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# CHILD'S IDENTITY PROTECTION IN THE CONTEXT OF DOMESTIC ADOPTION IN CENTRAL EUROPE

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**Recommendation for the Workshop Discussion of the Dissertation Authored by mgr Maria Masłowiec and Entitled:** *Child's Identity Protection in the Context of Domestic Adoption in Central Europe*

Hereby, we submit our recommendation of the PhD dissertation entitled *Child's Identity Protection in the Context of Domestic Adoption in Central Europe* prepared by Maria Masłowiec under the framework of the Central European Comparative Law programme of the University of Miskolc and Central European Academy.

The dissertation addresses a particularly sensitive and timely topic situated at the intersection of family law, human rights, and child protection: the child's identity within the context of domestic adoption in Central European countries. While adoption is widely recognized as a protective legal measure intended to secure the best interests of the child, the dissertation explores how this legal institution impacts the identity of the child, including aspects of personal history and origins, psychological development and cultural heritage.

Contemporary debates concerning origins have become particularly prominent in light of advancements in medical science, especially in the context of assisted reproduction and surrogacy. Intercultural dimensions, in turn, are of particular relevance in the case of international adoption. Nevertheless, the issues under consideration have by no means lost their significance in the context of domestic adoption. This is especially evident when considering the rights and interests of biological parents, alongside the complex process of the child's integration into the adoptive family.

The dissertation is structured into four main parts. The first part explores the points of interaction between the protection of identity and the objectives of the legal institution of adoption. The second part provides a broad overview of instances in which identity protection is addressed within the framework of international human rights law, with particular emphasis on the relevant provisions of the Convention on the Rights of the Child relating to adoption. These considerations are further developed in Part III, which focuses on the European Convention on Human Rights. Drawing on the jurisprudence of the European Court of Human Rights, this section highlights the practical challenges and legal tensions that arise in relation to individual rights within adoption proceedings. The final part examines how key identity-related issues concerning adopted children are regulated within the framework of national family law systems.

In the Part IV detailed legal analysis is conducted with respect to Polish and Hungarian regulations, particularly concerning the registration of a child's civil status following adoption and the child's right of access to information regarding their origins, situating these aspects within the broader normative framework governing adoption. Furthermore, the discussion is supplemented by an examination of the key legal issues related to the protection of a child's identity in the context of adoption under the law of Slovakia and the Czech Republic.

While the earlier sections of the dissertation adopt a legal approach primarily rooted in international law and human rights law, which are fundamental to the analysis of identity protection, the final chapter applies a comparative legal methodology to examine domestic legal frameworks. By focusing on the domestic adoption systems of selected Central European countries (Poland, Hungary, Slovakia, Czech Republic), the dissertation identifies both similar and diverse national approaches in addressing the child's right to identity. The integration of international legal analysis with a focus on domestic legal frameworks in Central Europe constitutes a significant aspect of the dissertation's originality.

Maria Masłowiec is a graduate of the Jagiellonian University in Poland and is currently enrolled in the Central European Comparative Law Programme at the University of Miskolc. At the same time, as a scholarship recipient and intern at the Central European Academy, the PhD candidate has had the opportunity to participate in numerous events fostering academic exchange within the region. In particular, with regard to the subject matter of the dissertation, it is worth highlighting her involvement in conferences focused on the protection of children's and family rights, such as organized annually by the Central European Academy 'Children's Rights Days'.

The PhD thesis contains credible data, and the scientific results of the PhD thesis are the result of the candidate's own research work. The PhD thesis meet the formal requirements of the Doctoral School. In conclusion, we recommend that the dissertation proceed to workshop discussion within the candidate's doctoral procedure.

Budapest, 19 May 2025

Supervisors:
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**Summary**

The research project focuses on the child's right to identity in the context of adoption, a crucial issue given the extensive impact adoption has on various facets of a child's identity. Among the most significant aspects are:

- the child's family status and birth certificate;
- the question of changing the child's given name and surname due to adoption;
- the matter of continuity in upbringing, which respects the child's cultural, religious, and linguistic identity;
- and the fundamental question of the child's right to know their origins, including the scope of protection for this right.

Undoubtedly, these issues are essential to the formation of individual identity as a whole.

Regarding the right to know one's origins, the scope of protection in the context of adoption addresses the extent to which an adoptee may access information about their biological background, including the timing, conditions, and limitations of such access, balanced with the confidentiality interests of biological parents and legal guardians.

For the remaining aspects, a visible tension may arise between the need to respect the child's identity and the goal of fully integrating them into the new family established by adoption.

Issues related to the right of a child and an individual to identity protection are regulated internationally, in both universal and regional instruments (within the European context, importantly, under the European Convention on Human Rights; the EU law may apply to identity matters in cases of alternative care to a very limited extent). In international law, the complex questions concerning identity are addressed from various perspectives, such as the legal personality of individuals or their family life protection. In the context of adoption and children's identity, the role of the Convention on the Rights of the Child and its fundamental principle of the best interests of the child, which holds particular significance in adoption cases, should be emphasized.

The challenges associated with safeguarding internationally established legal standards are evident at the national level, particularly in shaping family law regulations and civil status registration.

The research presents a theoretical framework relevant to the subject of study and examines the foundations of international human rights law applicable to the issue, including the perspective of the European Convention on Human Rights. In addition, it offers

an analysis of the domestic legal frameworks of four selected Central European countries—Poland, Hungary, Slovakia, and the Czech Republic.

The findings demonstrate that the legal provisions concerning the protection of a child's identity in the context of adoption vary significantly across these jurisdictions. This variation is evident both in the general regulatory approaches and in the specific legal mechanisms adopted at the national level. Crucially, the protection of a child's identity is not always treated as an integral element of adoption regulation. Not all of the examined countries provide a structured legal mechanism that ensures adopted children access to information about their origins. Furthermore, not all legal systems attempt to balance the child's interests—particularly the right to know one's identity—with the rights of biological parents, such as their right to privacy.

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# Introduction

Adoption is a widely recognized legal institution. As a general rule, adoption is intended to facilitate the child's full integration into a new family environment. This objective comprises three interrelated components: the legal and personal position of the parents of origin; the situation of adoptive parents, prospective adoptive parents and those wishing to take custody of the child through adoption; and the child's status.

