped precisely during childhood and develop and change with age. In this context, several issues related to the child's situation in the family must be considered.

First, it will be necessary to address the question of identity in the context of a child's descent from each parent and situations in which the child is not genetically descended from either or both parents. Such a situation may arise when adopting a child, as well as when using specific assisted procreation methods. Second, the issue of the child's registration must be addressed. Such a procedure does not pose a problem when the child is born in the country of registration and of the particular country's nationals. Nevertheless, it can generate difficulties in the case of migrant children or when parents wish to register a child born abroad. Third, the issue of giving the child a name and a surname must be considered. While the former situation will be more of an administrative control, the latter (i.e. the surname) may carry broader complications concerning whether there are grounds for the child to bear the surname of both or one of the parents. It also seems necessary to analyse the child's identity in the context of contact with the parents – those raising the child and, in foster care cases, the natural parents. Notably, apart from the right to the child's identity in the family context, the question of the right to preserve and nurture this identity (relevant from the perspective of adoption or migration) will be relevant.

The issues addressed will be based on an analysis of the guarantees typical of the Council of Europe system, particularly regarding the existing case law practice concerning Central European countries, the general case law practice concerning the countries of the Council of Europe system, and universal standards, albeit only to the extent that they are used in the case of conflicts concerning the right to family life and the right to identity being the subject of ECtHR decisions. The analysis presented will allow for the formulation of conclusions and *de lege ferenda* postulates that may, in the future, form the basis for considerations accepted by European countries.

2. Right to family life and right to identity in the ECHR

The protection of the right to private and family life, place of residence, and correspondence are regulated in Article 8 of the ECHR. According to the text of this article, '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

wellbeing 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.'[1]

From the perspective of the considerations made, it is necessary to examine the protection of private life, which has – as one of its constituents – an element of the right to identity and the protection of the right to family life. Notably, the ECtHR, in its jurisprudence, often refers to Article 7 of the Convention on the Rights of the Child (hereinafter CRC). According to this article, the child 'shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents'.[2] Reference can also be found to Article 8 of the CRC, which contains a regulation indicating that 'States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference'. This regulation obligates States Parties to the CRC (including all Council of Europe member states) to act to restore elements of identity. Over time, understanding the right to family life and private life in the context of identity has taken on a broader context.

When ruling in the context of the concept of family life, the ECtHR addressed this issue broadly and independently of the legal regulations adopted by member states of the Council of Europe.[3] A broad approach to the concept of "family life" allows it to encompass a wide range of parent-child relationships,[4] far broader than merely the relationship of spouses with their children.[5] According to the findings of the ECtHR in deciding cases relating to family life, it has been established that family life includes relationships between parents in a de facto relationship only and not in marriage and their children,[6] relationships between parents and their children after the end of the marriage,[7] relationships between same-sex couples,[8] relationships between children and their grandparents,[9] relationships between siblings,[10] irrespective of their age,[11] and relationships occurring between an uncle or aunt and his/her nephew or niece.[12] There are also cases in the ECtHR case-law where the term "family life" is extended to

1 Article 8 of the Convention on the Rights of the Child (CRC) United Nations, Treaty Series, vol. 1577, p. 3.
2 Art 7, CRC.
3 Piech, 2009, p. 149.
4 Schabas, 2015, p. 389.
5 Although these are considered the most obvious: case Berrehab vs. the Netherlands, no. 10730/84, 21 June 1988, § 21.
6 Case X, Y and Z vs. United Kingdom [GC], no. 21830/93, 22 April 1997, §34; case Johnston and others vs. Ireland, no. 9697/82, 18 December 1986, §56; case Van der Heijden vs. the Netherlands [GC], no. 42857/05, 3 April 2012, §50; case Keegan vs. Ireland, no. 16969/90, 26 May 1994, §44.
7 Case Ilya Lyapin vs. Russia no. 70879/11, 30 June 2020, §44.
8 Case Schalk and Kopf vs. Austria, no. 30141/04, 24 June 2010, §§ 90-95.
9 Case Marckx vs. Belgium, no. 6833/74, 19 June 1979, § 45-46.
10 Case Olsson vs. Sweden, no. 10465/83, 24 March 1988, §59.
11 Case Boughanemi vs. France, no. 22070/93, 24 April 1996, §32-35.
12 Case Terence Boyle vs. United Kingdom, no. 16580/90, 28 February 1994, §13-14, also Lazoriva vs. Ukraine, no. 6878/14, 17 April 2018, § 65.

relationships between parents and children born in a second relationship or between children born out of wedlock, particularly where paternity has been acknowledged, and the parties have a close personal relationship,[13] as well as between adoptive or foster parents established for children deprived of their natural parents.[14] Moreover, some circumstances justify extending the scope of "family life" beyond the age of majority where there are "additional elements of dependency".[15] Notably, the mere existence of a biological relationship between parents and the child is considered insufficient to confer protection under Article 8 of the ECHR. Other elements would also be necessary, particularly cohabitation. However, in some situations, a relationship based on blood ties is supported by factors demonstrating that the relationship is sufficiently durable.[16] Conversely, the mere will, desire, or determination to have a family is not protected under the right to family life.[17]

Concerning the right to family life, it should also be stated that the ECtHR decides possible violations of this right with a wide margin of appreciation.[18] The more comprehensive this margin, the smaller the consensus of the Council of Europe member states on a given issue.[19] Decisions must also be made to guarantee that States ensure the child's best interests.[20] Thus, it must be emphasised that ensuring the child's best interests takes precedence over parental decisions and that state intervention need not take place only in extreme circumstances, but when it is, in the opinion of the state authorities, justified.[21]

About the consideration of the right to privacy, which is often considered together with the right to family life, it should be pointed out that the ECtHR has not chosen, as in the case of the right to family life, to indicate a concrete definition of what is protected as privacy,[22] recognising its broad protective scope[23] and thus impossible to define.[24] Certainly, ECtHR case law indicates that the concept of private life is broader than that of privacy. Simultaneously, it is a sphere in which an individual can freely

13 Decision on the admissibility of the application X vs. the Netherland no. 8427/78, 13 March 1980.

14 Decision on the admissibility of the application Jolie and others vs. Belgium no. 11418/85, 14 May 1986.

15 Case Belli and Arquier-Martinez vs. Switzerland no. 65550/13, 11 December 2018, § 65; case Emonet and Others vs. Switzerland no. 39051/03, 13 December 2007, § 80.

