| Chapter 10 |

Right to Respect for Private and Family Life

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ABSTRACT

The subject of this study is the protection of the right to private and family life guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in relation primarily to the countries of Central and Eastern Europe. This work analyses the understanding of the right to protect private and family life and the travaux préparatoires concerning Article 8 ECHR. The scope and context of the protection of the right to private and family life provided by the ECHR and other legal acts in the human rights field are also analysed. A separate part of the study consists of considerations concerning changes in the interpretation of the right to family and private life and the creation of standards for the scope of its protection in the case law of the European Court of Human Rights (ECtHR). The issues addressed in the study also include an analysis of the most critical cases related to protecting the right to private and family life. This analysis covers the protection of the right to private life and the standards of protection of the right to family life. In terms of aspects concerning private life, the analysis focuses on three aspects, i.e. the physical, psychological or moral integrity of individuals, the privacy and the protection of personal autonomy and identity. Regarding the right to family life, the analysis covers relations between spouses or persons in a stable or a casual relationship, relations between parents and their children, and issues relating to adoption and assisted procreation. The same analysis pattern also covers cases decided upon based on Article 8 ECHR, concerning Central and Eastern European countries.

KEYWORDS

human rights, Europe, privacy, family life, ECHR

1. Introduction

The protection of an individual's private and family life is a fundamental right, enshrined in both international and national legal frameworks. This right is regarded as being among those subject to the broadest interpretation, at least in the context of the European regional human rights protection system. In examining the right to private and family life, it is essential to consider two distinct but frequently

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intertwined rights, which are often interpreted separately[1] despite their significant overlap. Furthermore, the European Court of Human Rights (ECtHR)[2] has not always clearly delineated this boundary in its case law. Additionally, the boundary is often fluid, potentially due to the ECHR's status as a "living instrument," which allows for a dynamic interpretation of its provisions.

The issue of the right to privacy appears to be a broader concept than the right to family life. The modern understanding of the right to privacy encompasses the autonomy of the individual, control over his or her personal data and the absence of interference by state authorities as well as natural and legal persons in his or her personal affairs. The first considerations related to the need to protect privacy were conducted within the legal system of the United States of America and the Fourth Amendment provided for in the Constitution.[3] Over time, the concept began to evolve and was introduced into all major documents related to the sphere of human rights.[4] Today, this right is present both in universally accepted international agreements protecting the individual and finds its recognised place in national constitutions. It is recognised as one of the more fundamental rights, without which the individual, especially in a state identified as democratic, could not function.

The issue of the right to family life for which the protection of privacy is both a first step and a further necessary protection has emerged in the national sphere in the constitutions of states, particularly those that drew their models from the Roman tradition and the Judeo-Christian worldview.

The purpose of this study is to examine and present how the right to private and family life has developed on the European continent, with a particular focus on the achievements within the Central and Eastern European states in this regard. The right to family and private life will be contextually analysed within the ECHR. A historical outline indicating the development of this right will also be presented. The analysis will also include a comparative aspect related to the identification and discussion of universal and regional human rights instruments. The most extensive part of the work will be the elements related to the jurisprudential acquis of the ECtHR. This acquis will be analysed from two aspects. As a first aspect, the analysis will focus on selected fundamental (key-cases) judgements that have been delivered in relation to the right to family and private life over the years of the court's operation and in relation to all Council of Europe (CoE) Member States. As a second aspect, a selection of the court's jurisprudence related to human rights violations that took place in Central and Eastern European countries will be analysed.

1 Kilkelly, 2003, p. 6.
2 Schabas, 2015, p. 366.
3 National Archives, n.d.
4 Council of Europe, 1950; United Nations, 1948, 1966; 1989; American Convention on Human Rights, 1969; African Union, 1981; European Union, 2000; League of Arab States, 2004.

2. Contextual Analysis of the Relevant Substantive Right(s) Under the Convention

The right to private and family life is provided for in the ECHR in Article 8. The content of this article is strongly inspired by the provisions of the Universal Declaration of Human Rights (hereinafter: UDHR)[5]. In 1949, when work began on the content of Article 8[6] Pierre-Henri Teitgen proposed that the text of the Convention should regulate 'natural rights deriving from marriage and paternity and those pertaining to the family, the sanctity of the home'[7]. The version prepared mentioned the "inviolability" "of private life" as well as that of the home, correspondence and family, as stated in Article 12 of the UDHR.[8] Another version, amended as a result of the position of Belgium and France, provided for 'immunity from arbitrary interference in his private life, his home, his correspondence and his family'.[9] Eventually, the Committee preparing the text of the Convention ended up replacing the term "immunity" with "freedom". The report presented to the Consultative Assembly indicated that the list of rights and freedoms should include rights relating to the family, which included: freedom from all arbitrary interferences in family life, the right to marry and to found a family and the prior right of parents to choose the kind of education to be given to their children.[10] Towards the end of 1949, the Committee of Experts on Human Rights presented a version of Article 8 that drew heavily on the UDHR, specifically revisiting the version that included the term "privacy": 'no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence. Everyone has the right to the protection of the law against such interference'.[11] The discussions of early 1950 were determined by the possible relationship between the provisions of the future ECHR and those of the ICCPR.[12] Further work was dominated by the debate on the form of the regulation presented by the British delegation with the wording

> 'No restrictions shall be placed on the exercise of this right other than such as are in accordance with law and are necessary in a democratic society in the interests of national security, public safety, for the prevention of disorder or crime or for the protection of health or morals.'[13]

5 Czubik, 2009, p. 113; Preparatory work on Art. 8 of the European Convention of Human Rights, p. 2.
6 More: Schabas, pp. 359–366.
7 Council of Europe, 1975, p. 46.
8 Preparatory work on Art. 8 of the European Convention of Human Rights, point 3.
9 Preparatory work on Art. 8 of the European Convention of Human Rights, p. 3.
10 Ibid.
11 Preparatory work on Art. 8 of the European Convention of Human Rights, p. 2.
12 Schabas, pp. 362–363.
13 Proposal submitted by the United Kingdom Delegation, Doc. CM/WP 4 (50) 14, A 1377, IV TP 202.

Ultimately, the plenary Conference of Senior Officials reverted to the use of the term "private and family life".[14] Further work on the content of Article 8 took place mainly within the Committee of Ministers. The aim of this work was to clarify the content of this article.[15]

The main element requiring consideration was the aspect relating to the possibility of state interference. The final version of Article 8 was adopted in 1950 at a meeting of the Committee of Ministers. The content is as follows:

> '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.'

According to the provisions made by the creators of the ECtHR, Article 8 covers the protection of four elements: the right to private life, the right to family life, home and correspondence. However, they do not appear in the court's case law to the same extent. It should be noted that considerations concerning the right to private and family life dominate over violations concerning the protection of home and correspondence. It is also significant that the ECtHR, when deciding upon cases and conducting considerations, often analyses the right to private and family life together without making a clear distinction between them.[16] Article 8 itself is also one of the most frequently invoked to determine a violation of individual rights. It is also an article protecting rights whose protection may require limitations on other rights protected under the Convention. This may apply to the right to private life and the freedom of the press under Article 10 of the Convention.[17] The ECtHR also tends to conduct considerations based mainly on Article 8, even when the basis for the complaint is a violation of another right. This applies particularly to violations of Article 9.[18]

Article 8 also contains permissible restrictions on its application. These limitations include: the interests of national security, public safety, the economic wellbeing of the country, the prevention of disorder or crime, the protection of health or morals, the protection of the rights and freedoms of others.

It is important to note that not all aspects are utilised equally in case law. Initially, the emphasis was on the last two aspects: the protection of health or morals and

14 Draft Convention annexed to the Report, Doc. CM/WP 4 (50) 19 annex, CM/WP 4 (50) 16 rev., A 1452, IV TP 274–295, p. 278.
15 Preparatory work on Art. 8 of the European Convention of Human Rights, p. 2.
16 Schabas, p. 366.
17 Harris et al., 2009, pp. 362–363, also: Seibert-Fohr, Villiger and Baden-Baden, p.175.
18 For example, the last case: *Pindo Mulla v. Spain*, application no. 15541/20, 17 September 2024.

the protection of the rights and freedoms of others. However, modern case law is increasingly acknowledging the necessity of restrictions related to national security and public safety.

3. A Brief Historical Outline of the Development of a Given Right/ Substantive Rights

The right to private and family life is one of those rights whose scope of respect, within the scope guaranteed by the ECtHR, is in constant development. The sphere of what is considered private life and what falls within the scope of family life evolves and adapts to changing values in a given society while maintaining a specific common European approach to these rights.

When analysing the historical aspect of the development of the right to private and family life, it is necessary to separate these two rights, even though the ECtHR case law itself does not always make such a separation.

Over the years, the issue of the right to private life has evolved from quite apparent violations related to blatant state interference (e.g. illegal searches)[19] to complex cases concerning data protection, including sensitive data. The ECtHR has not defined the concept of the "right to private life" itself because this term was considered so broad that such a definition cannot be developed. This right encompasses a broad term[20] that cannot be exhaustively defined.[21] The extensive case law that has covered cases related to the protection of the right to private life over the years allows us to determine specific elements that will fall within the scope of this right.