It is worth noting, however, that according to contemporary legal acts, the child's perspective and the role of their best interest in adoption are crucial. Addressing the issue from the child's perspective and from the international law angle, the United Nations Convention on the Rights of the Child [hereinafter: CRC; Convention][1] requires mentioning. According to them, adoption is one of the possible means of special protection and assistance a state provides to a child deprived of a family environment. The state is consequently a vital actor in adoption procedures, having numerous obligations. One should remember other international law sources relevant to the matter of adoption next to the CRC. They are, in the scope of their application, the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption [hereinafter: the Hague Convention, HCCH 1993 Adoption Convention][2] and the European Convention on the Adoption of Children[3] with its revised version.[4] [hereinafter, together: European Adoption Conventions]. The first provides for safeguards for the particularly challenging situation of adoption resulting in a change of the country of residence of a child. The second is of regional, European character, the context of which is essential for the present thesis. The Convention was prepared under the auspices of the Council of Europe. The four conventions mentioned express the main principles of adoption. These are, for instance, the subsidiarity of adoption to care in the family of origin and the subsidiarity of international adoption to care in the child's country of origin. In the first instance, however, it is worth mentioning again the subordination of adoption to the best interests of the child principle, which state authorities should consider at every stage of the proceedings, with a due regard to child's right

[1] United Nations Convention on the Rights of the Child signed at New York on 20 November 1989, UNTS, vol. 1577, p. 3.
[2] Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, UNTS, vol. 1870, p. 167.
[3] European Convention on the Adoption of Children signed at Strasbourg on 24 April 1967, ETS 58.
[4] European Convention on the Adoption of Children (revised) signed at Strasbourg on 27 November 2008, CETS 202.

to express their opinions. The focus of the present research is, however, on the child's identity protection.

The notion of 'identity', when applied to the human person, encompasses a range of meanings and holds relevance across various academic disciplines, including, in particular, philosophy and psychology. It also carries political and legal significance, particularly in contexts involving personal status, citizenship and the recognition of individual and collective identity within legal and institutional frameworks.

Protection of various elements of identity is articulated in various international human rights instruments: the Universal Declaration of Human Rights [hereinafter: UDHR],[5] the International Covenant on Civil and Political Rights [hereinafter: ICCPR],[6] the International Covenant on Economic, Social and Cultural Rights [hereinafter: ICESCR],[7] the Convention on the Elimination of All Forms of Discrimination Against Women [hereinafter: CEDAW],[8] International Convention on the Elimination of All Forms of Racial Discrimination [hereinafter: ICERD],[9] or – importantly – in CRC.

Additionally, the European Convention on Human Rights [hereinafter: ECHR; European Convention][10] constitutes a fundamental legal framework in individual protection in the European region, including identity protection and child protection. The European Court of Human Rights [hereinafter: ECtHR; Court] hears the individual applications and clarifies the meaning of the provisions of the Convention and individual protection standards.[11] One of the areas concerned is one's private and family life under Article 8 of the ECHR. The private life consists undoubtedly of one's identity and personal history, whereas the family life includes the relationship between children and their parents (parent and child).

In the context of the protection of the rights of the child, the issues of a child's first name, surname, and establishing a legal parent-child relationship remain of particular relevance. Unquestionably, a child's identity is interfered with by adoption. The consequences

[5] UN General Assembly Resolution 217 A (III), A/RES/3/217 A, 10 December 1948.
[6] International Covenant on Civil and Political Rights signed at New York on 16 December 1966, UNTS vol. 999, p. 171 and vol. 1057, p. 407.
[7] International Covenant on Economic, Social and Cultural Rights signed at New York on 16 December 1966, UNTS vol. 993, p. 3.
[8] Convention on the Elimination of All Forms of Discrimination against Women signed at New York on 18 December 1979, UNTS vol. 1249, p. 1.
[9] International Convention on the Elimination of All Forms of Racial Discrimination signed at New York on 7 March 1966, UNTS vol. 660, p. 1.
[10] Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950, ETS 5.
[11] Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, ETS No. 155.

of adoption may create a new legal parent-child relationship or change the child's name. Thus, adoption influences the fundaments of an origin of a person. Hence there is a need to study this interaction. Its essential elements include, in particular, the registration of the child's civil status following adoption and the question of changing the child's given name and surname due to adoption; the protection of continuity in the child's upbringing with due regard to their cultural identity; and the child's right of access to information concerning their origins, including the scope of protection for this right.

Reflections on these matters reveal the interaction of several branches of law, such as international public law (including human rights law and children's rights law), international private law (primarily addressing cross-border challenges related to child protection) and substantive family law.

The aim of this dissertation is to analyse the provisions contained in international legal instruments concerning the protection of a child's identity, with particular emphasis on adoption. Based on this analysis, relevant domestic legal regulations in this area will be examined. A detailed legal analysis will be conducted with respect to Polish and Hungarian legislation. In addition, the discussion will be broadened by an exploration of the key legal issues concerning the protection of a child's identity in the context of adoption under the legal frameworks of Slovakia and the Czech Republic.

The central hypothesis of this dissertation is that the legal provisions governing the protection of a child's identity in the context of adoption vary significantly among selected Central European countries. This variation manifests itself both in the regulatory approaches and in the specific legal solutions adopted within national legal systems. Within the framework of this dissertation, three principal research questions are posed. First, to what extent is the protection of a child's identity an integral element of adoption regulation in the domestic legal systems of selected Central European countries? Second, do national laws provide a legal mechanism that ensures adopted children access to information about their origins, and under what conditions can this access be exercised? Third, in establishing these conditions, do the respective legal systems attempt to balance the child's interest—particularly their right to know their identity—with the rights and interests of biological parents, such as the right to privacy or family life?

The dissertation is divided into four main chapters. The first chapter presents the theoretical framework related to the subject of the study. The second chapter explores the foundations of international human rights law relevant to the issue. The third chapter supplements the discussion with the particularly important perspective of the European

Convention on Human Rights, including references to case law and the role of the balancing exercise in reconciling competing interests. Finally, the fourth chapter will address the domestic legal frameworks of four selected countries.

The primary sources for this dissertation consist of international documents of both universal and regional character, as well as national legal acts, mainly civil law and family and guardianship law.

To achieve the research objectives, it is appropriate to employ the dogmatic method, which involves analyzing national and international legal acts as well as doctrinal opinions. The historical-legal method will also be applied to examine how legal standards and regulations have developed. In the fourth chapter, the comparative legal method will be used to analyze and contrast national legal systems.

# Chapter I. Interaction between Child's Identity Protection and Adoption

## 1. Introduction to Chapter I

The purpose of the first chapter is to examine the relationship between the protection of a child's identity and the legal institution of adoption. This examination necessitates, to the extent possible, a definition of the term identity, as well as an analysis of the legal purposes and functions of adoption. The chapter will aim to identify and critically assess the normative and practical intersections between these two constructs.

The notion of identity will be considered within a multidimensional framework, incorporating both philosophical foundations and psychological insights, insofar as they inform and influence legal reasoning and child protection policy.