16 Case Katsikeros vs. Greece, no. 2303/19, 14 November 2022, §43.

17 Case E.B. vs. France [GC], no. 43546/02, 22 January 2008, §41; case Petithory Lanzmann vs. France, no. 23038/19, 12 November 2019, §18.

18 Case Sommerfeld vs. Germany [GC], no. 31871/96, 8 July 2003, §63.

19 Case Paradiso and Campanelli vs. Italy [GC], no. 25358/12, 24 January 2017, §184.

20 Case Zaunegger vs. Germany, no. 22028/04, 3 December 2009, § 60.

21 Case Vavřička and Others vs. the Czech Republic [GC], no. 47621/13, 8 April 2021, §§ 286-288.

22 Theory and Practice of the European Convention on Human Rights, 2006, p. 664-665.

23 Case Niemietz vs. Germany, no. 13710/88, 16 December 1992, § 29; case Pretty vs. the United Kingdom, no. 2346/02, 29 April 2022, § 61; case Peck vs. the United Kingdom, no. 44647/98, 28 January 2003, § 57.

24 Case Costello-Roberts vs. the United Kingdom, no. 13134/87, 25 March 1993.

develop and realise his or her personality internally[25] and in relation to other people and the outside world.[26] Analogous to family life, private life is identified before the ECtHR from the perspective of the various situations that fall within its scope. Thus, issues relating to name,[27] image protection,[28] family background,[29] descent from specific persons,[30] ethnic identity,[31] physical and social aspects of a person's identity,[32] the right to establish and develop relationships with other people and the outside world,[33] physical and moral integrity,[34] reputation,[35] or sexual orientation[36] and identity are identified as private life.[37]

The right to identity as an element of the right to private life[38] covers a relatively broad conceptual scope. Identity, as such, is identified as complex. First, it includes what we think and feel about ourselves and how we imagine ourselves. Second, it is associated with relationality, by which it identifies us in terms of the relationships we have with other people and society and the effects of these relationships. Third, temporality allows us to identify what we are at a given moment and the fact that we will change.[39] Notably, the issue of identity is also linked to issues such as our relationships, nationality, belonging to a religious group, image of oneself, or the issue of how other people perceive us. It is also emphasised that the most critical aspects of identity are formed during childhood and remain with the individual throughout his or her life.[40]

25 Case Bărbulescu vs. Romania [GC], no 61496/08, 5 September 2017, § 71.
26 Roagna, 2012, p. 12; case Denisov vs. Ukraine [GC], no. 76639/11, 25 September 2018, § 95.
27 Case Szabó and Vissy vs. Hungary, no. 37138/14, 12 January 2016. However, the identity connection that a person has with his family is indicated here, by: Schabas, 2015, p. 375.
28 Case of Dupate vs. Latvia, no. 18068/11, 19 November 2020, § 40.
29 The Court had previously held that the determination of the father's legal relationship with the alleged child concerned his "private life", see: case Rasmussen vs. Denmark, 8777/79, 28 November 1984, §33; case R.L. and others vs. Denmark, no. 52629/11, 7 March 2017, § 38.
30 Case Mikulić vs. Croatia no. 53176/99, 7 February 2022 and Kutzner vs. Germany, no. 46544/99, 26 February 2002, § 66; case Odièvre vs. France [GC], no. 42326/98, 13 February 2003, §42-44; case Jäggi vs. Switzerland, no. 58757/00, 3 July 2003, § 38.
31 Case Ciubotaru vs. Moldova, no. 27138/04, 27 April 2010, § 53.
32 Case Mile Novaković vs. Croatia, no. 73544/14, 14 December 2020, §42.
33 Case S. and Marper vs. United Kingdom [CG], no. 30562/04 and 30566/04, 4 December 2008 § 66; case Gillberg vs. Sweden [GC], no. 41723/06, 3 April 2012, § 66; case Bărbulescu vs. Romania [GC], no. 61496/08, 5 September 2017, § 70.
34 Case F.O. vs. Croatia, no. 29555/13, 22 April 2021, §59; case Dubská and Krejzová vs. the Czech Republic [GC], no. 28859/11 and no. 28473/12, 15 November 2016.
35 Dissenting opinion of judge Zagrebelsky in case of Armonienė vs. Lithuania, no. 36919/02, 25 November 2008, case Pfeifer vs. Austria, no. 12556/03, 15 November 2007, §35; case Petrina vs. Romania, no. 78060/01, 14 October 2008, §§27-29 and 34-36; case Timciuc vs. Romania, no. 28999/03, 12 October 2010, § 143, case of Ion Cârstea vs. Romania, no. 20531/06, 28 October 2014, §29; case of L.B. vs. Hungary [GC] no. 36345/16, 9 March 2023, §102.
36 Case Dudgeon vs. the United Kingdom, no. 7525/76, 22 October 1981, §41.
37 Case of A.P., Garçon and Nicot vs. France, no. 79885/12, no. 52471/13 and no. 52596/13, 6 April 2017, §92.
38 Jumakova, 2020, p. 240.
39 Identity and Migration in Europe: Multidisciplinary Perspectives, 2014, p. 78.
40 Marshall, 2022, p. 25.

The CRC also provides aspects relating to freedom of thought, conscience, and religion, as well as what this means for identity. It presupposes the protection of these values[41] and indicates how they fit into the protection of the right to respect for identity.[42] From the perspective of ECtHR jurisprudence, which always considers a broader context than just ECHR regulations and national law, guaranteeing these rights under the CRC is also essential.