In the initial period, cases related to ECHR violations were still dealt with by the European Commission of Human Rights (hereinafter: ECmHR). In the first period of its activity, issues related to the right to private and family life were determined by considerations related to the state's interference in the sphere of individual freedom. In the next period, which can be identified as the beginning of the seventies, commences a broader perspective on the right to private and family life. This aspect starts to encompass not only the physical sphere and the home but also transfers to aspects of personal identity, including relationships that an individual enters into with others. At that time, the *Marckx v. Belgium*[22] judgement was issued, in which the court (after the case had been referred by the ECmHR) found that the situation, in which children born in wedlock and children born out of wedlock were treated differently violated Article 8. The reason for finding this violation was the lack of a legal bond between the child and her mother's family, insufficient protection of inheritance rights and the mother's freedom to dispose of her property. In this case, considerations were

19 *Klass and Others v. Germany,* Application no. 5029/71, 6 September 1978.
20 *Niemietz v. Germany,* Application no. 13710/88, 16 December 1992, para. 29; *Pretty v. the United Kingdom*, application no. 2346/02, 29 April 2002, para. 61. Also: Aleca and Duminică, 2012, p. 112.
21 Dijk and Hoof, 2006, p. 664.
22 *Marckx v. Belgium,* Application no. 6833/74, 13 June 1979.

conducted regarding the scope of protection of private and family life. As the court itself indicated, it was necessary to clarify the meaning and sense of the words 'respect for ... private and family life'.[23] In resolving this issue, the ECmHR asked itself whether the natural bond existing between the applicants gave rise to private and family life protected by Article 8. In response, it indicated that it agreed with the ECmHR's position on the lack of distinction between "legitimate" and "illegitimate" families because the existence of such a distinction would be contrary to the prohibition of discrimination. Article 8 will therefore apply here, especially since the applicant, the mother of the child, showed concern for her daughter and her upbringing right from the beginning, so family life did exist between them.

Attention was also drawn to the existence of negative (ordering the state to refrain from specific actions) and positive (assuming state action) in the sphere of protection of rights arising from the ECtHR. This interpretation indicates the distance with which the issue of defining private and family life was approached at the time and how the requirements imposed on the state within the scope of protection of these rights evolved (from passivity to activism). This period was also characterised by the formation of the understanding of the concept of private life, within which sexual life was also considered to be protected.[24] During this period, migration cases related to family reunification also gained importance. In the case *Abdulaziz, Cabales, and Balkandali v. United Kingdom*[25], the ECtHR ruled on the case of three women whose husbands were refused the right to enter the United Kingdom based on migration law. This factor, giving rise to the finding of a violation of Article 8 here was the diverse practice in treating migration applications by spouses, depending on whether women or men filed them. This case, initially decided at the Commission on Human Rights level, also shows that the Commission viewed family relations in the context of migration more narrowly than the ECtHR does.[26]

The next period of jurisprudential development was in the 1990s. It was then that new challenges to privacy began to emerge for the ECtHR. Issues consequently arose relating to the broadening interpretation of the right to privacy, the development of new technologies, including procreative methods, changes in the situation and structure of the family, or the protection of environmental or social rights. It was during this period that a decision was made in the case of Pretty v. United Kingdom[27]. In her complaint, Mrs Diane Pretty alleged, among other things, violations of her right to private life by not having been provided with a guarantee of non-prosecution for her husband assisting her in committing suicide. In this case, the ECtHR made clear the need for a broad understanding of the concept of private life, which encompasses

23 *Marckx v. Belgium*, para. 30.
24 *Dudgeon v. The United Kingdom*, Application no. 7525/76, 22 October 1981, p. 41.
25 *Abdulaziz, Cabales and Balkandali v. The United Kingdom*, Application nos. 9214/80; 9473/81; 9474/81, 28 May 1985.
26 Storey, 1990, p. 343.
27 *Pretty v. United Kingdom*.

both the physical and psychological integrity of the person[28], aspects of an individual's physical and social identity[29], gender identification, name, sexual orientation and sex life[30], personal development establishing relationships with other persons and the outside world.[31] The Pretty ruling also saw inclusion as protected by Article 8 of the concept of the right to self-determination, for which personal autonomy is the basis for interpreting its guarantees.[32] In the Copland[33] case, the ECtHR made a ruling in the field of new technologies. It indicated that monitoring telephone calls, emails and internet use without the employee's knowledge violates the right to privacy. In particular, the exceptions to the authorities' interference with exercising this right and whether they applied to Ms Copland[34] were taken into consideration here. The case gave rise to a further extension of the understanding of the right to privacy about employees' actions and their relationship with their employers, as well as the need for proportionality when interfering with the right to private life.

The scope of the right to family life has also expanded to include new situations covered by the term relating to the diversification of aspects concerning family life and the extension of protection under this right to family members other than just spouses and children. Attention is drawn here, for example, to the case of *Kroon and Others v. Netherlands*[35]. In this case, the ECtHR dealt with a violation of Article 8 in the context of the failure of the Dutch legal system to recognise the parental relationship between a child and its father, who was the mother's long-term partner (though not the husband). This period also saw an interpretation of the understanding of protecting the "home". In *Loizidou v. Turkey*[36], it was pointed out that it was not possible to consider a home a property on which it was only planned to build a house for residential purposes, nor could the concept be interpreted as covering the area of the country where a person grew up and where he or she has roots, but no longer resides[37]. Environmental and social issues were also an aspect that was subject to the ECtHR's expanding activity. During this period, the ECtHR issued the decision Botta v. Italy[38], which concerned a man with a disability who was prevented from using certain public facilities during his holidays because they were unsuitable for people with disabilities. Despite not finding a violation of Article 8, the ECtHR found that

28 *X and Y v. The Netherlands*, Application no.8978/80, 26 March 1985, para. 22.
29 *Mikulić v. Croatia*, Application no. 53176/99, 7 February 2002, para. 53.
30 *B. v. France*, Application no. 13343/87, 25 March 1992 para. 63; *Burghartz v. Switzerland*, Application no. 16213/90 22 February 1994 r., para. 24; *Dudgeon v. The United Kingdom*, para. 41; *Laskey, Jaggard and Brown v. the United Kingdom*, Application nos. 21627/93; 21628/93; 21974/93, 19 February 1997, para. 36.
31 *Burghartz v. Switzerland*, para. 47; *Friedl v. Austria*, Application no. 15225/89, 31 January 1995, para. 45.
32 *Pretty v. United Kingdom*, para. 61.
33 *Copland v. United Kingdom*, Application no. 62617/00, 3 April 2007.
34 More: Salami, 2017.
35 *Kroon and Others v. Netherlands*, Application no. 18535/91, 27 October 1994.
36 *Loizidou v. Turkey*, Application no. 15318/89, 18 December 1996.
37 Ibid., para. 66.
38 *Botta v. Italy*, Application no. 153/1996/772/973, 24 February 1998.

the right to private life can apply to the accessibility and participation in society of persons with disabilities.[39] This is also the emergence of the first cases of the impact of the environment on human life[40] and the protection that follows from this under Article 8.[41]

The last period of ECtHR jurisprudence was the contemporary period. It has seen an intensification of case law on personal data. At the same time, data began to be understood broadly, with the scope of protection and the possible margin of appreciation of the state depending on the sensitivity of the data. The case of S. and Marper v. the United Kingdom should be considered an important decision.[42] In this case, UK services took data (fingerprints and DNA profiles) from two individuals. One of these persons was a minor. This collection was carried out during the arrest. Although these individuals were not subsequently convicted, their prints and DNA profiles were stored for an indefinite period by the police. UK law permitted such storage even if the charges against the persons whose data had been taken were dropped or acquitted. The complainants in this case pointed out that such indefinite storage of their data violated their right to privacy. The ECtHR agreed with this position and pointed out that the UK's data retention rules violated Article 8 due to the disproportionality between data collection and the need to take action to prevent crime. The ECtHR recalled that national law should, in particular, ensure that the storage of data is not excessive for its intended purpose. It also pointed out that data should be kept in a form that permits the identification of data subjects but for no longer than is required for the purpose for which the data are kept.[43] As a consequence, the conduct of the UK services disrupted the balance between conflicting public and private interests while leading the state to exceed any permissible margin of appreciation.[44] Such conduct could not be considered necessary in a democratic society. In addition to data issues, balancing individual rights and the public interest was also an important sphere. In particular, this concerns security issues, including migration security, because of crises. In *Balogun v. United Kingdom*[45], the ECtHR considered the violation of the relationship of a Nigerian national. The applicant arrived in the UK at the age of three. Upon reaching the age of majority, he committed several offences, including being convicted of robbery. After serving his sentence, the UK authorities decided to deport him.

The applicant disagreed with this approach, indicating that separating him from the family who lived in the UK violated the right to private and family life. In analysing

39 Ibid., paras. 33–34.
40 Keller and Heri, 2022, pp. 153–74.
41 For example: *López Ostra v Spain*, Application no. 16798/90, 9 December 1994; *Powell and Rayner v. the United Kingdom*, Application no. 9310/81, 21 February 1990.
42 *S. and Marper v. the United Kingdom,* [GC], Application no. 30562/04 and 30566/04, 4 December 2008.
43 Ibid., para. 103.
44 Ibid., para. 125.
45 *Balogun v. the United Kingdom,* Application no. 60286/09, 10 April 2012.

the case, the court pointed out that the state must protect private and family life, but there are possible exceptions. It emphasised that interference with private life is possible when it can be justified as "following the law", as pursuing one or more of the legitimate aims listed in Article 8(2) and when it qualifies as "necessary in a democratic society" to achieve the aim or aims in question. The court assessed whether there was interference based on the criteria formulated in Üner v. the Netherlands[46]. In its decision, the court stated that when offences of such a severe nature are committed, we deal with a situation that outweighs family ties.[47]

4. Comparison With Other Universal and Regional Human Rights Instruments Containing the Relevant Right(s) in Question

The right to private and family life has also found its place in universal and regional human rights protection systems. However, it has only occasionally appeared as a right considered collectively, as a right to private and family life. There have been and still are cases in which these rights appear as two separate rights, i.e., the right to privacy and the right to family life.