A historical perspective will be presented, originally linking the right to identity with the prevention of enforced disappearances, and, in the case of children, with protection against forced (illegal) adoptions. Furthermore, the chapter will address contemporary contexts in which the protection of a child's identity is closely linked to birth registration and the recognition of the child's legal subjectivity.

It is also necessary to provide a conceptualisation of the institution of adoption. Historically, adoption primarily served to secure the property interests of the family. In modern legal systems, however, its central function is to ensure that a child receives the necessary care and upbringing, particularly in circumstances where the biological family is facing significant hardship. At the same time, adoptive families possess a distinct legal and social character.

The purpose of the following remarks is to identify the key areas which, from the perspective of identity protection, are of particular relevance and require careful consideration within the framework of legal regulation of adoption.

## 2. Concept of Identity and Its Legal Protection

### 2.1. Notion of Identity

Notwithstanding being widely used in the public and academic debate, it is not evident what the notion of 'identity' means. In the context of a human being[12], the concept of identity has multiple interpretations and complex nature, being pertinent to philosophy, psychology, sociology and anthropology.[13] Encyclopædia Britannica, refers to the concept of identity

[12]The term is also used to refer to not-human being, see, e.g., Raisz, 2022 and quoted sources or Mathieu, 2022, on 'constitutional identity' of the State.
[13]See, e.g. Wojtanowska, 2016, p. 11.

in various contexts, e.g., as a notion from logic and metaphysics or in connection to an identity crisis - a term from the area of psychology, among many others.[14] As noted by John Eekelar: '"identity" is a powerful word in political and social discourse.'[15] Although reflections on identity have been present in social thought for a long time, it was not until the late 20th century that the term 'identity' gained widespread usage, emerging as a key concept in both academic discourse and everyday language.[16]

It is not the purpose of the present thesis to search for the meaning of identity in an interdisciplinary perspective or to trace its formation in the changing history of culture, society and ideas.[17] This notion may be applied to the human relationship with God and the universe, with other human beings, and finally with oneself in different ways.[18] Understanding identity is also linked to the individual's experience of the need for authenticity and growth; for rootedness and change; and for 'being' and 'becoming', as Ya'ir Ronen puts it.[19] It is therefore linked to the perception of the person (personality, personhood) as such and consideration of this far exceeds the scope of this work.

Nevertheless, Encyclopédie Larousse defines the entry *identité* as 'the permanent and fundamental character of a person or group that makes them unique and individual'[20] or 'what differentiates one community from another or one individual from another.'[21] This uniqueness and differentiability is built by a number of factors, which often intersect. Consequently, considerations on the basis of legal acts often have to refer to extra-legal criteria, for example in terms of the understanding identity of a group (community) and the mutual (dynamic) relations between the concepts of national, ethnic, cultural identity.[22]

Protecting identity is crucial for children, whose development is ongoing. As noted in Encyclopedia Britannica: 'One of the most important aspects of a child's emotional development

[14] Encyclopædia Britannica, https://www.britannica.com/search?query=identity [last accessed: 17 July 2024].
[15] Eekelar, 2018, p. 822.
[16] Encyklopedia PWN, https://encyklopedia.pwn.pl/haslo/tozsamosc;3988537.html [last accessed: 17 July 2024].
[17] Among the thinkers whose works have contributed to the reflection on the concept of identity are Aristotle, Saint Augustine, J. Locke, G.W. Leibniz, J.J. Rousseau, I. Kant, F. Schiller, W.James, E. Erikson, D. Parfit, A. Giddens or Z. Bauman, see, e.g., Michałkiewicz-Kądziela, 2020, pp. 4-16 and quoted sources; Eekelaar, 2018, p. 822-826 or Encyklopedia PWN.
[18] Ibid.
[19] McCombs and Shull González, 2007, p. 11; Ronen, 2004, p. 150.
[20] Encyclopédie Larousse, https://www.larousse.fr/encyclopedie/divers/identit%C3%A9/59715, translation from French by the author [last accessed: 12 July 2024].
[21] Ibid.
[22] Zajączkowska-Burtowy and Burtowy, 2020, p. 107.

is the formation of his self-concept, or identity—namely, his sense of who he is and what his relation to other people is.' [23]

Still outside legal language, but approaching aspects with legal implications, it is possible to define 'identity' as 'a person's name and other facts about who they are', 'the fact of being, or feeling that you are, a particular type of person; the qualities that make a person different from others', 'who a person is, or information that proves who a person is, for example, their name and date of birth'.[24] These dictionary explanations point to the role of date of birth, name and other information about oneself in the context of identity. It is these factors that are important links between the concept of identity and the issue of child adoption.

It should be noted that the placement of the protection of identity (or elements thereof) among human rights stems from the philosophical foundations of the concept of identity.[25] The textbook 'Philosophical foundation of human rights' by Paul Tiedemann applies the notion of 'personal identity' as 'the self-awareness of "who I am"',[26] using however the notions of 'personhood, personal identity, authenticity' interchangeably.[27] Be that as it may, the concept of identity in this view involves with the role of human dignity.[28]

Encyclopédie Larousse invokes a 'permanent character of a person',[29] while Theodore McCombs and Jackie Shull González refer to a 'dynamic' aspect of identity.[30] They also draw attention to the adjective 'self-determined'.[31] Identity can therefore be seen from different perspectives, as a spectrum of personal characteristics and social ties,[32] including ties to family members, culture[33] or belonging to religion, nation or other community.[34] Consequently, identity covers both objective and subjective aspects,[35] as well as aspects of both belonging and uniqueness.[36]

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[23]Lerner, Kagan and Bornstein in Encyclopædia Britannica, https://www.britannica.com/topic/human-behavior [last accessed: 12 July 2024].
[24]Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/identity [last accessed: 13 May 2024].
[25] See, e.g. Jumakova, 2019.
[26] Tiedemann, 2023, p. 81.
[27] Ibid., p. 91.
[28] Ibid., p. 79-99. See also Michałkiewicz-Kądziela, 2020, p. 115-127.
[29]Encyclopédie Larousse, op. cit.
[30]McCombs and Shull González, 2007, p. 9 and quoted sources.
[31] Ibid.
[32] Ibid., p. 2.
[33]McCombs and Shull González, 2007, p. 10.
[34] Kuźnicka, 2016, p. 186 or Hearst, 2012.
[35]Michałkiewicz-Kądziela, 2020, p. 38-42 and quoted sources. This author also proposes a systematisation of the right to identity, based on this very distinction, ibid.
[36] Stadniczeńko, 2015, p. 91.