Evidently, the right to private family life and the protection of correspondence are among the types of rights guaranteed by the ECHR, which may be subject to limitations by public authorities. Simultaneously, it should be stressed that the ECtHR has repeatedly pointed out that any interference by public authorities with an individual's right to respect for private life, family life, home, and correspondence must be lawful.[43] Article 8 also requires that the interference be necessary for a democratic society[44] and determined by the interests of national security, public safety, or 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.[45]

3. Origin of the child and its relation to the right to family life and identity

Awareness of our origins and knowledge of our parents and birth history are essential to respect private and family life. However, these relationships and associated situations are extremely complex and varied. The question of the child's origin and the child's knowledge of that origin will be dealt with differently in the case of adoption, the situation of assisted procreation procedures, and the relationship between the child and the father of an out-of-wedlock child. Further, the right to know one's origin may compete with the rights of others, the public interest, or the child's best interests.[46] To conduct the "balancing of interests test", it is also necessary to consider the general interest of legal certainty.[47] Additionally, it is necessary to examine these findings from a procedural perspective. From the perspective of the ECHR, it is also necessary to pay attention to aspects such as the point in time at which a person who does not know his or her origin became aware of his or her biological reality, whether requests relating to the possibility of establishing this identity were made before the expiry of the time limit[48] laid down in national law, and whether there are alternative

41 Article 14 CRC.
42 Article 8 CRC.
43 Case Vavřička and others vs. Czech Republic [GC], §§ 266-269.
44 Case Piechowicz vs. Poland, no. 20071/07, 17 April 2012, §212 (CHECK).
45 Article 8 of the ECHR.
46 Besson 2007, p. 138., also: case Boljević vs. Serbia, no. 47443/14, 16 June 2020, § 50.
47 Case Backlund vs. Finland, no. 36498/05, 6 July 2010, § 46.
48 Case Mizzi vs. Malta, no. 26111/02, 12 January 2006 §§109-11; case Shofman vs. Russia, no. 74826/01, 24 November 2005, §40 and §43.

legal remedies in the case of time-barring[49] or exceptions to the application of the time limits when a person becomes aware of his or her presumed biological origin after the expiry of the time limits allowing for its establishment.[50]

In its jurisprudence, the ECtHR has been clear about the importance of the early period of life in establishing one's identity and has emphasised that individuals 'have a vital interest, protected by the Convention, in receiving the information necessary to know and to understand their childhood and early development'.[51] The ECtHR recognised the childhood stage as crucial and emphasised that '(...) people have a right to know their origins, that right is derived from a wide interpretation of the scope of the notion of private life. The child's vital interest in its personal development is also widely recognised in the general scheme of the Convention'.[52] Similarly, this means that knowledge of one's background may be necessary to ensure the realisation of other individual rights under the ECHR. The guarantees provided by the ECHR are so far-reaching that even the fact of death from one of the alleged parents or the age of the person seeking this information does not prevent them from being realised. In *Jäggi vs. Switzerland*, it was pointed out that 'persons seeking to establish the identity of their ascendants have a vital interest, protected by the Convention, in receiving the information necessary to uncover the truth about an important aspect of their personal identity'.[53]

Turning to specific issues concerning determining a child's origin in the context of identity, it is necessary to start with the most settled issue – adoption. The ECtHR jurisprudence on adoption has been primarily concerned with domestic adoption, which is the predominant form in CoE member states. Usually, foreign adoptions are combined with the need to fulfil additional procedural requirements and are thus rare. The fact that foreign adoptions are restricted has its justification in possible abuses (corruption, financial benefits, and procedural deficiencies) that may be beyond the control of the domestic legal system. Conventional solutions prove helpful in this respect. Within the circle of CoE countries, the document that organises and guarantees the provision of adoption standards is the European Convention on the Adoption of Children (Revised).[54] In its content, the Convention provides regulations relating to the fact that adoption must be granted by a competent judicial or administrative authority (Article 3), the assurance that the adoption process will take place with respect for the best interests of the child (Article 4), the voluntary consent of the biological parents to the adoption (Article 5), as well as the guarantee that any undue financial advantage resulting from the adoption of the child is prohibited (Article 17).

49 Case Boljević vs. Serbia, no. 47443/14, 16 June 2020, §50.
50 Case Shofman vs. Russia §43; case Backlund vs. Finland §47.
51 Case Gaskin vs. the United Kingdom, no. 10454/83, 7 July 1989.
52 Case Odièvre vs. France [GC], no. 42326/98, 13 February 2003, §42-44, case Johansen vs. Norway, no. 10600/83, 7 August 1996, §78; case Mikulić vs. Croatia, §64; case Kutzner vs. Germany §66.
53 Case Jäggi vs. Switzerland, §38.
54 European Convention on the Adoption of Children (Revised), Council of Europe Treaty Series – No. 202, Strasbourg, 27 November 2008.

From the perspective of preserving the child's identity, the most significant aspects are the attention paid to the participation of state authorities in the adoption process and the principle of protecting the child's best interests. Adoption issues in Europe are also influenced by the Convention of 29 May 1993 on the Protection of Children and Co-operation in Respect of Intercountry Adoption.[55]

Following the provisions of the Convention, the authorities dealing with adoption must take steps to collect, store, and exchange information on the child's situation[56] to prepare appropriate adoption documents containing data on the child's identity, adoptability, background, social environment, family history, and medical history, including the child's family and any special needs.[57] From an identity perspective in the broader context, Article 16(1)(b) is considerably relevant; it stipulates that the child's upbringing and ethnic, religious, and cultural background must be considered in adoption procedures.[58] The Convention also imposes an obligation on member states to ensure that the child and the child's representative have access to information regarding the child's background, particularly on the identity of the parents and the child's medical history.[59]

Family relationships and their link to identity have yet to address aspects of identity often but the mere existence or not of a right to adoption as such or the procedural safeguards during adoption, including the recognition of foreign court decisions.[60] However, the identity aspect will appear in domestic and intercountry adoption cases. According to Article 7 of the CRC, the child has 'the right to know and be cared for by his or her parents'. Conversely, Article 8 of the CRC guarantees the fulfilment by States of their obligation 'to respect the right of the child to preserve his or her identity'. These rights should be exercised broadly.

As far as Central European States are concerned, they have all implemented national arrangements for adopting children. As a general rule (as they are bound by the provisions of the CRC), these adoptions are not anonymous, which is further underlined by the binding of these States to the mechanisms mentioned above of the Adoption Conventions and the conclusions of the ECtHR's jurisprudential practice

55 Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption [Online]. Available at: https://www.hcch.net/en/instruments/conventions/full-text/?cid=69 (Accessed: 18 July 2023).