When it comes to the right to privacy and the right to family life considered together and constituting a human right, they appear in the primary document, the UDHR[48], adopted by the United Nations General Assembly. According to Article 12, 'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation'. Everyone has the right to the protection of the law against such interference or attacks. The Declaration thus singles out two elements not referred to (albeit considered under Article 8) in the ECHR, namely "honour and reputation". In addition, elements relating to the right to family life as a human right can be found in the UDHR.

Article 16 indicates that on reaching the appropriate age, a man and a woman have the right, without discrimination on race, nationality or religion, to marry and to found a family (also adopted as a solution by Article 12 ECHR). In marriage, their rights are equal. It indicates that 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the State'. The ECHR no longer replicates this indication.

In a similar vein to the solutions of the Declaration, the regulations of the International Covenant on Civil and Political Rights (hereinafter: ICCPR) adopted in 1966 were prepared. It devotes two articles to protecting privacy, family, home or correspondence altogether. The first indicates that the Covenant protects against arbitrary or unlawful interference that may affect the family.[49] The second, on the other hand,

46 *Üner v. the Netherlands*, [GC], Application no. 46410/99, 18 October 2006.
47 *Balogun v. the United Kingdom*, para. 53.
48 United Nations, 1948.
49 Art. 17. International Covenant on Civil and Political Rights.

refers only to the family and indicates the same as the UDHR: 'The family is the natural and fundamental group unit of society and is entitled to protection by society and the State'.[50] The ECHR no longer replicates this indication.

Regulations dedicated to the issue of family rights can also be found in the International Covenant on Economic, Social and Cultural Rights (from now on: ICESCR). It contains the state's obligation to ensure that an individual's working conditions are such as to guarantee an adequate standard of living for his or her family.[51] Regarding the standard of living, it also emphasises the right to have an adequate standard of living for the family, mainly when this refers to food, clothing, and housing, and it respects the need for continuous improvement of living conditions.[52] Like the UDHR and the ICCPR, it identifies the family as the natural and fundamental group unit of society to which the broadest possible assistance should be provided, particularly the care and education of children. It also emphasises the freedom to marry.[53]

The dominant aspect, however, was the emphasis on the family as society's foundation and the protection necessary for it. However, the separate regulation of the protection of the right to private life was not addressed under the ICESCR.

It is worth emphasising that the universal solutions prepared after the Second World War were inspired by national acts protecting individual rights. First, they were based on national constitutions, as we can find such regulations in the Norwegian Constitution (Grunnloven) of 1814[54] or the Weimar Constitution of Germany (1919).[55]

As far as regional solutions are concerned, from a European perspective, the most relevant document is the ECHR. This Convention protects family life, including the family (although never defined and relatively infrequently referred to by jurisprudential practice). This regulation is contained in Article 8, discussed above. The European solution has inspired other regional human rights systems. The American Convention on Human Rights (hereinafter: ACHR)[56], which is the basis of the inter-American system, protects family life by prohibiting arbitrary and abusive interference with family life.[57] The right to privacy, the home and correspondence are also protected under this article. Following the model of the UDHR solutions, it was pointed out that everyone has the right to have their honour respected and dignity recognised. The ACHR's wording also indicates that the family is the basic unit of society and must be protected by both society and the state[58]. This regulation is linked to the right to marry voluntarily and to find a family and for the state to ensure equality of rights and obligations for spouses both during and after the termination of marriage. The need

50 Art. 16. Universal Declaration of Human Rights; Art. 23. International Covenant on Civil and Political Rights.
51 Art. 7. International Covenant on Economic, Social and Cultural Rights.
52 Ibid., Art. 11.
53 Ibid., Art. 10.
54 Art. 102. Norwegian Constitution (Grunnloven) of 1814.
55 Art. 109. Weimar Constitution of Germany 1919.
56 Organization of American States, 1969.
57 Art. 11. American Convention on Human Rights.
58 Ibid., Art. 17.

for the protection of children and consideration of their best interests in the event of the dissolution of marriage is unequivocal (which is not typical of the ECHR), as is the need for equality of rights for married and non-married children.

In the regional system of African states, the right to family life is regulated by the African Charter on Human and Peoples' Rights (hereinafter: ACHPR).[59] According to its provisions[60], the family is the basic unit of society. It is subject to the protection of the state as the place where a community's morals and traditional values are protected. The Charter gives special protection to women and children, emphasising that they should enjoy the protection standard guaranteed by international declarations and conventions. Also of interest is the solution providing special protection measures for the elderly and persons with disabilities. Also distinct from previous regional regulations is that the Charter also provides for duties, including the individual's duties towards the family[61], particularly the duty to care for its harmonious development and to 'work for the cohesion and respect of the family'.[62]

Also linked to the system created by the ECHR are the regulations of European Union law contained in the Charter of Fundamental Rights (hereinafter: CFR). Its Article 7 indicates that 'Everyone has the right to respect for private and family life, home and communications'.[63] The wording of this article is almost identical to that of Article 8; however, due to technological developments, it was decided to replace the term "correspondence" with "communication". The interpretation of Article 7 allows for legal restrictions to exercise the rights contained in Article 7 CFR analogous to those provided for in Article 8 ECHR.

5. A Very Detailed Case-Law Analysis of the ECtHR Respecting That Given Substantial Right/Rights

In analysing the issue of the protection of the right to private and family life, it is necessary to start with a broader view of what will be protected within both spheres.

Regarding the right to private life, the analysis should start by indicating what elements the ECtHR has considered to be within the limits of protection. Next, attention should be drawn to the most important matters within the scope of protection of the right to private life grouped into three spheres indicating how the right to private life should be understood and interpreted: the notion of private life is the physical,

59 Organization of African Unity, 1981.
60 Art. 18. African Charter on Human and Peoples' Rights.
61 Ibid., Art. 27.
62 Ibid., Art. 29.
63 Charter of Fundamental Rights of the European Union, Official Journal of the European Union, C 202/389.

psychological or moral integrity of individuals, privacy and the protection of personal autonomy and identity.[64]

Individuals' physical, psychological, or moral integrity pertains to circumstances pertaining to the individual and their physical or psychological aspects, which are to be safeguarded or about which the individual has the prerogative to determine. The scope of decision-making in this context can be exceedingly expansive. The understanding and interpretation of the right to privacy accentuated as such should be moderate. It has been pointed out that the very concept of the right to privacy is not limited to the individual sphere but extends to creating and nurturing interpersonal relationships.[65] It is also important to note that privacy should refer to the individual's physical and psychological integrity[66], encompassing elements of his or her physical and social identity.[67] Finally, the ECtHR identified several elements that constitute the scope of the right to privacy. It included name, gender identity, sexual orientation, sexual life[68], the right to personal development, as well as the right to establish and develop relationships with other people and the outside world.[69] An exception to protecting the right to private life will be when the other person does not wish to be contacted.[70]

The right to privacy also identifies the values held by the individual[71], such as goodness and dignity[72], the right to self-determination[73] or integrity of both the physical and psychological dimensions[74], aspects of personality development[75] and some aspects of social identity.[76] The right to privacy can also correlate strongly with aspects protected under the right to family life. The experience of the ECtHR points, for example, to the right to respect the decision of whether or not to have children[77] or the emotional ties that have been created and that are developed between an adult

64 Based on the division contained in: Council of Europe and European Court of Human Rights, 2024.
65 *Niemietz v. Germany*, Application no. 13710/88, 16 December 1992, para. 29 [Online]. Available at: https://hudoc.echr.coe.int/?i=001-57887 (Accessed: 27 January 2026).
66 *X and Y v. the Netherlands*, Application no. 8978/80, judgement of 26 March 1985, para. 22.
67 *Mikulić v. Croatia*, para. 53.
68 *B. v. France,* Application no. 13343/87, 25 March 1992, para. 63; *Dudgeon v. the United Kingdom, para. 41, Laskey, Jaggard and Brown v. the United Kingdom*, para. 36; *Botta v. Italy*, para. 32.
69 *Friedl v. Austria,* Application no. 15225/89, 19 May 1994, para. 44.
70 *Evers v. Germany*, Application no. 17895/14, 28 May 2020, para. 54.
71 *Denisov v. Ukraine*, [GC], Application no. 76639/11, 29 September 2018, paras. 95, 96, 129.
72 *udorovič and others v. Slovenia*, Application nos. 24816/14 and 25140/14, 10 March 2020, paras. 112–116; *Beizaras and Levickas v. Lithuania*, Application no. 41288/15 14 January 2020, para. 117.
73 *Pretty v. United Kingdom*, para. 61.
74 *J.L. v. Italy*, Application no. 5671/16, 27 May 2021, para. 118; *Vavřička and Others v. the Czech Republic*, [GC], Application nos. 47621/13, 3867/14, 73094/14, 19298/15, 19306/15, 43883/15, 8 April 2021, para. 261.
75 *Von Hannover v. Germany* (no. 2), [GC], Application nos. 40660/08 and 60641/08, 7 February 2012, para. 95.
76 *Mikulić v. Croatia*, para. 53.
77 *A, B and C v. Ireland,* Application no. 25579/05, 16 December 2010, para. 212.

and a child in situations other than classic kinship situations.[78] Protecting the right to private life in the context of data is also an important aspect, especially in the current development of new technologies. Therefore, personal data[79], including images[80] and a person's home address[81], is protected. Data protection also includes the guarantee of non-dissemination of data without persons' consent[82] and may extend to post-mortem situations.[83] The protection of the right to private life is also relevant to more severe violations of this sphere falling within the scope of criminal law, such as verbal violence and related situations causing emotional suffering, damage to mental health, violations of dignity and moral integrity, as well as humiliation in the eyes of others.[84] Also linked to these spheres are possible attacks on a person's reputation, degradation or actions of a similar nature protected under the right to private life.[85] Violations related to protecting the right to private life may also concern violations of physical and mental integrity.[86] Separate violations may relate to sexual harassment[87] or the violation of individual psychological well-being and dignity.[88]

When looking at the three spheres of the right to the protection of private life (the physical, psychological or moral integrity of individuals, privacy and the protection of personal autonomy and identity), it is necessary to take a broader look at some of them, which have been dealt with by the ECtHR and based on which there have been rulings that have been subsequently invoked in similar factual situations or when similar arguments have to be used.