The idea of identity is therefore difficult to define. There is also no definition of it in legal acts or a unified view of it.[37] Regardless of definition problems, it can be seen as a vital concept, essential for the formation of a sense of self, holding together one's past, presence and future, shaping the personal narrative.[38] In this subjective dimension identity is also related to one's autonomy and freedom of expression.[39] Insofar as it concerns subjective characteristics and feelings, questions arise about the possibility and extent of identity protection by the State.[40] Thus, what are the mechanisms and frameworks for the legal protection of identity.

## 2.2. Legal Protection of Identity – Preliminary Remarks

The problem of the variety of uses of the concept of identity entails also the a problem regarding the framing for the legal protection of identity. There is no international (or, arguably, national) provision stating that: 'everyone has a right to identity.' If such a guarantee were to exist, it must be interpreted from other norms. In literature the 'right to identity' often appears accompanied by some adjective or additional noun, such as 'rights to gender identity'[41] or 'right to identity of minorities'.[42] Seeking a more general approach, referring to the above encyclopaedic definitions, one can describe the right to identity as the right to protect those characteristics that determine uniqueness and differentiate one from others. This may apply to an individual or a group.[43]

Theodore McCombs and Jackie Shull González proposed a unifying definition of the right to identity, as follows: 'the right to identity protects an individual's significant and knowable personal attributes and social relationships'.[44] They also depict the right to identity as 'distinct and autonomous right explicitly and implicitly protected by international law.'[45]

Indeed, the protection of identity is an aspect relevant for international human rights law, anchored in various treaties, conventions, and declarations. The path to its protection was paved by instruments of general international human rights law such as the UDHR, the ICCPR or the ICESCR. Identity protection is linked to the many rights protected by these

[37] Achmad, 2018, p. 59 and quoted sources.
[38] Freeman, 1996, p. 290.
[39] See, e.g., Besson, 2007, p. 141.
[40] McCombs and Shull González, 2007, p. 14 and quoted sources.
[41] See, e.g. von Arnauld, von der Decken and Susi, 2020, pp. 191-214.
[42] See, e.g. Henrard, 2013.
[43] See more, McCombs and Shull González, 2007, p. 19-20.
[44] Ibid, p. 2.
[45] Ibid., p. 1.

instruments, including recognition as a person before the law,[46] the rights to a name,[47] nationality,[48] recognition as a person before the law,[49] protection of family[50] and culture.[51] However, the concept of the right to identity, as proposed by Theodore McCombs and Jackie Shull González, does not precisely correspond to any of these rights.[52]

It is also worth mentioning at this point the role of the CEDAW and the ICERD. CEDAW addresses identity by promoting equality and eliminating discrimination, thereby supporting the rights of women to their identity, while ICERD combats racial discrimination and supports identity preservation by ensuring equal treatment and recognition of all racial and ethnic groups. It is worth noting, however, that the aspects of gender equality and racial identity will not be the subject of the present research in connection to children's rights in adoption.[53]

Furthermore, one should underline the role of the law of the ECHR. One may claim that the present understanding of the right to identity results from the case law of the ECtHR in the matter of the protection of private and family life (Article 8).[54] As stated by Ewa Michałkiewicz Kądziela: 'this has the effect of assigning it to the closest and most intimate sphere of a person's life.'[55] Among others, the Court's case-law refers extensively to gender identity (and gender re-assignment),[56] as well as to the protection of cultural or ethnic identity[57], but these aspects of identity will not be analysed in detail, due to the focus of the topic on children's rights, particularly in adoption.

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[46]See, e.g., Art. 6 of UDHR, see below.
[47]See, e.g., Art. 24 para. 2 of ICCPR, see below.
[48]See, e.g., Art. 24 para. 3 of ICCPR, see below.
[49]See, e.g., Art. 6 of UDHR, see below.
[50]See, e.g., Art. 10 of ICESCR, see below.
[51] See, e.g., Art. 27 of ICCPR, see below.
[52]McCombs and Shull González, 2007, p. 1.
[53]Except perhaps to mention their role in relation to child's right to identity in connection to birth registration deficiencies. See, e.g., Kron, 2019 or the activities of the *Regards de femmes* association in this area https://www.etatcivil.pw/eradiquer-le-fleau-des-enfants-fantomes-no-birth-registration-no-rights/ [last accessed: 30 July 2024].
[54]Michałkiewicz-Kądziela, 2020, p. 43.
See, Art. 8 ECHR: 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
[55] Ibid.
[56]See, e.g., ECtHR, *Christine Goodwin v. United Kingdom*, judgment of 11 July 2002, Application no. 28957/95; ECtHR, *Hämäläinen v. Finland*, judgment (Grand Chamber) of 16 July 2014, Application no. 37359/09; ECtHR, *O.H. and G.H. v. Germany*, judgment of 4 April 2023, Application no. 53568/18 and 54741/18.
[57]See, e.g., ECtHR, *Chapman v. United Kingdom*, judgment of 18 January y 2001, Application no. 27238; ECTHR, *Ciubotaru v. Moldova*, judgment of z 27 April 2010, Application no. 27138/04: ECtHR, *Tasev v. North Macedonia,* judgment of 16 May 2019, Application no. 9825/13; ECtHR, *Mile Novaković v. Croatia*, judgment of 17 December 2020 r., Application no. 73544/14.

The instruments listed impose positive and negative obligations, but the content of specific rights and obligations remains ambiguous in the context of identity.[58] Similarly, it is ambiguous whether the right to identity constitutes one distinct right or an umbrella for other rights, or whether we can speak of an 'identity dimension' of other human rights.[59] Undoubtedly, however, the State should effectively recognize an authentic human identity, one that is recognisable to the state and consistent with the individual's behaviour.[60] It consists in *respecting* that must be about refraining from actively (forcibly) violating someone's identity, and *protecting* that must be about taking necessary steps to prevent others from interfering with the individual's identity.[61]

The need to protect the right to identity as such was noted in response to horrific violations of human rights in the 20th century.[62] The experience of the Second World War can be mentioned here, as one that has influenced the development of international human rights in general,[63] but has also been cited to justify the need to protect the child's right to identity against forceful separation from parents in particular.[64] Another violation that influenced framing the right to identity was enforced disappearance.[65] Situations such as kidnapping, interrogating torture, execution or burial in degrading ways undoubtedly constitute a violation of the right to identity of victims and their close ones.[66] Using this example, the link between identity and dignity seems self-evident. Social and psychological identity was to be destroyed and then identity was to be permanently erased from memory.[67] Sometimes enforced disappearances have been linked to forced (illegal) adoptions of children of victims.[68] On these examples it is clearly seen that 'there can be few more basic rights than a right to one's identity' as Michael Freeman puts it.[69] Also outside the context of forced disappearance, illegal adoptions linked to child trafficking constitute a violation of children's right to identity.[70] In addition, situations that constituted human rights violations, showing the need for a legal framework for their protection, were forced adoptions and assimilations related