56 Art 9, Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.

57 Art 16.1 (a) Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.

58 Art 16.1 (b) Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.

59 Art 30, Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 29 May 1993.

60 Case Fretté vs. France, no 43546/02, 22 January 2008; case Wagner and J.M.W.L. vs. Luxembourg no. 76240/01, 28 June 2007; case Pini and Others vs. Romania, no. 78028/01 and 78030/01, 22 June 2004, case Kearns vs. France, no. 35991/04, 10 January 2008, E.B. vs. France [GC], no. 43546/02, 22 January 2008, case Gas and Dubois vs. France, no. 25951/07, 15 March 2015; case X and Others vs. Austria [GC], no. 19010/07, 19 February 2013.

concerning Western European States. First, it is essential to highlight the tendency to provide access to data to establish a child's descent from specific parents, which replaces anonymity in adoption procedures. These data may be made available to a limited extent (to limited entities), but the child is to be given access to them if he wishes. This access is to be provided before the child reaches the age of majority and after. As the ECtHR noted in *Odièvre vs. France,*[61] it was not the aim of the applicant, who was an adopted child, to question her relationship with her adoptive parents. However, it is 'to discover the circumstances under which she was born and abandoned, including the identity of her biological parents and brothers'.[62] The ECtHR decided to examine this case based on the right to private life because, as indicated, her claim was based on the right to know one's personal history and the impossibility of obtaining information about one's origin and identifying data. Although no violation of Article 8 has been established in this case, the court has ruled in favour of the mother due to a conflict of interests between the mother's wish to remain anonymous and the child's claim. In adoption procedures, which, in principle, provide complete information concerning the natural parents, the right of access to data should be recognised. This thesis is also confirmed in the aforementioned conventions dedicated to adoption procedures.

The issue of establishing the child's origin outside the adoption mechanisms also involves the possibility of establishing a relationship with one of the parents. In this case, the analysis will require the possibility of establishing a man's paternity in the case of an unmarried child and the existence in national law of the admissibility of anonymous births or "baby boxes".

Regarding establishing the paternity of a male child, this type of case will have a broader scope of analysis, as situations where children have undetermined paternity are more frequent than the other two. Regarding the establishment of paternity, the leading case in this area is *Mikulić vs. Croatia*.[63] This case concerned a girl who complained about the length of time it took to process a paternity determination case and the lack of measures in Croatian law to force her and her mother to compel the alleged father to comply with a court order to conduct DNA testing. In the ECtHR's view, such requests should be addressed respecting the principle of the best interests of the child. The procedure provided for by Croatian law did not sufficiently safeguard this interest. Moreover, the balance between the applicant's right to remove doubts about her personal identity without undue delay and the right of her alleged father not to undergo DNA testing was not respected. Consequently, the applicant was left in a state of prolonged uncertainty as to her identity.

Concerning the issues of anonymous deliveries and the question of "baby boxes", it should be pointed out that we are dealing here with considerably similar mechanisms aiming to safeguard the interests of the child to provide care in cases where the

61 Case Odièvre v. France [GC], no. 42326/98, 13 February 2003, §42-44.
62 Case Odièvre v. France, §28.
63 Case Mikulić vs. Croatia, §§64-66.

mother or both parents are unwilling or unable to fulfil this duty and ensure the exercise of the right to privacy of those persons (mainly mothers) who, for various reasons, cannot take care of the child themselves. Regarding the previously mentioned case of *Odièvre vs. France*, the institution of anonymous childbirth should, in addition to the generation of interests, also secure the possibility of knowing one's identity if both parties so wish. This is precisely the direction taken by the changes in French law.[64] Furthermore, it is crucial to bear in mind the existence of a necessary period that would allow the mother to benefit from this type of birth and change her decision. In view of the best interests of the child in finding a family environment, this period must not be too long, although States have a wide margin of appreciation.[65]

An argument that is sometimes made when considering "baby boxes" is that it is not always just the mother or the father or the parents acting together (and perhaps someone without the knowledge and consent of either or both of them) who will leave the child. Nevertheless, given the child's interest in surviving and securing subsequent adoption opportunities, the protection of the mother's hypothetical interest should not outweigh it. Given the lack of jurisprudential practice in this area, it seems reasonable to consider that analogous solutions to "baby boxes" could be applied here.

The second group of issues to which attention should be drawn is respect for identity in medically assisted procreation, in the broadest sense. Here, we can point to the issues of artificial insemination, in vitro fertilisation with genetic material originating, not originating, or partially originating from the intended parents, embryo adoption, and, in some cases, surrogacy, which is linked to the issues mentioned above. As these issues are only intensifying in the indicated area, extensive case law is yet to be established. In this context, there are two reasons to note. Firs, wealthier societies use assisted procreation techniques more easily (given their costs). However, Central European countries are gradually joining this group. Second, cases of this kind often require action by the interested party himself, and given the availability of these forms of procreation, the resulting children are too young and often unaware of possible infringements. Such cases will have a more significant impact on identity aspects in the future.

Some observations can be made based on the ECtHR's emerging cases on surrogacy. Owing to its controversial nature,[66] this issue is regulated differently in national legal systems. This broad variation ranges from regulations that prohibit surrogacy entirely to those that allow commercial and voluntary surrogacy. While surrogacy situations within one legal system do not cause significant difficulties, those that involve a cross-border element appear to be more complex. The cases dealt

64 However, Italian law did not contain such regulations, which was the reason for recognising a violation of art. 8 in case Godelli vs. Italy, no. 33783/09, 25 September 2012.