As far as the sphere of analysis concerning individuals' physical, psychological or moral integrity is concerned, it should be stressed that the ECtHR case law in this area is prosperous and covers aspects relating to both beginning and end-of-life decisions. It also considers aspects of violence, the broader health issue and, more recently, environmental aspects. Attention should first be paid to reproductive rights related to the beginning of life. The ECtHR has mainly commented on issues related to access to abortion. In one of the best-known cases on this issue, *A, B and C v. Ireland*[89], there were three claimants seeking abortion. The first two based their claim on the reluctance to have another child due to social considerations, and the third claim

78 Jessica Marchi v. Italy, Application no. 54978/17, 27 May 2021, para. 62.
79 *M. L. and W.W. v. Germany*, Application nos. 60798/10 and 65599/10, 28 June 2018, para. 87; *Liebscher v. Austria*, Application no. 5434/17, 6 April 2021, para. 31.
80 *Reklos and Davourlis v. Greece*, Application no. 15 January 2009, 1234/05, para. 38.
81 *Alkaya v. Turkey*, Application no. 42811/06, 9 October 2012, para. 30.
82 *M. P. v. Portugal*, Application no. 27516/14, 7 September 2021, paras. 33–34.
83 *M.P. v. Portugal*, paras. 33–34.
84 *F.O. v. Croatia*, Application no. 29555/13, 22 April 2021, paras. 81, 59–61.
85 *Denisov v. Ukraine*, [GC], paras. 111–112,115–117; *Vučina v. Croatia (dec.)*, Application no. 58955/13, 24 September 2019, paras. 44–50; *M. L. v. Slovakia*, Application no. 34159/17, 14 October 2021, para. 24.
86 *Nicolae Virgiliu Tănase v. Romania*, [GC], Application no. 41720/13, 25 June 2019, para. 128.
87 *C. v. Romania*, Application no. 47358/20, 30 August 2022, paras. 50–54.
88 *Beizaras and Levickas v. Lithuania*, Application no. 41288/15, 14 January 2020, paras. 109 and 117.
89 *A, B and C v. Ireland*, [GC] Application no. 25579/05,16 December 2010.

was based on health issues. In respect of the first two applicants, the ECtHR found no violation of Article 8, indicating that it did not consider Ireland's ban on abortion on health and social grounds to exceed the margin of appreciation granted to the state. In the court's view, this prohibition is deeply based on the moral views of the Irish people on the nature of life and, consequently, the protection that life deserves, including the protection of unborn children[90]. In addition, as the ECtHR points out, the challenged prohibition reflects the fair balance between the rights of the first and second complainants in this case and the rights of unborn children. The scope of physical, psychological or moral integrity of individuals also includes the end-of-life case, *Pretty v. the United Kingdom*[91]. In this case, a woman whose husband was denied guarantees of non-recurrence if he assisted her to commit suicide complained about this decision as violating her rights laid down in Article 8. In the ECtHR's view, in such a case, one can speak of interference with the right to private life because, although the right to self-determination has not been established anywhere, 'the notion of personal autonomy is an important principle underlying the interpretation of its guarantees'[92]. In this particular case, despite the existence of this autonomy, interference with its scope constituted actions considered 'necessary in a democratic society'[93].

Interference in this respect would also relate to aspects relating to post-mortem situations. The applicant, given her move, wished to exhume the body of her deceased spouse[94], which was determined by the need to bury him in another place closer to her final residence. The purpose of the applicant's conduct was to exercise her right to venerate the deceased. In the Court's view, this situation falls within the scope of protection provided for by Article 8 but is subject to a wide margin of appreciation. Due to the balancing of interests carried out by the national authorities, it was held that there had been no violation of Article 8 and that the refusal to authorise the transfer of the urn was 'necessary in a democratic society'[95]. Environmental aspects are also on the rise within individuals' considered scope of physical, psychological or moral integrity. While the Convention does not provide for a right to a clean environment[96], matters relating to the living conditions of individuals are appear before the ECtHR in increasing numbers. The environment in which people live and how this environment affects their lives and health gives rise to positive obligations on the part of the state to ensure that the right to private life is respected. In cases like *Cordella and Others v. Italy*[97], a violation of Article 8 fair balance is not struck between the applicants' interest in avoiding severe damage to the natural environment that

90 *A, B and C v. Ireland*, para. 241.
91 *Pretty v. the United Kingdom*.
92 *Pretty v. the United Kingdom*, para. 61.
93 *Pretty v. the United Kingdom*, para. 78.
94 *Elli Poluhas Dödsbo v. Sweden*, Application no. 61564/00, 17 January 2006.
95 *Elli Poluhas Dödsbo v. Sweden*, para. 25.
96 *Hatton and Others v. the United Kingdom*, [GC], Application no. 36022/97, 8 July 2003, para. 96.
97 *Cordella et autres c. Italie*, para. 174, Application nos. 54414/13 and 54264/15, 24 January 2019.

could affect their well-being and private life and the interest of society as a whole, Article 8 may be breached.

Regarding privacy, the ECtHR case law primarily protects a person's name, photo, or physical and moral integrity[98]. First, it is necessary to have extensive experience in case law protecting personal data, including sensitive data such as biometric or genetic data.[99] The issue of data protection and collection was considered by the ECtHR in the case *Amann v. Switzerland*.[100] The applicant, in this case, was a Swiss businessman whose conversation with a member of the Russian embassy staff regarding products he offered as part of his professional activity was overheard, and his data was then entered into a database maintained by the Swiss intelligence services. In assessing this case, the ECtHR found that the concept of private life should be understood broadly.[101] A situation in which the state authorities create documentation concerning a citizen and then, despite not meeting the conditions, keep it in a file interferes with the applicant's private life. Such an action cannot be considered "by the law" because Swiss law does not sufficiently specify the provisions concerning the collecting, recording, and storage of information.[102]

As for aspects related to the protection of personal autonomy and identity. These issues may concern the sense of one's own identity in the context of assigned forms of identity, which ultimately leads to questioning the legal concepts of various roles, statuses, or institutions.[103] As to this, an attention should certainly be paid here to the British case concerning the situation of people who underwent a gender reassignment procedure.[104] The applicant in this case was Christine Goodwin, who underwent a gender reassignment operation. However, the effects of this operation were not reflected in all of the documents concerning her. Although in earlier judgements concerning the United Kingdom, the ECtHR ruled that there was no interference with the right to private life[105], such interference transpired in this case. The justification for the violation was the fact that the applicant, despite having undergone a gender reassignment operation for legal purposes, was still considered a man, which had consequences on her life. The existing discrepancy between social reality and the law placed her in a situation where she had to take additional actions and activities to have her status recognised, which required her to indicate the type of procedure she had undergone. According to the ECtHR, the United Kingdom, which allows such procedures to be carried out and supports them financially, is not consistent in regulating

98 *Vavřička and Others v. the Czech Republic*, [GC], Application no. 47621/13, 8 April 2021, para. 261.
99 Referred to above: *S. and Marper v. the United Kingdom*.
100 *Amann v. Switzerland*, [GC], Application no. 27798/95, 16 February 2000.
101 Ibid., para. 65.
102 Ibid., paras. 79–80.
103 Trotter, 2022, p. 38.
104 *Christine Goodwin v. the United Kingdom*, [GC], Application no. 28957/95, Judgement 11 July 2002.
105 *Rees v. the United Kingdom*, Application no. 9532/81, 17 October 1986; *the Cossey v. the United Kingdom*; Application no. 10843/84, 27 September 1990; *the X., Y. and Z. v. the United Kingdom*, Application no. 21830/93, 22 April 1997.

the persons using these procedures.[106] Because of the changes in both legal systems and social awareness[107], emphasised in the ruling, including the recognition by the European Court of Justice (hereinafter: ECJ) that discrimination on grounds of sex also includes discrimination on grounds of gender reassignment[108], the ECtHR found that in this respect there had been a breach of the state's margin of appreciation and, consequently, a breach of the right to privacy protected by Article 8.