[58]McCombs and Shull González, 2007, p. 6.
[59] Ibid, p. 11-13.
[60] Ibid., p. 16-17.
[61] Ibid., p. 17-18.
[62]Ibid., p. 2.
[63] See, e.g., Pisillo Mazzeschi, 2021, p. 10-11.
[64] Cerda, 1990, p. 116.
[65] See, e.g., Ott, 2011.
[66] McCombs and Shull González, 2007, p. 2-3 and quoted sources.
[67]Ibid., p. 3-4 and quoted sources.
[68]Ibid.
[69] Freeman, 1996, p. 283.
[70]McCombs and Shull González, 2007, p. 3-4 and quoted sources.

and attempts at social engineering towards indigenous and vulnerable children.[71] In general, reflections on the protection of identity often arise in the context of abuses against indigenous communities.[72] Moreover, culture as such is closely linked to human identity and dignity, as cultural heritage is a significant factor in forming an individual's identity.[73] Therefore, the destruction of its heritage is sometimes considered a violation of international criminal law.[74]

However, probably one of the contexts in which the 'right to identity' most often appears today is promoting and advocating for children's rights and the demand for the registration of children's births, giving them access to other rights. For instance, this issue is relevant to the work of the United Nations Children's Fund [hereinafter: UNICEF].[75] Birth registration is linked to the obligation to *fulfill* identity– ensure by the State opportunities of developing it.[76]

In the context of birth registration, the 'right to identity' is often assumed as a evident, with Articles 7 or 8 of the CRC cited in brackets. However, as indicated above, the very meaning of the concept of identity is highly ambiguous and multifaceted. Moreover, the scope of application of Articles 7 and 8 of CRC and relationship between them is not obvious, as will be discussed in Chapter II.

### 2.3. Legal Subjectivity of the Child and the Protection of Their Identity

Continuing with the consideration of the right to identity as related to birth registration, it is necessary to address the topic most relevant to this work, namely the child's identity protection. In the context of the international human rights law, a child is understood according to the approach adopted by the drafters of the CRC, followed by many other instruments, as a person under 18 years of age.[77] However, it is worth bearing in mind that this is not the only possible understanding of the child.[78]

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[71] Ibid., p. 5 and quoted sources.
[72] See, e.g., O'Donovan, 2002, p. 74.
[73] Zombory, 2022, p. 239 and 255 and quoted sources.
[74] Ibid., p. 246 and quoted sources, referring to the example of war crimes in Timbuktu, International Criminal Court, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, judgement of September 27, 2016, Case no. ICC-01/12-01/15.
[75] https://www.unicef.org/protection/birth-registration [last accessed: 30 July 2024]. In addition, there is an international not for profit organization specialised in child identity issues, precisely with a focus on birth registration, see, *Child Identity Protection* association, https://www.child-identity.org/ [last accessed: 30 July 2024].
[76] McCombs and Shull González, 2007, p. 18.
[77] See Art. 1 of the CRC: For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.
[78] See, e.g., Stadniczeńko, 2015, pp. 51-63.

As mentioned above, the first step to protecting identity and accessing to all other rights is birth registration. This is particularly evident given the problems of children, especially in sub-Saharan Africa and South Asia, whose fact of birth has not been registered in any way.[79] This problem concerns around 166 millions of children worldwide (one in four children under age 5).[80] In addition, an estimated 237 million children under 5, due to local circumstances, are registered, but there is no evidence of this (birth certificate).[81] In the Central European context, the problem may concern Roma children.[82] Unregistered children are exposed to various forms of discrimination and abuse. On the role of the birth certificate, UNICEF notes:

> 'Birth certificates are often required to access health care, education and other social services. (...) Having legal identification is also critical in protecting children from violence and exploitation. Proof of age can be used to prevent child labour (through the enforcement of minimum age of employment laws), recruitment into the armed forces, prosecution as an adult in criminal proceedings and child marriage. Moreover, birth certification is legal proof of one's place of birth and family ties. Thus, it is necessary for establishing a nationality and preventing the risk of statelessness. Later in life, birth certificates may be required to obtain social assistance or a job in the formal sector, to buy or inherit property, and to vote.'[83]

Birth registration is a necessary prerequisite for the enjoyment by children of several other human rights, such as the right to education or to judicial protection.[84] Furthermore, from the state's perspective, neglecting to register children makes it difficult to plan public policies and assess the demographic situation.[85] The lack of registration is due to various reasons, among which are financial reasons, distance, unawareness (of mothers), necessary participation of fathers.[86] The issue of non-registration is linked to, and can exacerbate, social inequalities.[87] Consequently, the issue of registration can be particularly challenging in the context of wars, migration or refugee crises.[88]

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[79] UNICEF, 2019, p. 44.
[80] Ibid., p. 6.
[81] Ibid., p. 44.
[82] See, e.g., https://www.unhcr.org/rs/en/14925-lack-of-birth-certificates-leaves-roma-children-in-europe-at-risk-of-statelessness-and-without-healthcare-or-education.html [last accessed: 30 July 2024].
[83] UNICEF, 2019, p. 8.
[84] On the connection between the birth certificate and the enjoyment of human rights by children, see the considerations of the Inter-American Court of Human Rights in the case *Yean and Bosico v. Dominican Republic*, judgment of 8 September 2005, Application no. 12.189, paras. 178-187.
[85] Kuźnicka, 2016, p. 187 and quoted sources.
[86] See, e.g., UNICEF, 2013.
[87] Ibid., p. 22-23.
[88] Not without a reason the issues of recognition before the law or birth registration are explicitly mentioned in International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families signed at New York on 18 December 1990, UNTS vol. 2220, p. 3 (Art. 29) or UN Guiding Principles

The creation of a civil status registration system[89] that is universal, free and immediate is called for by CRC Committee.[90] Providing legal identity for all, including birth registration is one of the goals of the UN 2030 Agenda for Sustainable Development.[91] Despite the progress that has indeed been made, it is likely that the target will not be reached by the deadline set (by 2030).[92] Nevertheless, one should remember that: 'a birth certificate may be an important tool for somebody's identification but the concept of identity goes beyond the (non-)issuance of a birth certificate.'[93]

However, starting with birth and requirement of its registration, through the first 18 years of a person's life, the legal framework for the protection of identity is primarily the CRC, in addition to other international human rights instruments that guarantee, explicitly or implicitly, the protection of the right to identity, and which apply to every person regardless of age. Identity is explicitly mentioned in the CRC provision, and references to issues relevant to it, such as the role of the family environment or respect for tradition and culture, are already present in the preamble. The reflections in following chapter will include the requirements of the CRC specifically, also in relation to general standards of international human rights law.