65 Case Kearns vs. France, §77.

66 A Comparative Study on the Regime of Surrogacy in EU Member States, Citizens' rights and constitutional affairs, legal affairs, *A Comparative Study on the Regime of Surrogacy in EU Member States*, Brussels EU 2013, [Online]. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2013/474403/IPOL-JURI_ET(2013)474403_EN.pdf (Accessed: 18 July 2023).

with by the ECtHR mainly concerned situations where parents from countries that do not recognise surrogacy decided to use this type of practice abroad. Nonetheless, over time, they wanted to legalise their relationship with their child within the legal system of their country of origin. It was this legalisation aspect that primarily generated difficulties.[67]

However, the aspect related to the genetic relationship between at least one of the persons who benefited from surrogacy and the child born as a result is considered integral. In the absence of such a genetic relationship, settlements do not recognise the parental relationship and do not allow the born child to be raised by the intended" parents. According to the advisory opinion issued by the ECtHR, in the case of the existence of a genetic relationship with at least one parent, practice should move in the direction of recognising the relationship between parents and the child.[68] Nevertheless, the country's legal system must remain the same in terms of the need for the direct transcription of birth certificates. A relationship between the child and parents must be established that allows them to fulfil their parental responsibilities. In its consideration of surrogacy cases, the ECtHR did not directly address respect for identity, access to data on surrogates, or even the use of this form of procreation support. It should be recognised that, by analogy, the truth about origins should be rendered knowable by the child. Whether this truth will require the indication of the data of the surrogate mother or the donors of genetic material remains an open question, on which the states will conduct their regulations, and the possible practice of the ECtHR ruling will be focused on the examination of whether there has been a proper representation of the interests of the parties to the surrogacy relationship (the donor of genetic material, the surrogate, the intended parents).

4. Child registration and its relation to the right to family life and identity

The issue of child registration is one of the elements necessary for a child to exercise his or her rights in a given legal system. Certainly, the lack of registration does not deprive the child of the possibility of exercising his/her fundamental human rights. However, concerning children and their particular situation of dependency, remaining at the level of the exercise of fundamental rights of the individual, and to their minimum

67 Case Mennesson vs. France no 65192/11, 26 June 2014, case Labassee vs. France no. no 65941/11, 26 June 2014; D. and Others vs. Belgium, no. 29176/13 8 July 2014, case Paradiso and Campanelli vs. Italy [GC] no. 25358/12, 24 January 2017; case Valdís Fjölnisdóttir and Others vs. Iceland, no 71552/17, 18 May 2021; C and E vs. France no. 1462/18 and 17348/18, 19 November 2019.
68 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, requested by the French Court of Cassation, request no. P16-2018-001.

extent, seems too narrow.[69] The wording of the Resolution adopted by the Human Rights Council indicates that registration protects against serious human rights violations such as marginalisation, exclusion, discrimination, violence, statelessness, abduction, sale, exploitation, and abuse, child labour, human trafficking, child, early, and forced marriage, and unlawful child recruitment.[70] It is also important to ensure standards for the registration of children, such as the existence and implementation of specific policies and programmes dedicated to registration, the development of a comprehensive registration system with adequate funding and ensuring its full accessibility, taking action against obstacles to registration, such as 'poverty, disability, gender, age, adoption processes, nationality, statelessness, displacement, illiteracy and detention contexts, and to persons in vulnerable situations'.[71]

In most cases, the issue of child registration is a procedure governed by domestic law. As a general rule, the legal systems of the member states of the Council of Europe assume that the right to register a child is vested in the parents. The child is subject to registration in the country of birth or nationality of at least one of his or her parents. Such arrangements aim to ensure the "visibility" of the child by the legal system of the country concerned.

Some legal problems related to registration may arise when the registration concerns a child born abroad or a child whose parentage generates some doubts from the perspective of the legal system of the country concerned. As suggested in the report of the High Commissioner for Human Rights, the registration of a child involves declaring the child's birth, notifying official authorities, and issuing a document confirming that the child's legal existence is recognised in the country.[72]

As the ECtHR's jurisprudential practice indicates, the issue of child registration can be problematic when the basis for the registration is a document whose content reflects the state of affairs contested by the national law of the state concerned. This was the case against France.[73] In this case, the registration of birth, marriage,

69 As: Resolution adopted by the Human Rights Council, Birth registration and the right of everyone to recognition everywhere as a person before the law, April 2013, A/HRC/RES/22/7, preamble [Online]. Available at: https://www.refworld.org/pdfid/53bfacfa4.pdf, (Accessed: 18 July 2023).

70 Resolution adopted by the Human Rights Council on 24 March 2017, Birth registration and the right of everyone to recognition everywhere as a person before the law, 11 April 2017, A/HRC/RES/34/15, p. 12. [Online]. Available at: https://undocs.org/A/HRC/RES/34/15 (Accessed: 18 July 2023).

71 Resolution adopted by the Human Rights Council on 24 March 2017, Birth registration and the right of everyone to recognition everywhere as a person before the law, 11 April 2017, A/HRC/RES/34/15, p. 12. [Online]. Available at: https://undocs.org/A/HRC/RES/34/15 (Accessed: 18 July 2023).

72 Office of the High Commissioner for Human Rights "Report on best practices on birth registration for vulnerable and marginalized children", Report of the United Nations High Commissioner for Human Rights, [Online]. Available at: https://undocs.org/A/HRC/39/30 (Accessed: 18 July 2023).

73 Case D vs. France, no 11288/18, 16 July 2020; previously, similar arguments presented in the cases C and E vs. France no. 1462/18 and 17348/18.

and death data of a child born under a gestational surrogacy procedure (where the intended mother was also the genetic mother) was refused. An official from the French embassy in Kiev refused to make such an entry. This refusal arose because French law did not allow for the transcription in civil registers of birth certificates of children born abroad due to surrogacy.[74] In analysing this issue, the ECtHR stressed, referring to the Mennesson judgement, that 'respect for private life requires that everyone should be able to establish details of their identity as individual human beings, which includes the legal parent-child relationship' and that 'an essential aspect of the identity of individuals is at stake where the legal parent-child relationship is concerned'.[75] It also pointed out that 'the effects of non-recognition in French law of the legal parent-child relationship between children thus conceived and the intended parents are not limited to the parents alone, who have chosen a particular method of assisted reproduction prohibited by the French authorities. They also affect the children themselves, whose right to respect their private life - which implies that everyone must be able to establish the substance of his or her identity, including the legal parent-child relationship - is substantially affected. Accordingly, a serious question arises as to the compatibility of that situation with the children's best interests, respect for which must guide any decision in their regard'.[76] The ECtHR also cited its advisory opinion,[77] emphasising that it is for the State, within its margin of appreciation, to decide what measures to take to allow for the recognition of the relationship between the child and the intended parents. The need for more consensus among the Council of Europe member states on how to establish the relationship between the child and the intended parents was also pointed out. According to the ECtHR, identity is not at risk when it is not a question of the principle of establishing or recognising its origin, but it is more at risk in terms of the means to be used to do so. While these measures may be distinct from the mere transcription of the birth certificate, they may lead to the establishment of a parent-child relationship through adoption.[78] Thus, there is no disproportionate interference by the national authorities with respect for private life here, and the State itself, in refusing to transcribe the third applicant's Ukrainian birth certificate into French civil status records, has not exceeded its margin of appreciation.[79]