Regarding the protection of the second aspect under Article 8, the right to family life, this concept is also sometimes understood broadly by the ECtHR due to the ECtHR's approach to the right to family life as a right in which the understanding of family life must refer not to its *de jure* but to its *de facto* understanding[109]. Consequently, this considerably broadens the catalogue of factual situations protected under the Convention, certainly not limited to relations between spouses and their children.[110] An aspect to be examined when considering whether there is "family life", is close personal ties.[111] The ECtHR 's jurisprudence to date indicates that relationships protected based on family life will be said to be affected when they concern relationships between parents in a *de facto* relationship only and not in marriage and their children[112], relationships between parents and their children after the end of the marriage[113], relationships between children and their grandparents[114], relationships between same-sex couples[115], between siblings[116], irrespective of their age[117], relationships occurring between an uncle or aunt and his/her nephew or niece or nephew.[118] According to case-law practice, it is also possible to extend the meaning of "family life" to 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.[119] The concept also applies to adoptive or foster parents established for children deprived of their natural parents.[120] In the case of adoption, a familial relationship may also be considered to

106 *Christine Goodwin v. the United Kingdom,* paras. 77–78.
107 Ibid., para. 92.
108 *P. v. S. and Cornwall County Council,* the European Court of Justice, 30 April 1996.
109 Dijk and Hoof, p. 690.
110 Schabas, 2015, p. 389.
111 *Paradiso and Campanelli v. Italy,* [GC], Application no. 25358/12, 24 January 2017, para. 140.
112 *X, Y and Z v. United Kingdom,* [GC], Application no. 21830/93, 22 April 1997, para. 34; *Johnston and others v. Ireland,* Application no. 9697/82, 18 December 1986, para. 56*; Van der Heijden v. the Netherlands* [GC], Application no. 42857/05, 3 April 2012, para. 50; *Keegan v. Ireland*, Application no. 16969/90, 26 May 1994, para. 44.
113 *Ilya Lyapin v. Russia,* Application no. 70879/11, 30 June 2020, para. 44.
114 *Marckx v. Belgium,* paras. 45–46.
115 *Schalk and Kopf v. Austria,* Application no. 30141/04, 24 June 2010, paras. 90–95.
116 *Olsson v. Sweden,* Application no. 10465/83, 24 March 1988, para. 59.
117 *Boughanemi v. France,* Application no. 22070/93, 24 April 1996, paras. 32–35.
118 *Boyle v. United Kingdom,* Application no. 16580/90, 28 February 1994, paras. 13–14, also *Lazoriva v. Ukraine,* Application no. 6878/14, 17 April 2018, para. 65.
119 *X v. the Netherland,* Application no. 8427/78, 13 March 1980; *Moretti and Benedetti v. Italy,* Application no. 16318/07, 27 April 2010, para. 48.
120 *Jolie and others v. Belgium,* Application no. 11418/85, 14 May 1986.

exist where it has been decided in one legal system, although the other does not recognise it.[121] In the case of the existence of "additional dependencies", an interpretation of "family life" beyond childhood is also admissible.[122] On the other hand, it should be borne in mind that the mere existence of a biological relationship between parents and child, which does not take account of any other aspect of the relationship, is not sufficient for it to be considered as a "family life" to be protected, factors often being necessary in order to have grounds for protection which point to its permanence.[123] The court consequently approaches the determination of the existence of family life on an individual basis, assessing the close personal ties between the parties, with full awareness of the difficulties in establishing all possible configurations of those ties.[124]

The protection of the right to family life also has to be analysed based on certain elements linking the cases dealt with by the ECtHR. Consequently, a distinction can be made between considerations relating to this right, including relations between spouses or persons in a stable or casual relationship, relations between parents and their children, and issues relating to adoption and assisted procreation.[125]

Regarding issues concerning relations between spouses or persons in a stable or casual relationship, attention should be paid to issues relating to family relationships and migration. In the case Jeunesse v. the Netherlands[126], the court could rule on the compatibility with Article 8 of the expulsion decision. In that case, the applicant was a Surinamese national who came to the country on a tourist visa, then remained there, married a Dutch national and gave birth to three children—residing in the Netherlands. She applied several times for a residence permit, but her applications were rejected. In deciding on this case, the ECtHR emphasised that although the applicant was in the Netherlands illegally, her situation was extraordinary. Firstly, she had lost her Dutch citizenship due to an agreement between the Netherlands and Suriname. Secondly, her stay in Dutch territory was tolerated for sixteen years; thirdly, she had no criminal history during her stay in Dutch territory. After balancing the personal interests of the applicant, her husband and their children in maintaining their family life against the interests of public order in controlling migration, the action of the Dutch authorities was found to be insufficiently justified and, therefore, in breach of Article 8.

121 *Wagner and J.M.W.L. v. Luxembourg*, Application no. 76240/01, 28 June 2007.
122 *Belli and Arquier-Martinez v. Switzerland*, Application no. 65550/13, 11 December 2018, para. 65; *Emonet and Others v. Switzerland*, Application no. 39051/03, 13 December 2007, para. 80; *Bierski v. Poland*, Application no. 46342/19, 22 October 2022, para. 47.
123 *Katsikeros v. Greece*, Application no. 2303/19, 21 July 2022, para. 43.
124 Roagna, 2012, pp. 27–28.
125 Partly based on the division contained in: Council of Europe and European Court of Human Rights, 2024.
126 *Jeunesse v. the Netherlands*, [GC], Application no. 12738/10, 3 October 2014.

The ECtHR also considered issues relating to relationships between persons in unmarried relationships. In the case *Vallianatos and Others v. Greece*[127], the issue at stake was whether the introduction of a regulation allowing civil partnerships, but only for different-sex couples, violated the right to family life. According to the court, the Greek government's regulation violated the applicants' rights. Although the Greek government argued that the purpose of the introduction of the regulation was to provide legal security for children born out of wedlock, this reasoning did not, in the ECtHR's view, justify the exclusion of same-sex couples from the catalogue of those who could enter into a civil partnership. The court pointed out that cases concerning the situation of same-sex couples in the context of the right to private and family life were coming up with increasing frequency. It pointed out that issues concerning the different age of consent in criminal law for homosexual relations on the one hand and heterosexual relations on the other[128], the attribution of parental responsibility[129], the authority to adopt a child[130], the right to inherit a deceased partner's lease[131], the right to social security[132], access by same-sex couples to marriage or another form of legal recognition[133] and the exclusion of same-sex couples from the adoption of a child by the other parent had already been analysed.[134]

In the court's view, the fact that the applicants are individuals who form stable couples and that their relationship falls within the concept of "private life", and, as a result of the evolution contained in the *Schalk and Kopf* case[135], also in a significant number of states, it would be artificial to maintain the view that such couples cannot enjoy protection for family life. In the court's view, there is no basis for making a distinction in terms of protection here, and same-sex couples are in the same position in terms of the legal need to recognise their relationship and grant them protection. The last element that could be regarded as justifying a difference in treatment is guiding children's interests from informal unions. In that context, the court points out that it is indeed the case that, while the protection of the family in the traditional sense is regarded as a valid and legitimate reason towards a difference in treatment, the protection of the interests of the child is also regarded as a legitimate reason.[136] However, an essential element which must be analysed in such a case is the question of proportionality. In the court's view, this is of particular relevance when the case involves issues that justify the court's own application of the "living instrument"

127 *Vallianatos and Others v. Greece,* [GC] Application nos. 29381/09 and 32684/09, 7 November 2013.
128 *L. and V. v. Austria,* Application nos. 39392/98, 39829/98, 9 January 2003.
129 *Salgueiro da Silva Mouta v. Portugal,* Application no. 33290/96, 21 December 1999.
130 *Fretté v. France,* Application no. 36515/97, 26 February 2002; *E.B. v. France,* [GC], Application no. 43546/02, 22 January 2008; *Gas and Dubois v. France,* Application no. 25951/07, 15 March 2012.
131 *Schalk and Kopf v. Austria,* Application no. 30141/04, 24 June 2010.
132 *P.B. and J.S. v. Austria,* Application no. 18984/02, 22 July 2010.
133 *Schalk and Kopf v. Austria*.
134 *X and others v. Austria,* [GC], Application no. 19010/07, 19 February 2013.
135 *Schalk and Kopf v. Austria*.
136 *Vallianatos and Others v. Greece,* para. 84.

concept in its case law. This means that the state, in choosing and applying measures to protect the family, must take into account the development of society and changes in the perception of social issues and relationships, and that there is not just one way or one choice when it comes to the conduct of the family as well as the conduct of private life[137]. Consequently, concerning proportionality, the ECtHR concludes that the margin of appreciation states should have for differences in treatment based on sex or sexual orientation is narrow. Not only must the measures justifying the restrictions be appropriate from the perspective of the objective to be achieved, but it is also necessary to demonstrate that, in order to achieve that objective, it was necessary to exclude specific categories of persons from the scope of the legislation on – as in this case – civil partnerships. The ECtHR noted that the contested provisions do not refer only to the regulation of the origin of children but provide for the regulation of social relations in a broader sense (property, maintenance, or related to inheritance). Thus, the Greek legislator introduced the regulation of partnerships, allowing for the regulation of relations between persons of different sexes, while excluding same-sex couples from this scope.

According to the ECtHR, these couples had a particular interest in being able to enter into a civil partnership since there was no other alternative to their recognition by law. It was also pointed out that there was a growing trend in the Member States of the Council of Europe to recognise same-sex unions by law, as done by seventeen states as of date. Over time, the number of states increased to over twenty. The ECtHR, in its judgement in the case of *Oliari v. Italy*[138] and later in the case of *Fedorova v. Russia*[139], indicated that there was a need to create a legal framework for the functioning of same-sex couples without indicating to all Member States what kind of framework this should be.

Within the perspective of family life, considerations also relate to the relationship between parents and child/children. The parent-child relationship, in the simplest case, involves the relationship between a child and their biological parent. The issue of establishing the relationship is, as a general rule, reflected less frequently in national law than in ECtHR case law. However, it is possible to identify cases where the way of establishing the relationship will be relevant. Such cases include, for example, those concerning determining the parent-child relationship.