According to the Convention in general, the child is a fully-fledged subject of rights. One should remember that a child's life is not a uniform time as their capacities evolve (Article 5).[94] This is of course relevant in terms of the right to identity.[95] Identity is important in the formation of the child's subjectivity in general.[96] Of great importance in a child's development is the creation of their own value system, a sense of security and responsibility

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on Internal Displacement, UN Office for The Coordination of Humanitarian Affairs, New York, September 2004 (Principle 20).
See also, e.g., Elmolla, 2019 on Syrian case-study.

[89]'Civil status registration is defined as the continuous, permanent, compulsory and universal recording of the occurrence and characteristics of vital events pertaining to the population, as provided through decree or regulation in accordance with the legal requirements in each country.' United Nations Department of Economic and Social Affairs, 'Principles and Recommendations for a Vital Statistics System', Statistical papers, Series M No. 19, Revision 3, Statistics Division, United Nations, New York, 2014, p. 65, chapter II, section A, paragraph 279.

[90] See, e.g., Tobin, 2019, p. 245-246, referring importantly to the CRC Committee's achievements.

[91]UN General Assembly Resolution, *Transforming our world: the 2030 Agenda for Sustainable Development,* A/RES/70/1, 25 September 2015, goal 16.9.

[92] UNICEF, 2019, p. 26.

[93] Doek, 2006, p. 4.

[94]Art. 5 States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.
See also, e.g., Varadan, 2019.

[95]Ibid., p. 325.

[96] Kuźnicka, 2016, p. 182.

derived from belonging, which constitutes preparation for life in society.[97] On the one hand, the child, compared to an adult, has limited possibilities to assert his or her rights and, on the other hand, the problem resulting from doubts about one's own background and identity will surface in the future.[98] It is also worth remembering that the rights in this area are sometimes enforced once children become adults.[99]

Taking all of the above factors into account, one may claim that the right to identity is essential also for the implementation of the four fundamental values of the CRC, prohibition of discrimination (Article 2), primary consideration for the child's best interests (Article 3), child's right to life and development (Article 6) and the right to be heard (Article 12).[100] The protection of the elements of a child's identity is respectively connected to a numerous safeguards from the Convention. Particularly those which emphasize the CRC's commitment to safeguarding the familial, personal, and cultural rights of children. Indeed, an important question is that of the place of the (child's ) right to identity among human rights. John Tobin and Jonathan Todres note that: 'Although the right to identity includes cultural aspects, it is more directly situated in the penumbra of civil rights'.[101]

As shown above, the right to identity is a multifaceted aspect of children's rights. There can be different interpretations of identity and diverse classifications of its elements. As proposed by John Eekelaar the right to identity may be seen in two dimensions: 'one related to an individual's personal characteristics (called here „individual identity"), the other to the individual's identification with other individuals („communal identity")'.[102] George Stewart refers to four categories of identity: familial, tribal, biological and political.[103] Theodore McCombs and Jackie Shull González, while invoking 'personal attributes' and 'social relationships' aspects of identity, describe them rather as a spectrum than dichotomy.[104]

The various legal acts list various factors that are relevant to the protection of identity, as will be indicated below. As for the elements of the right to identity one may refer to: the right to be recognized as a person before the law and be registered at birth, the right to know one's origins, right to a name, right to nationality or right to cultural identity

[97] Ibid., p. 182 and 186.
[98] Ibid., p. 182.
[99] I. e., by adults claiming violations of their rights when they were children, see, e.g., ECtHR, *Odièvre v. France*, judgment (Grand Chamber) of 13 February 2003, Application no. 42326/98 or ECtHR, *Jäggi v Switzerland*, judgment of 13 July 2006, Application no. 58757/00.
[100] The Committee on the Rights of the Child, General comment No. 5 (2003) on the general measures of implementation of the Convention on the Rights of the Child, para. 12; and No. 12 (2009) on the right of the child to be heard, para. 2; See also, e.g., Arkadas-Thibert, 2022, p. 62.
[101] Tobin, 2019, p. 287, referring importantly to the ECtHR's case-law.
[102] Eekelaar, 2018, p. 823.
[103] Stewart, 1992, p. 225.
[104] McCombs and Shull González, 2007, p. 15.

(including the protection of the continuity in upbringing in alternative care). All of these elements can involve a child, and childhood is relevant to the realization of many of them. In addition, the situation of adoption can be challenging for all in some way or circumstance. The following subchapter of this thesis will highlight those dimensions of identity that are relevant in the context of child adoption.

## 3. Adoption and Child's Identity Protection

### 3.1. Concept of Adoption

Adoption is a widely recognized legal institution.[105] It was already known to Roman law.[106] Historically, its primary function was to guarantee familial continuity and inheritance, particularly through the adoption of adults.[107] In contemporary legal systems, adoption is centred on the protection and care of minors, carried out with due regard for the full respect of their rights. [108]

Nonetheless, the principle that 'adoption imitates nature' (*adoptio naturam imitatur*) had already been firmly rooted in Roman legal thought.[109] It indicates that adoptive filiation is modelled on biological filiation.[110] Already in Roman law, this principle was linked to the requirement of an age difference between adoptive parents and their adopted children. This age difference requirement continues to influence contemporary legal frameworks, as evidenced in national adoption laws and international agreements concluded under the auspices of the Council of Europe, which will be examined in the subsequent chapters of this study.