74 Case D vs. France §43.
75 Case of Mennesson vs. France, §96.
76 Ibid., §99.
77 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, requested by the French Court of Cassation, request no. P16-2018-001, §51; Wedeł-Domaradzka, 2019, p. 64–83.
78 Case D vs. France, §54 and 55, also Mulligan 2018, §. 27.
79 Case D vs. France, §71.

5. The child's name and surname as elements shaping the child's identity

For every person, his or her name is the element that most clearly identifies him or her and allows him or her to be distinguished from other persons in private and official relations. This makes attributing a name considerably vital for an individual. As a rule, the attribution occurs with the birth registration or shortly after the same and is also permanent. Possible changes may concern adoption procedures, marriage, or other legitimate reasons (return to a name changed after marriage or change to a name that has been used in practice, although it has not been given since registration). The ECtHR dealt with the issue of children's names in the context of the parent's right to give them. Therefore, the identity aspect is only indirectly addressed here. The case against Spain[80] considered the question of naming the child after the father. The child was born out of wedlock; the father initially disputed his paternity and had no interest in his offspring. However, in time, he led to proceedings to recognise his paternity. Consequently, the child who had hitherto borne the mother's surname was added as the father's first surname. Such action followed national law but was challenged as discriminatory by the mother. In the ruling, the ECtHR recalled the 1995 Parliamentary Assembly Recommendation stressing that 'a name is an element which determines the identity of individuals and that, for this reason, the choice of name is a matter of considerable importance'.[81] Consequently, it must be considered that automaticity in the attribution of names, in the absence of a real relationship between the parent and child, must be considered an over-reaching interference likely to affect the sense of identity, as the child bears the name of a person whom he does not know and a name with which he does not identify.

6. Nationality and identity

For the sense of identity, the question of citizenship is also relevant. In this regard, the legal systems of countries worldwide generally follow two precepts: *ius soli* and *ius sanguinis*. The former refers to the situation where nationality is acquired by birth on the state's territory, and the latter to the situation where nationality is acquired as a consequence of being born to a parent(s) who is a state national. To eliminate the possible negative coincidence of citizenship acquisition, states should provide alternative mechanisms to those considered fundamental in their legal arrangements. In particular, in the case of negative coincidence, to prevent statelessness, states that

80 Case León Madrid vs. Spain, no. 30306/13, 26 Octobre 2021.

81 Recommendation 1271 (1995) Parliamentary Assembly, Discrimination between men and women in the choice of a surname and in the passing on of parents' surnames to children, Assembly debate on 28 April 1995, 16th Sitting [Online]. Available at: https://pace.coe.int/en/files/15305/html (Accessed: 18 July 2023).

prefer the *ius sanguinis* principle should apply the *ius soli* principle in a complementary manner.[82]

The situations known in ECtHR practice relating to the impossibility of acquiring nationality in a family context concern those where the failure to acknowledge the paternity of the child generated such an effect. In *Genovese vs. Malta*,[83] the child of a British national was deprived of the possibility of acquiring Maltese nationality because of the non-recognition of paternity and, subsequently (once the father had been identified), due to national legislation not allowing for the possibility of granting nationality to children out of wedlock if it was not their mother, who was a Maltese national. The Court pointed out that although the right to nationality itself is not indicated in the ECHR, its impact on the applicant's social identity was sufficiently significant to lead to a violation of Article 8.

The ECtHR faced a similar situation in the case against Romania.[84] Nevertheless, in this case, it was not a question of citizenship but based on the ethnic identity attributed (still by the Soviet authorities) to his parents. The applicant, living on Romanian territory, was attributed an ethnic Moldovan origin while failing to provide the legal mechanisms available (in light of political and historical realities) to obtain an identity alert related to his sense of ethnicity, which was Romanian. The applicant's inability to examine his 'claim to belong to a particular ethnic group in the light of objectively verifiable evidence presented in support of that claim'[85] constitutes a failure on the part of the authorities to comply with the positive obligation of Article 8 of the ECHR to ensure the applicant's adequate respect for his private life.

7. Parent-child contact and the right to maintain identity

The question of identity in Articles 7 and 8 is also linked to the existence of family relationships. According to the Committee on the Rights of the Child, the family environment is the best place for a child's upbringing, and it is the responsibility of states to ensure that children can grow up in families.[86] It is also the environment where

82 Council of Europe: Committee of Ministers, Recommendation CM/Rec (2009) 13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children, 9 May 2009, CM/Rec (2009) 13 [Online]. Available at: https://www.refworld.org/docid/4dc7bf1c2.html (Accessed: 18 July 2023).

83 Case Genovese vs. Malta, no. 53124/09, 11 October 2011.

84 Case of Ciubotaru vs. Moldova, no. 27138/04, 27 April 2010.

85 Case of Ciubotaru vs. Moldova §59.

86 General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses, Art. 23, 27/07/90, CCPR General Comment No. 19. (General Comments) p. 5. [Online]. Available at: https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2019.pdf (Accessed: 18 July 2023).

'the preservation of cultural identity, traditions, morals, heritage and the values system of society'[87] occurs.

The issue of the right of contact between parents and the child in the context of the right to identity and its preservation should be analysed multi-dimensionally. First, we can point to the contact between parents and a child born and raised in marriage. Second, we can point to the question of maintaining contact during the break-up of a marriage. A third situation concerns the relationship between a child and parents who do not have a regulated relationship with each other (whether they have never had such a relationship or whether their relationship has effectively ended). The ECtHR, in its jurisprudence, as already mentioned, takes a comprehensive approach to capture the concept of "family life"; thus, all such relationships will remain within the concept's scope and be protected.