In this respect, attention should be drawn to the findings of the ECtHR in the case *Marckx v. Belgium*.[140] The case concerned a woman who gave birth to a child out of wedlock. According to Belgian law at the time, to be registered as the child's mother, she had to acknowledge the child or have court proceedings establishing maternity. At the same time, making an acknowledgement would have restricted the right to inheritance, and the court proceedings would have been lengthy and risked separating the

137 *X and others v. Austria*, para. 139.
138 *Oliari and others v. Italy*, Application nos. 18766/11 36030/11, 21 July 2015, para. 185.
139 *Fedotova and Others v. Russia*, [GC], Application nos. 40792/10, 30538/14 and 43439/14, 17 January 2023, para. 224.
140 *Marckx v. Belgium*, more: Mowbray, 2004, pp. 151–152.

child from its mother. The court found that there had been a violation of the right to family life due to unjustified legal obligations imposed on unmarried mothers. The court also pointed to the violation of Article 8 in the context of the distinction made between the rights of children born in and out of wedlock, stressing that this procedure frustrates and impedes the normal development of family life.[141] Admittedly, as indicated, at the time of the preparation and adoption by the ECHR, there was a distinction in the legal systems of states between children of "married" and "unmarried" parents. Nowadays, it is necessary to take into account the evolving interpretation of the ECHR[142], to ensure that a child is not discriminated against based on his or her origin. This judgement has significantly affected the past regulation of children and the review of the legal situation in the context of possible discriminatory provisions against children from the perspective of the rights guaranteed by Article 8.

Concerning the relationship between parents and the child, the case of Neulinger and Shuruk v Switzerland deserves attention.[143] This case deliberates a situation in which the mother of a child fled with her child from Israel to Switzerland on the grounds of security. The father of the child claimed the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction.[144] The courts in Switzerland granted this request. Thus, the mother was forced to bring the case before the ECtHR. In the opinion of the ECtHR, the national courts in Switzerland did not adequately weigh the interests in the case. They have not adequately analysed the impact on the child's situation and have not properly balanced the interests to ensure that the child's best interests are pursued. Two elements must be considered regarding the child's interests in the context of contact with the parents. The first is the need to maintain the child's connection and personal contact with his or her family, except where that family is unsuitable. The second is to ensure that the child develops in a suitable environment without any authority under Article 8 of the parent's rights to take actions that may harm the child's health and development.[145] Therefore, it is necessary to analyse the whole situation that concerns the family and the factual, emotional, psychological, material and medical factors, as well as to consider each person's interests while keeping in mind the priority of the child's interests. Several circumstances had to be taken into account in order to make the correct findings. Attention was drawn to the fact that the child's father had an unstable family situation, as well as the fact that he had not fulfilled his child maintenance obligations towards his other child. It was also necessary to consider the situation of the boy, who had Swiss nationality, attended a nursery there and communicated in French. It should also be taken into account that the child would return to Israel alone, without the mother, who wanted to continue to remain in Switzerland and feared criminal

141 Ibid., para. 36.
142 Ibid., para. 41.
143 *Neulinger and Shuruk v. Switzerland*, Application no. 41615/07, 6 July 2010.
144 Hague Convention on the Civil Aspects of International Child Abduction, 1980.
145 *Neulinger and Shuruk v. Switzerland*, para. 136, also: *Elsholz v. Germany*, [GC], Application no. 25735/94, 13 July 2000, para. 50.

proceedings against her related to the child's kidnapping. As a result, the ECtHR found that the child's return to Israel would not be in the child's best interests.

It is worth emphasising that when analysing this case, the ECtHR emphasised that it is necessary to consider – as it results from the Vienna Convention on the Law of Treaties of 1969 – 'any relevant rules of international law applicable in the relations between the parties'. This will also apply to references to human rights norms other than the ECHR itself. The ECtHR uses this solution often and very willingly.[146] When faced with cases of a nature that require the weighing of different values, always achieving a consensus at the European level ensure better decision-making, especially when established practices are not always present.

In relations between parents and children, specific standards of case law can also be found about relations with children subject to adoption. In particular, it is necessary to remember the rights of natural parents. In the case *Johansen v. Norway*[147], the ECtHR considered the situation a violation of rights arising from Article 8 in the context of a woman whose daughter was taken away after birth and placed in adoption procedures. The domestic courts also decided that all ties between the child and the mother must be severed. When considering possible violations, the ECtHR indicated that in situations where the subject of the case is childcare issues, the state's margin of appreciation may be wide. However, the court will review the restrictions imposed by national authorities on exercising parental rights and issues related to contact between parent and child.[148] Analysing the entire situation, the ECtHR concluded that the deprivation of access rights to the daughter was a decision the national authorities took based primarily on the previous negative upbringing experiences that the applicant had with her son. Therefore, this decision was not sufficiently justified, as it did not directly concern the situation of deprivation of contact with the daughter's mother, and there was no indication that the solution applied was in the child's best interests. Such actions constituted an overstepping of the margin of appreciation by the national authorities.[149] It should be emphasised that this decision does not mean, however, an approach that would favour the mother of the child, as the ECtHR has already clearly indicated in its previous case law that in the absence of marriage, the father's role in raising the child is also of significant importance.[150]

A definite challenge concerning the standards related to Article 8 are issues regarding assisted procreation, especially in the context of surrogacy procedures.

146 *Golder v. the United Kingdom*, Application no. 4451/70, 21 February 1975, para. 29; *Streletz, Kessler and Krenz v. Germany*, [GC], Application nos. 34044/96, 35532/97 and 44801/98, 22 March 2001, para. 90; *Al-Adsani v. the United Kingdom,* [GC], Application no. 35763/97, 21 November 2001, para. 55.
147 *Johansen v. Norway*, Application no. 17383/90, 7 August 1996.
148 *Johansen v. Norway*, para. 64.
149 Ibid., paras. 78, 84.
150 *Keegan v. Ireland*, Application no. 16969/90, para. 55, 26 May 1994.

The ECtHR has had to deal with the issue of surrogacy several times so far.[151] In most cases, the main problem that arose in the context of violations of Article 8 was the recognition of the relationship between the intended parents and the child born under surrogacy procedures. When these children were genetically derived from the intended parents, the national courts recognised this relationship, at least concerning the parent who provided the genetic material. The parent-child relationship was not recognised in the case where the other parent did not have a genetic relationship with the child[152]. The issue of motherhood, which in most legal systems is regulated based on the fact of the child's birth, was also a challenge.[153] In such cases, national systems also did not want to recognise the relationship between the intended mother, who transferred genetic material but did not give birth to the child[154], and the child. Subsequently, as in the Mennesson[155] and Labasse[156] cases, taking steps to protect the child's best interests became necessary, stabilising family relations. The ECtHR also expressed its views in this spirit, issuing its first advisory opinion at the request of the state, precisely in the context of the increasingly frequent doubts regarding the effects of surrogacy procedures carried out outside France, but by French nationals[157]. In its advisory opinion, the ECtHR dealt with two questions submitted by the French Government. The first question concerned whether, if a child is born under a surrogacy procedure abroad and its intended father is also the biological father, is it possible to request the establishment of a parent-child relationship with the intended mother, who is not the biological mother. It should be emphasised that the data of the intended mother appears on the birth certificate, although the child was conceived from the genetic material of another woman. The second question concerned whether, in the event of the recognition that there is an obligation to establish a parent-child relationship also with the intended mother, would it be necessary, in order to respect the rights arising from Article 8, to make an entry in the register of births, marriages and deaths. It will also be important whether the entry of the data contained should be an entry in a birth certificate established following the law of a third country or whether it is possible to use other mechanisms to establish relationships, for example, the adoption of the child by the intended mother. In answering the first question, the ECtHR indicated that there is a need, based on Article 8, to guarantee recognition of the legal relationship between the child and the intended father, who is also the biological father. At the same time, the court indicated that the lack of recognition of the legal relationship between a child born under surrogacy procedures and the

151 *K.K. and Others v. Denmark*, Application no. 25212/21. 22 February 2023; *Paradiso and Campanelli v. Italy*, Application no. 25358/12, 24 January 2017; *D. v. France*, Application no. 11288/18, 16 July 2020.
152 More: Wedeł-Domaradzka, 2019, pp. 64–83.
153 Wedeł-Domaradzka, 2017.
154 *D. v. France*.
155 *Mennesson v. France*, Application no. 65192/11, 26 June 2014.
156 *Labassee v. France*, Application no. 65941/11, 26 June 2014.
157 Request for an Advisory Opinion under Protocol no. 16, 23 October 2018.

intended mother may have a negative impact on the rights of the child guaranteed by Article 8, in particular, at this stage, the right to private life.

On the other hand, threats were indicated, such as a threat to the possibility of knowing one's origins and the risk of abuse related to the implementation of surrogacy procedures. As to the second question, the ECtHR indicated that it is up to the state – exercising its margin of appreciation – to choose the means of recognising the legal relationship between the child and the intended parents. It does not need to be an obligation on the part of the state to register the foreign birth certificate together with the data contained therein. A satisfactory result from the perspective of protecting the child's best interests can also be achieved through other solutions, such as adoption. The most important thing is that the procedure that will allow for recognising this relationship is implemented quickly and effectively.

6. An Analysis, as Detailed as Possible, of the Case-Law of the ECtHR in Terms of the 16 Central and Eastern European Countries

Central and Eastern European Countries joining the ranks of the Council of Europe Member States after the political changes of the 1990s also brought their challenges to protecting human rights. The emergence of so many new actors as Member States has definitely increased the jurisprudential dynamics and pointed to new problems and new directions in developing human rights in Europe. Violations and efforts to restore respect for the rights guaranteed by Article 8 have also contributed to this development.

Analysing the situation in Central and Eastern Europe from the perspective of the right to private life should also be carried out on the basis of the three basic elements falling within the scope of this right: the physical, psychological, or moral integrity of individuals, privacy, and the protection of personal autonomy and identity.