However, according to Carlos Martínez de Aguirre:

> ' (...) it is important to underline that adoption creates a relationship that can be identified as "filiation" owing to its resemblance to the biological relationship of parent and child, while at the same time it serves the purposes assigned to it by law. (...) Law may not create biological links, but it may create legal links similar to those existing between parents and their biological children. In adoption (...) the natural or biological

[105] See, e.g., Lowe and Fenton-Glynn, 2023, pp. 2-3.
[106] See, e.g., Brosnan, 1922, p. 332.
[107] See, e.g., Lowe and Fenton-Glynn, 2023, pp. 2-3.
[108] See e.g., ibid, p. 37-57.
[109] *Institutes of Justinian*, 1.11.4: It is settled that a man cannot adopt another person older than himself, for adoption imitates nature, and it would be unnatural for a son to be older than his father. Consequently a man who desires either to adopt (...) a son ought to be older than the latter by the full term of puberty, or eighteen years.
English translation available at: https://www.gutenberg.org/files/5983/5983-h/5983-h.htm#link2H_4_0012 [last accessed: 27 September 2024].
Cf., e.g., Lambert-Garrel and Vialla, 2018.
[110] See, e.g., Martínez de Aguirre Aldaz, 2015, p. 1.

element is missing: the links between adopter and adoptee are only legal and do not have their origin in biology or nature, but exclusively in positive law. We can graphically say that the parental relationship is natural, and that that of adoption is "artificial", although both can have a practically identical legal content (...).'[111]

Nowadays, legal scholars describe the situation of a child, biological and adoptive parents as an adoption triad.[112] Indeed, 'adoption' can be defined as 'the act of establishing a person as parent to one who is not in fact or in law his child'[113] or 'the act of legally taking a child to be taken care of as your own.'[114] Even these definitions, outside of legal language, indicate the possibility of looking at the institution of adoption, both from the side of the new parent and the new child in the family. The paper entitled 'Adoption and children: a human rights perspective' issued by the Council of Europe's Commissioner for Human Rights contains the definition of adoption as follows: 'legal decision to transfer definitive and absolute parental responsibility for a child, creating a new parent-child relationship as a result of which the child becomes a fully-fledged member of the adoptive family.'[115] Thus, while the adoptive parents' interest in forming a family is recognized, the rights of the child remain paramount.[116]

Establishing the full picture of children in adoption and the reasons for the decision of biological parents (to give a child up for adoption) or adoptive parent (to seek to adopt a child) requires social science research, including conditions of the specific country. There are probably various reasons why a child might be given up for adoption, including social, economic, personal, and health-related factors. However, even though it is sometimes believed that poverty is the most common reason for giving up children to adoption, according to the information on the website of one the adoption centres in Poland, poverty is merely one of the factors that might lie behind a decision to place a child for adoption:

'Children are most often placed for adoption because of dysfunctions in the family of origin in a broad sense. These are mainly addictions, mental illnesses, handicaps, lack of resourcefulness of parents and their relatives. In view

[111] Ibid., p. 1-2.
[112] See e.g., Lowe and Fenton-Glynn, 2023, p. 11.
[113] Encyclopædia Britannica, https://www.britannica.com/topic/adoption-kinship [last accessed: 26 September 2023].
[114] Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/adoption?topic=parenting-and-caring-for-children [last accessed: 26 September 2023].
[115] Council of Europe, Commissioner for Human Rights, *Adoption and Children: A Human Rights Perspective* CommDH/Issue Paper (2011) 2, 28 April 2011, p. 7, available at https://rm.coe.int/adoption-and-children-a-human-rights-perspective-issue-paper-commissio/16806dac00 [last accessed: 27 September 2023].
[116] See, e.g., Guštin and quoted sources.

of the above, the problem of poverty is only one element of the overall functioning of the family and not the only determining factor.'[117]

In addition to cases where children are placed for adoption, there are also situations where they are taken away from their natural parents by decision of the relevant authorities and courts. Another adoption centre further notes:

> 'We could draw up a long list of causes, cite examples, but this probably still would not convey the enormity of the problems experienced by toddlers in their natural families, from which they are ultimately taken away by court decision. Certainly, the most common reason for this is alcohol addiction. This is compounded by other difficulties: violence (physical, psychological, sexual, neglect), unemployment, homelessness, inadequacy in life, educational failure, mental handicap, mental illness, conflict with the law. One could go on and on listing those adult problems to which children are victims. Dysfunctional environment - this is where children who end up in foster care come from. Each with their own baggage of difficult, often very traumatic experiences. We are sometimes confronted with the stereotypical belief that children are taken from their natural environments because of their difficult material situation. This is a myth that is not true - yes, poverty often co-exists with the other reasons mentioned above, but it is never the only reason for such court decisions. Nevertheless, it does happen that parents/single mothers, due to financial, housing and personal instability, decide on their own to place the child for adoption and make a declaration to the court to this effect. The reason why parents sometimes decide not to foster a child is also sometimes due to a very serious illness, diagnosed after birth, which will make it impossible for the child to function independently in the future. Any circumstance resulting in a child being proposed for adoption is dramatic for both children and parents.'[118]

These examples highlight the complexity of the biological parents' situation, which in turn affects the children placed for adoption. As a result, adoptive parents face numerous challenges in addressing the emotional, psychological, and practical needs of the child. Additionally, adoption presents legal complexities that require careful navigation to ensure the rights and well-being of all parties involved.

In the past decades adoption was seen as a mean to provide children for childless couples.[119] Nowadays, as mentioned above, the need for child-centred nature of adoption and a children's rights-based approach to the institution is emphasised. On the international, nearly universal level, CRC may serve as a basic standard-setter on children's rights in adoption,

[117] Pomorski Ośrodek Adopcyjny, https://www.poa-gdansk.pl/pcja/ap31~mity-i-fakty [last accessed: 11 August 2024], translation from Polish by the Author.
[118] Regionalny Ośrodek Polityki Społecznej w Poznaniu https://rops.poznan.pl/obszary-dzialalnosci/adopcja/dziecko-w-adopcji/skad-sie-biora-dzieci-do-adopcji--2 last accessed: 11 August 2024], translation from Polish by the Author.
[119] Lowe and Fenton-Glynn, 2023, p. 3.

with a special emphasis on the Articles 20 and 21. These provisions constitute an exception to the general principle underlying the CRC, according to which the child should remain in the care of the family and parents, expressed, *inter alia,* in Article 9.[120]

Article 20 concerns alternative care.[121] These are mechanisms of special protection and assistance provided by the State to children who cannot remain in their family environment. One of these forms is adoption, alongside foster placement, *kafalah* under Islamic law or institutional care.

Requirements for the system of adoption are provided in subsequent Article 21 of CRC.[122]

According to Articles 20 and 21 of the Convention adoption is is a special mean of alternative care to which a separate provision is dedicated. In some legal systems it may have a very permanent character. One should note that adoption is not known to legal systems of all of the countries, e.g. Islamic countries. Therefore, Article 20 refers respectively to *kafalah.*[123] Article 21 of CRC is addressed to States 'that recognize and/or permit the system of adoption.'