Concerning the situation of a child raised in marriage, his or her relationship with his or her parents, and the impact of this relationship on identity, there are no significant risks. As a general rule, parents exercise their rights concerning the child based on equality of their rights so that each of them has the right to co-determine the upbringing and essential matters concerning the child. One of the issues that may affect the child's situation in the marriage and the development of his or her sense of identity is the restriction of contact with one parent, resulting, for example, from that parent serving a custodial sentence. A situation of imprisonment has the effect of limiting contact with a parent to specific days and hours. For instance, the judgement against Poland indicates the following: 'The Court would note that, by the nature of things, visits from children or, more generally, minors in prison require special arrangements and may be subjected to specific conditions depending on their age, possible effects on their emotional state or well-being and on the personal circumstances of the person visited. However, positive obligations of the State under Article 8, in particular an obligation to enable and assist a detainee in maintaining contact with his close family (see paragraphs 123-124 and 129 above), includes a duty to secure the appropriate, as stress-free for visitors as possible, conditions for receiving visits from his children, regard being had to the practical consequences of imprisonment'.[88]

Notably, it is the State's responsibility to ensure that contact is maintained to the fullest extent possible. The absence of an adequate standard[89] of such contacts or their severe limitation may result in a lesser influence of the incarcerated parent on the upbringing of the child and a distorted sense of identity associated with the absence

87 Resolution adopted by the Human Rights Council on 3 July 2015 29/22. Protection of the family: contribution of the family to the realization of the right to an adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development, 22 July 2015, A/HRC/RES/29/22, [Online]. Available at: https://documents.un.org/doc/undoc/gen/g15/163/18/pdf/g1516318.pdf?OpenElementhttps://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/163/18/PDF/G1516318.pdf?OpenElement,%20 (Accessed: 18 July 2023).

88 Horych vs. Poland, no. 13621/08, 17 April 2012 §131.

89 More: Wedeł-Domaradzka, 2016, pp. 301-318.

of a sense of parental presence. However, the State's obligations in this respect are not absolute and do not extend to the right to choose the place of detention, even if that place would facilitate contact with children.[90]

Regarding the exercise of the right of access and its impact on the sense of identity, the end of a marriage does not affect the exercise of this right. Nonetheless, this may modify the manner in which it is exercised.[91] In the ECtHR jurisprudence, we are often confronted with situations in which the question arises as to how contact with the child is regulated, whether there are conflicts between the parents in this respect, and how contact is to be exercised.[92] Such situations must be analysed and resolved, considering the child's best interests.[93] Furthermore, the rights and arguments of both parents must be analysed and, as far as possible, considered.

The ECtHR jurisprudence has taken the approach of respecting the wide margin of appreciation of the State concerning parental responsibility and contact arrangements.[94] Such an approach should be considered valid, as the national authorities are best positioned to understand the specificities, traditions, or approaches to family relationships in a given country. Nevertheless, it is worth ensuring that there is no discrimination in establishing access. Such discrimination could occur if it is based on the religion of one of the parents. A difference of religion or approach to the practice of religion may be relevant. However, it must be considered from the perspective of respect for parents' beliefs and the possibility of shaping those beliefs in the process of raising the child.[95] The condition, of course, is that it is established that religion or beliefs do not have a negative impact on the child and his or her development.[96]

Another example of discrimination can be found in the case of basing the decision to limit contact and, thus, the possibility of influencing the child's development and identity solely on the sexual orientation of the parents.[97] As in the case of religion, the decisive criterion will be to consider the whole situation more broadly from the perspective of ensuring that the child's best interests are pursued and that any possible conflict with the child's best interests may influence the determination of the parent-child relationship. Finally, it is essential to examine the aspect relating to whether the child's parents have previously been married or unmarried. In such cases, the fact of not remaining may affect the exercise of the parent's rights vis-à-vis the child. Subsequently, when it is not justified in protecting the best interest of the child, it should also

90 Case Serce vs. Romania, no. 35049/08, 30 June 2015, §§ 55-56.
91 Case K. and T. vs. Finland, [GC] no. 25702/94, 12 July 2001; case R.I. and Others vs. Romania, no. 57077/16, 4 December 2018, §53.
92 Case Raw and others v. France, no. 10131/11, 7 March 2013, §95; case Vorozhba v. Russia, no. 57960/11, 16 October 2014, §91; case Malec v. Poland, no. 28623/12, 28 June 2016, §69-77; case Strumia vs. Italy no. 53377/13, 26 June 2016, §122-125.
93 Case Buchs vs. Switzerland no. 9929/12, 27 May 2014, §49.
94 Case Glaser vs. United Kingdom no. 32346/96, 19 September 2000, §64.
95 Case Vojnity vs. Hungary no. 29617/07, 12 February 2013, §37.
96 Case Vojnity vs. Hungary, §38.
97 Case Salgueiro da Silva Mouta vs. Portugal no. 33290/96, 21 December 1999, §28.

not be allowed.[98] This last aspect can, however, be extended to consider the birth of a child from a non-marital relationship. When a child from such a relationship is born during the marriage, the law points to the mother's husband as the father, and the child has a stable family situation; it is not in the child's best interests to interfere in this relationship.[99] Nevertheless, this should not affect the child's ability to establish his or her origin and, thus, identity at a later age, when the child's degree of maturity will allow him or her to know the situation without compromising his or her best interests.

The aspect of identity preservation in the context of parental access rights may also generate a need for protection due to formal aspects such as the length of contact determination proceedings. Proceedings that extend for too long may lead to a lack of or significant weakening of the relationship with the parent.[100] An important aspect relates to cross-border contact; here, situations may arise where a child is detained by his or her parent, and the national authorities do not always adequately and effectively discharge their duty to guarantee the return of the children.[101]

8. Conclusions

Concerning the right to family life in the context of identity, several problems can be identified, which have been presented above.