Concerning the first of the scopes to be protected, i.e. the physical, psychological or moral integrity of individuals, attention may first be drawn to cases relating to the inadequacy of state protection for women who experience domestic violence. In the case Kalucza v. Hungary[158], the situation at issue was the failure of the judicial authorities to grant the applicant adequate protection against attacks of violence by her former partner. The applicant had experienced repeated acts of violence. However, the proceedings initiated could not provide her with adequate protection, including in terms of the length of the proceedings intended to protect the applicant from attacks by her cohabiting partner.[159] There was also a failure to comply with the state's fundamental obligation to secure the restriction of contact because the applicant was also violent, without having examined whether the aggression was

158 *Kalucza v. Hungary,* Application no. 57693/10, 24 April 2012.
159 Ibid., para. 64.

part of self-defence.[160] The national courts also failed to comply with their obligations to adjudicate disputes concerning the cohabitation of the applicant and her violent partner promptly. A similar picture of the ineffectiveness of the protection of the woman's situation emerges from the case *Eremia v. Moldova*[161], in which a comparable lack of adequate response by the state authorities could be observed. In this case, the positive obligations of the state in terms of protection were violated by the conduct of both the police and the judicial authorities, which failed to process the applicant's divorce application in time.

Separate cases of violation of individuals' physical, psychological or moral integrity may involve medical procedures. From the perspective of the right of access to medical procedures, a frequently cited case is the case of *Tysiąc v. Poland*.[162] This case concerned a woman who was denied the right of access to an abortion procedure despite the existence of a serious visual impairment. Although Ms Tysiąc had a certificate indicating that her eyesight was at risk as a result of the pregnancy, this was issued by an internal medicine doctor and not an ophthalmology specialist. Consequently, the hospital refused to carry out the legal abortion procedure. In examining this case, the ECtHR focused not on the right to abortion, but on the failure of the state to comply with its positive obligation to secure adequate respect for the applicant's private life. The failure was due to the lack of clear procedures that allowed the doctor to satisfy himself of the necessity of a legal abortion and allowed the applicant to review the doctor's decision.[163] Therefore, the case had more of a procedural aspect, and it was the procedure and not the substantive law resulting from the judgement that would have to be changed to become effective and not illusory.[164]

The ruling in the cases *Petrova v. Latvia*[165] and *Elberte v. Latvia*[166] is also relevant regarding medical issues. These cases were interesting because the first one by the ECtHR concerned the issue of transplantation. The rights of the applicant, in this case, were violated by not informing her about the removal and retention of organs of a deceased family member, which resulted from the obligation of the coordinator of the transplantation centre to inform her relatives about the issues concerning organ transplantation. However, at the same time, the law did not formulate the obligation to obtain their consent.[167] In the second of the *Latvian cases*[168], also based on the absence of an obligation to obtain consent for organ donation, a violation of Article 8 was found to have occurred because of the failure of the national authorities to provide legal and practical conditions to enable the applicant to express her wishes regarding

160 Ibid., para. 66.
161 *Eremia v. Moldova*, Application no. 3564/11, 28 May 2013.
162 *Tysiąc v. Poland*, Application no. 5410/03, 20 March 2007.
163 Ibid., para. 122.
164 Kondratiewa-Bryzik, 2009.
165 *Petrova v. Latvia*, Application no. 4605/07, 24 June 2014.
166 *Elberte v. Latvia*, Application no. 61243/08, 13 January 2015.
167 *Petrova v. Latvia*, para. 96.
168 *Elberte v. Latvia*.

the donation of her deceased husband's tissue.[169] Medical issues may also relate to the failure of patients to obtain relevant information relating to their medical condition and treatment. In *Csoma v. Romania*[170], the applicant had a pregnancy termination procedure for medical reasons. However, after the surgery, she was not subjected to proper treatment procedures and her health deteriorated to such an extent that her life was at risk. In the ECtHR's view, the doctors violated her right to private life by failing to involve the applicant in the choice of treatment and by failing to properly inform her of the risks associated with the medical procedure.[171]

Regarding the second right to the protection of private life, i.e. privacy, cases in this area may concern issues related to securing the privacy of communications and personal data, including data of a sensitive nature. Regarding issues related to the right to privacy, attention should be paid to ensuring such privacy in the workplace. The issue of ensuring privacy at the workplace was decided upon by the ECtHR in the case Bărbulescu v. Romania.[172] This case concerned an employee whose communications were monitored at work. His employer informed the complainant that he was prohibited from using the Internet for personal purposes. However, he should have previously been informed about the extent and nature of the employer's monitoring activities and that the employer could have access to the actual content of his communications. The national courts should have considered that the Applicant was not adequately informed of the nature or extent of the monitoring to safeguard the respect for the right to private life.

Regarding the protection of sensitive data, a case concerning Lithuania[173] was relevant, in which a Lithuanian daily newspaper quoted hospital employees indicating which of the patients were HIV-positive. In both cases, this information was not published intentionally, and compensation proceedings were conducted in both cases, but the complainants nevertheless received meagre compensation at the national level. Consequently, they decided to take their case to the court, which clearly underlined the importance of national law protecting patient confidentiality. In this case, there was an abuse of the freedom of the press and, thus, a serious interference with private life. Aspects of privacy were also present in the Hungarian context[174], including publishing the complainant's data on a list of tax debtors. In this case, the ECtHR found a violation of the Applicant's private life due to the failure to strike the right balance between improving fiscal discipline and ensuring transparency and business credibility and the interests of private individuals. Publishing data, especially so extensively as to include a home address, is not justified, even posing the danger of its use by third parties.[175]

169 More: Wedel-Domaradzka, 2015.
170 *Csoma v. Romania,* Application no. 8759/05, 15 January 2013.
171 Ibid., para. 68.
172 *Bărbulescu v. Romania,* Application no. 61496/08, 5 September 2017.
173 *Biriuk v. Lithuania,* Application no. 23373/03, 25 November 2008.
174 *L. B. v. Hungary,* Application no. 36345/16, 9 March 2023.
175 Ibid., para. 98.

Regarding privacy, the cases dealt with by the ECtHR concerning Central and Eastern European countries concerned various aspects of regime change. In the first case worth noting, a Romanian citizen[176] found out that the intelligence services kept his file containing false information collected during the communist era. He considered that this information could be used in the future and affect his personal life. In deciding upon the case, the Grand Chamber pointed out that storing such data in a manner likely to promote its disclosure and not adequately protect against unwarranted access violated Article 8 obligations. In the second of the Moldovan cases *Iordachi and Others v. Moldova*[177], the Applicant challenged the tapping practices, which were carried out based on outdated Soviet-era legislation. He further argued that the lack of judicial oversight of wiretapping operations violated the right to privacy. The court shared the complainant's view of the violation, emphasising the lack of transparent practices and adequate safeguards against unwarranted state interference.

Regarding the third aspect of the right to private life, i.e., the protection of personal autonomy and identity, it should be pointed out that this includes issues where the victims more clearly identify violations. A case to which attention should certainly be drawn in the context of identity is *Mikulić v Croatia*.[178] This case involved the situation of an unmarried child who brought a paternity suit with his mother. At the level of national proceedings, the courts repeatedly ordered DNA tests to establish paternity. The defendant himself did not appear for these tests. The basis of the complaint to the ECtHR was the inefficiency of the Croatian courts to establish paternity. In deciding the case, the court emphasised how important it is for one's identity to know one's origins, in this case, to establish who the father is. It stated that merely being able to bring an action for such an establishment is too little to speak of effectiveness. It will only be effective if an examination can be carried out to establish or exclude the paternity of the man in question. Thus, on procedural grounds, a violation of Article 8 was determined.

In another case related to personal autonomy, the ECtHR examined the issue of forced sterilisation Roma women were subjected to. The complainant in this case was a woman[179] who had been sterilised while in hospital for childbirth. The information she was given was not provided in a way that would allow her to understand the term "sterilisation" and its consequences for her future procreation plans. In the court's opinion, the Slovak legal arrangements did not contain adequate safeguards for the performance of sterilisation procedures and did not guarantee reliable information on the facts of their performance and their consequences. This case has a broader context relating to the use of sterilisation practices against Roma women in Slovakia.[180]

176 *Rotaru v. Romania*, Application no. 28341/95, 4 May 2000.
177 *Iordachi and Others v. Moldova*, Application no. 25198/02, 10 February 2009.
178 *Mikulić v. Croatia*.
179 *V. C. v. Slovakia*, Application no. 18968/07, 8 November 2011.
180 *I. G. and Others v. Slovakia*, Application no. 15966/04, 13 November 2012.

Concerning the identity issue, attention may also be drawn to a case involving Poland[181], the so-called 'exhumation of Smolensk crash victims' case. The subject of the complaint was the prosecutor's decision to carry out the exhumation, against which the applicants had no right to lodge any appeal. Here, the court shared the applicants' view that there had been a violation of Article 8, with the violation relating to procedural aspects, namely the impossibility of appealing against the prosecutor's decision and the impossibility of requesting a judicial review of his decision.

In analysing the second aspect of Article 8, the right to family life, it is also necessary to focus on the three thematic areas considered earlier, namely relations between spouses or persons in a stable or casual relationship, relations between parents and their children, issues relating to adoption and assisted procreation.