Regarding the cases dominating the ECtHR jurisprudence, one can certainly notice the predominance of paternity and contact cases. These cases are predominantly noted in Central European countries. An important aspect that is emerging and likely to intensify shortly is the issue of cross-border child custody, including the need to recognise the decisions of courts other than the court of the country where the child is currently present. The intensification of this trend for Central European countries was due to frequent labour migration, which occurred after they acceded to the European Union. The marriages or partnerships that Central European migrants entered into at the time often did not stand the test of time and broke up after a few years. Subsequently, in many cases, some of the spouses or partners decided to return to their country of origin and attempted to regulate contact with their children.

These attempts were made initially at the national level and subsequently through proceedings before the ECtHR to support parents who felt the national system was ineffective in regulating these contacts. The lack of these contacts can affect the upbringing and the formation of a child's sense of identity, who is deprived of contact with one parent. Thus, the intervention of the ECtHR seems to be necessary in many

98 Case Zaunegger vs. Germany no. 22028/04, 3 December 2009, §59 and 60.
99 Case Fröhlich vs. Germany, no. 16112/15, 26 July 2018, §42 and 63.
100 Case Ribić vs. Croatian, no. 20965/03, 19 October 2010, §92 and included cases Eberhard and M. vs. Slovenia no. 8673/05 and 9733/05, 1 December 2009, §127; case S.I. vs. Slovenia, no. 45082/05, 13 October 2011, §69; case H. vs. United Kingdom, no. 9580/81, 8 July 1987, §89.
101 Case Ignaccolo-Zenide vs. Romania, no. 31679/96, 25 January 2000, § 113; case Zawadka vs. Poland, no. 48542/99, 23 June 2005, §67 and 68; also: Szubert, 2015, pp. 185-194.

cases. However, it should not be forgotten that the issue of contact is a far-flung margin of appreciation,[102] which is a good thing because it is a considerably individualised matter that depends on the traditions, culture, and legal peculiarities of the country concerned.

Another important aspect relates to procedural safeguards for the possibility of bringing proceedings as indicated '(...) rigid limitation periods or other obstacles to actions contesting paternity that apply irrespective of a putative father's awareness of the circumstances casting doubt on his paternity, without allowing for any exceptions, violated Article 8 of the Convention'.[103]

In the procedural aspect, the active participation of children throughout the procedure is also significant. The European Convention on the Exercise of Children's Rights[104] is relevant to the RE regulation, emphasising the need for children's participation in proceedings, especially when these are family proceedings concerning the child's residence and access rights. In this context, the Convention implies the need to be informed, express one's views during the proceedings, and appoint representatives where the representation of the person with parental responsibility could lead to a conflict of interests and the right to exercise all or some of the rights of a party in such proceedings. The Convention also imposes an obligation on judicial authorities to both seek complete information to enable them to act following the principle of the best interests of the child and ensure that complete information is provided to the child and that the child is allowed to make his or her views known. Further, from the perspective of the judgements discussed in the text, a noteworthy aspect is the Convention's requirement for judicial authorities to act expeditiously to avoid undue delay and ensure that provisions are in place to ensure the immediate enforcement of judgements.

A much smaller trend can be observed in Central European countries regarding assisted procreation cases, including surrogacy. Given the predominance of cases from Western Europe, this originates in the societies' affluence and the model of assuming a later procreative age adopted in this area. However, it is to be expected that in Central Europe, too, with the increasing affluence of societies and the shifting upward boundary of the reproductive age, cases of assisted procreation, including surrogacy, will emerge. Even if there are cases of surrogacy practices due to their unusual nature, they do not need to bed by the legal system. Nevertheless, in time, with their increase, this will undoubtedly require an appropriate response from the legal system of the specific state. These systems will have to prepare themselves for the pending proceedings and decide whether a rigorous understanding of Articles

102 Case Sommerfeld vs. Germany [CG] no. 31871/96, 8 July 2003, §63.

103 Case Boljević vs. Serbia, no. 47443/14, 16 June 2020, §52 and citated cases: Mizzi vs. Malta, §80 and §111-113 and Shofman vs. Russia, no. 74826/01, 24 November 2005, §80, and Backlund vs. Finland, no. 36498/05, 6 July 2010, §48.

104 European Convention on the Exercise of Children's Rights, European Treaty Series - No. 160, Strasbourg, 25 January 1996.

7 and 8 of the CRC (as in the case of the German court judgement in Hamm)[105] or, rather, the more balanced approach suggested by the ECtHR will prevail in these proceedings.

Some demands associated with the need to review legal systems may also relate to the child registration mechanisms.[106] In this regard, it is also recommended that good practices in registration be exchanged and that allowing someone other than the parents to register a child be absolved.[107] Such a practice may be essential in the event of an increase in the influx of migrants (including those to Central European countries) in a situation where the migrants will be children without any guardians and whose country of origin (and thus nationality) cannot be established.

Indeed, the issue of identity in the future and the prevalence of situations of insecurity will require more attention from European states. In dealing with family life and identity issues, the ECtHR often draws on the provisions of Articles 7 and 8 of the CRC, considering it to be the primary document shaping the standard for realising children's rights. Simultaneously, the ECtHR is aware of the aforementioned wide margin of appreciation in matters concerning family and private life. Balancing these two aspects is the most serious challenge in the future.

105 Oberlandesgericht Hamm, I-14 U 7/12, 6 February 2013, [Online]. Available at: http://www.justiz.nrw.de/nrwe/olgs/hamm/j2013/I_14_U_7_12_Urteil_20130206.html (Accessed: 18 July 2023). The effect of court proceedings was, for example, a reception in Germany Gesetz zur Regelung des Rechts auf Kenntnis der Abstammung bei heterologer Verwendung von Samen (Act to Regulate the Right to Know One's Heritage in Cases of Heterological Use of Sperm), 17 July 2017, BUNDESGESETZBLATT [BGBl], p. 960.

106 The result of this recommendation was the development by the Office of the High Commissioner for Human Rights "Report on best practices on birth registration for vulnerable and marginalized children", Report of the United Nations High Commissioner for Human Rights [Online]. Available at: https://undocs.org/A/HRC/39/30, (Accessed: 18 July 2023).

107 Applying for birth registration [Online]. Available at: https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/applying-birth-registration (Accessed: 18 July 2023).

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