In the context of cases concerning relationships between spouses or persons in a stable or casual relationship, attention to the case *Babiarz v. Poland* concerning the pronouncement of divorce[182] must be emphasised. In this case, the Court addressed the issue of divorce in the context of protecting marriage in Poland, particularly when one of the spouses does not want the divorce. The applicant in this case was a man who got married, and then his marriage started experiencing problems. The two spouses stopped living together, and the man entered into a new relationship in which they were expecting a child. The applicant's wife refused to consent to the divorce. According to Polish law, the resistance of one of the spouses results in the impossibility of declaring the dissolution of the marriage. The applicant brought the case before the court, indicating that the refusal to divorce violated his right to respect for his private and family life. The court did not find that there had been a violation, arguing that Polish law aims to protect the institution of marriage and that the state itself has a wide margin of appreciation in this regard. Since Polish law protects marriage and family stability, there is no violation of Article 8, as it is justified by public interest. The context of the present case shows that based on the ECHR, the absolute right to divorce does not exist.

Another aspect that the Court has dealt with in the context of relationships between persons in a relationship, this time in a *de facto* relationship, is the case of *Buhuceanu and Others v. Romania*.[183] The applicants in this case were persons in same-sex partnerships who were denied the status of co-insured by the Romanian legislator. They brought the case before the court, indicating that the state had failed to fulfil its positive obligation to recognise and protect their relationships, particularly in the context of the decisions previously made in the *Fedotova and Others v. Russia*[184] case. In assessing the state's fulfilment of its positive obligations, the court found that Romanian law sanctioned a marriage reserved only for persons of different sexes. Nor did it appear from the government's position that this state of affairs would be

181 *Solska and Rybicka v. Poland*, Application nos. 30491/17 and 31083/17, 20 September 2018.
182 *Babiarz v. Poland*, Application no. 1955/10, 10 January 2017.
183 *Buhuceanu and Others v. Romania*, Application nos. 20081/19, 20108/19, 20115/19, 23 May 2023.
184 *Fedotova and Others v. Russia*.

changed. Same-sex couples were nothing more than *de facto* unions under Romanian law, and the partners in such unions were unable to regulate fundamental aspects of their lives, including property, mutual maintenance or inheritance. The court, therefore, indicated that the applicants had a particular interest in entering into a *de facto* partnership or establishing another form to which the law would grant protection. The government's arguments about the Romanian community's lack of acceptance of this type of union and the argument of the state's absence of any prior commitment to its willingness to establish legal regulations for same-sex couples were not accepted positively by the ECtHR. Consequently, the court found that the government did not enjoy a wide margin of appreciation in this respect. While it was free to determine the legal nature, it could not exclude the recognition of the legal relationship of same-sex couples. Thus, it was held that the state still needed to fulfil its positive obligation to protect the rights under Article 8 of the Convention.

Concerning the issue of the relationship between parents and their children, one can point, for example, to the judgement rendered in the case *Popadić v. Serbia*.[185] The court had to deal with the situation of the father of a child for whom the Serbian authorities did not grant adequate contact with his child after his divorce from the mother. Although the right to contact was granted, in practice it was constrained and, in many cases, needed to be put into effect appropriately. The Serbian authorities had been unable to effectively enforce court judgements allowing regular contact between the father and the child. In his application, the applicant claimed that the Serbian authorities had thus violated his right to respect for family life guaranteed by Article 8 of the Convention. The court agreed with the applicant's position and pointed out that the Serbian authorities had failed to take measures that could be considered sufficiently effective and had not adequately enforced previous court orders. It was emphasised that it was the authorities' task to take appropriate measures so that the father could regularly maintain contact with his son. It was also clearly indicated that the length of time taken to determine the contact issue between father and son was excessive and not based on legitimate or exceptional circumstances. The ECtHR stressed that an important aspect, in the case of contact issues, is the particular sensitivity related to the child's sense of stability and his young age. The longer it takes to establish parent-child contact, the more complex the relationship will actually be and the more difficult it will be for it to develop properly.

An essential example of the protection of family relationships that may be relevant in cross-border aspects is the case of *I.V. v. Estonia*[186], in which a biological father residing in Latvia contested that another man in Estonia had adopted his son. The applicant in this case was a Latvian national trying to establish his biological paternity in Latvia. At the same time, the child resided in Estonia and was adopted there by a man who was in relationship with the child's biological mother. In the applicant's view, the Estonian courts violated his right to family life by failing to consider his

185 *Popadić v. Serbia*, Application no. 7833/12, 20 September 2022.
186 *I.V. v. Estonia*, Application no. 37031/21, 10 October 2023.

potential paternity, which could consequently affect his subsequent relationship with the child. In the court's view, family life is not limited solely to marital relationships, it may also include a potential relationship in which a child born out of wedlock may develop between the child born out of wedlock and its biological father, therefore the man is entitled to the protection of his rights. The breach of Article 8 by the Estonian authorities also consisted in their failure to examine the particular circumstances of the case and to correctly balance the different rights and interests of the persons involved.

The third aspect of the right to respect for family life concerns adoption and assisted procreation. The issue of adoption in the context of the relationship between adopted children and adoptive parents was addressed by the ECtHR in the case of Pini and Others v. Romania.[187] The complainants in this case were two Italian couples who had received a ruling authorising them to adopt Romanian children who were previously living in a private care home. These rulings generated an amendment to the children's birth certificates. The adoption procedure was found to comply with national law and the Hague Convention of 29 May 1993 on the Protection of Children and International Cooperation. The national courts obliged the care homes to hand over the children together with their birth certificates; however, the care homes obtained a stay of the adoption orders. The applicants made several attempts to gain access to the children and to have them surrendered, but this was unsuccessful. Over time, the children stated that they did not want to join, and proceedings were initiated to have the adoption orders removed from the law. In the court's view, Article 8 of the Convention was not violated. Although the adoptive parents had obtained final court decisions and made attempts to obtain the children, the minors' refusal had some weight, mainly as it had been expressed consistently, and their integration into the new family was consequently considered unlikely. It was held that the Romanian authorities had no obligation to ensure that the children leave the country against their will and could not ignore the pending proceedings in which the legality and legitimacy of the original adoption arrangements were questioned.

An interesting procreative aspect in the context of the possibility of assisted procreation was contemplated by the ECtHR in a case *Pejřilová v. the Czech Republic*.[188] The facts concerned a situation in which the applicant's husband had frozen his sperm prior to starting oncological treatment while agreeing to store it. The document he signed at the time of semen collection stated that a separate consent would be required before each use and that, unless otherwise agreed, storage would be discontinued in the event of the donor's death. Subsequently, the applicant and her husband decided to have an IVF procedure and sperm multiplication. Unfortunately, the applicant's husband's condition deteriorated, and he died before any further steps were taken about the IVF procedure. After her husband's death, the applicant applied for fertilisation of her ova with her deceased husband's sperm. The infertility treatment centre

187 *Pini and Others v. Romania*, Application no. 78028/01 and 78030/01, 22 June 2004.
188 *Pejřilová v. the Czech Republic*, Application no. 14889/19, 8 December 2023.

refused. Subsequently, the applicant filed a lawsuit with the national court, which was dismissed because, as a single woman without a partner, she was not eligible for assisted reproduction. By referring her complaint to the court, she alleged a violation of her right to private and family life. In deciding the case, the court noted that states are granted a wide margin of appreciation in assisted reproduction matters. In its considerations, the ECtHR pointed out that Czech law allows artificial insemination only based on a written request from a woman and a man jointly, treating each other for infertility. In the court's view, it does not go against the rights provided by Article 8 for the state to enact legislation regulating artificial insemination within the said wide margin of appreciation. In the case of Czech law, the solutions adopted were only available to couples and between living persons. The court emphasised that by prohibiting the use of reproductive material, the Czech authorities protected not only the free will of the man who consented to assisted reproduction but also the right of the unborn child to know its origin. It also pointed out that, although neither the unborn child nor the deceased person is a holder of Convention rights as such, the ECtHR sees no reason why the law could contain solutions that take their interests into account. The court pointed out that the domestic legislation was clear and had been presented to the applicant, as well as to her husband, who had signed the form with this content and not a subsequent one. Consequently, it was pointed out that the applicant's right to decide to have a child should not outweigh the legitimate protection of general interests.

7. Summary

In Central and Eastern Europe, human rights protection issues, substantially similar to those faced by Western European countries, are escalating. This is particularly true for protecting private and family life, including equality. One can note a growing number of cases concerning the possibility of recognising same-sex relationships, which the case of *Fedotov v. Russia* has undoubtedly influenced. As evident from the case law, the court allows states a certain degree of discretion regarding the forms in which they will recognise these relationships. When deciding on these cases, it interprets the manner of regulation through the prism of anti-discrimination legislation, which narrows the margin of appreciation.

The specific challenges in this part of Europe stem from the post-communist legacy, where protecting private life also includes protecting the data of those repressed by previous regimes.

It is worth emphasising that the countries of Central and Eastern Europe are confronted with new ethical problems related to medically assisted procreation. In the absence of consensus and ethical differences in this area, the acceptability and scope of regulations adopted within the framework of national orders are assessed from the perspective of the wide margin of appreciation accorded to states. The ethical challenges to be faced by the CEECs over time also include issues that have

been regulated fragmentarily or not at all, such as surrogacy. This issue is particularly relevant for economically weaker countries such as Ukraine, where there is a lack of uniform standards regulating surrogacy services and where there is a high risk of institutionalisation of such practices.[189] On the other hand, it should not be forgotten that a consequence of globalisation is that legal situations under one set of laws conflict with others.

Ultimately, there still needs to be standardised relationships between the right to family and private life and other Convention rights in Central and Eastern Europe, leading to various interpretations and human rights challenges.[190]

189 Mikluszka, 2010, p. 322.
190 Ramskold and Posner, 2013, p. 118.

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