Adoption is seen as a very particular form of alternative care especially when it takes the 'full' form, that 'extinguishes parenthood and parental responsibility in the birth parents,

[120] See, e.g. Art. 9 para. 1 CRC: States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

[121] Art. 20 CRC: 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. 2. States Parties shall in accordance with their national laws ensure alternative care for such a child. 3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

[122] Art. 21 CRC: States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall: (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary; (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin; (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption; (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it; (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

[123] An Islamic law-based alternative similar to foster care, where a family takes responsibility for a child's care without formal adoption, see, e.g., Tobin, 2019, p. 749.

and vests it instead in the adopter(s).'[124] The second type is 'simple' adoption, which 'generally does not terminate the parent-child relationship between the original parent(s) and the child, but simply supplements this with additional ties to the adoptive parent(s).'[125]

In decision-making concerning the placement of a child in alternative care, including adoption, the best interests of the child have a special role. One should recall that principle of the best interest of the child is one of the general principles of the CRC, stipulated in its Article 3,[126] according to which in all actions of public or private social welfare institutions, courts, administrative or legislative bodies, the best interests of the child shall be a primary consideration.[127] General Comment No. 14 of the UN Committee on the Rights of the Child elaborates on this principle.[128] It sets out a comprehensive framework for assessing the child's best interests, identifying several key elements that must be considered. These include the child's views, preservation of the family environment and maintenance of relationships, care, protection, and safety, vulnerability and the rights to health and education. Among these factors, identity is also explicitly mentioned. The weight of each of these elements is analyzed in context and may vary depending on the circumstances of the individual child. Not all elements will be applicable in every case and their relevance must be evaluated on a case-by-case basis. Importantly, these elements may sometimes come into conflict with one another, in which case the child's age and maturity should guide the balancing process, taking into account their physical, emotional, cognitive, and social development. The Committee further emphasizes that children's capacities evolve over time, and therefore decisions should allow for flexibility and revision, avoiding irreversible outcomes. In this light, it is necessary not only to assess the child's immediate needs, but also to consider potential future development and outcomes, both in the short and long term. The best interests of the child, as articulated in the General Comment, function not as a vague concept but as a legally binding principle,

[124] See, e.g., Lowe and Fenton-Glynn, 2023, p. 3.
[125] Ibid.
[126] Art. 3 CRC: 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.
[127] See in details, e.g., Freeman, 2007; Kilkelly, 2016 and quoted sources.
[128] General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) available in UN Treaty Body Database on the website https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11 [last accessed: 14 May 2024].
See also Garayová, 2021, p. 234.

procedural safeguard, and interpretive lens through which all decisions affecting children must be evaluated. In adoption, the principle of the best interests of the child has even a 'paramount' rank, as underscored in the first sentence of Article 21 of the CRC.

Article 21 refers broadly to intercountry adoption, which is an option, if a child cannot be cared for in their country of origin. However, it must be ensured that the child will receive the same protections and care as they would in their country of origin. Intercountry adoption raises fundamental issues, mostly from the perspective of children and birth parents, and some more general post-colonial, transracial concerns.[129]

The final provision of Article 21 of the CRC encourages the development of bilateral and multilateral arrangements for child protection in adoption. The HCCH 1993 Adoption Convention should be considered as a crucial example of the implementation of this encouragement.

Adoption involves a range of issues related to the human rights of children and parents, which is well illustrated by cases that come before the ECtHR.[130] One of them is undoubtedly the protection of child's identity in adoption.

### 3.2. The Adoptive Family from a Psychological Perspective, with Particular Consideration of the Child's Identity

As mentioned above, the issue of identity is of particular importance across various academic disciplines, including psychology, with special emphasis on matters related to child development. Dictionary of Psychology of American Psychology Association [hereinafter: APA] defines *identity* as:

> 'an individual's sense of self defined by (a) a set of physical, psychological, and interpersonal characteristics that is not wholly shared with any other person and (b) a range of affiliations (e.g., ethnicity) and social roles. Identity involves a sense of continuity, or the feeling that one is the same person today that one was yesterday or last year (despite physical or other changes). Such a sense is derived from one's body sensations; one's body image; and the feeling that one's memories, goals, values, expectations, and beliefs belong to the self. Also called personal identity.'[131]

Moreover, it should be emphasized that identity is a concept that pertains not only to the individual, but also to the broader dynamics of the family unit.[132] This subchapter aims

[129] See, e.g., Lowe and Fenton-Glynn, 2023, pp. 321-408.
[130] See, e.g., Draghici, 2011, Fenton-Glynn, 2021 or Kowalski and Masłowiec, 2024.
[131] APA Dictionary of Psychology available at: https://dictionary.apa.org/identity [[last accessed: 14 May 2024].
[132] See, e.g., Cierpka, 2013 and quoted sources.

to present the key findings from psychological research on adoptive families that are relevant to the issue of a child's identity.

As previously noted with reference to the CRC The purpose of adoption is to provide a child with a family environment when the child is deprived of the care of biological parents. From the perspective of family law, adoption creates ties equivalent to those within a biological family. This is a necessary and valuable assumption, ensuring that the status of an adopted child is not distinguished from that of a biological child, for instance regarding maintenance obligations or inheritance rights.[133] Mechanisms facilitating the child's integration into the new family exist, such as the possibility of changing the child's surname to reflect their belonging to the adoptive family. These aspects will be examined in greater detail using the example of domestic regulations in Poland or Hungary in the following parts of this study.

It is important at this stage to consider the issue of adoption secrecy, which in Polish legal thought is closely linked to the protection of the child's best interests and the principle of equal treatment between adoptive and biological parenthood.[134]. Information about the adoption remains confidential from the biological family and third parties, with adoptive parents serving as the custodians of this information in relation to the child.[135] The broad protection of adoption secrecy is justified by the need for stability within the newly formed family, the full inclusion of the child and the realization of the adoptive parents' parental aspirations.[136]

At the same time, it is essential to acknowledge the unique specificity of adoptive families, both by adoptive parents themselves and by professionals supporting the family.[137] This awareness is crucial throughout various stages of the family life cycle, particularly during periods of crisis and conflict. Effective functioning within the adoptive family system necessitates active collaboration on the part of adoptive parents with therapists, medical professionals, and psychologists.[138]

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[133] See Art. 2 CRC, which prohibits discrimination: 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

[134] See, e.g., Ignatowicz, 1985.

[135] See, e.g, Holewińska-Łapińska, 2011.

[136] See, e.g , Gajda, 2012.

[137] See, e.g,, Majchrzyk-Mikuła and Matusiak, 2016.

[138] Ibid.

In theories of the family life cycle,[139] the arrival of children marks a pivotal moment, with the child's development setting new tasks and challenges for the family. An adoptive family differs from a biological family both prior to and during the upbringing of a child at various developmental stages.[140]

Loss is an inherent experience in adoptive family.[141] For adoptive parents, it often arises from involuntary childlessness, frequently associated with profound existential anxiety and suffering.[142] This loss may stem from infertility, the miscarriage or death of a biological child,[143] leading to a process of mourning for the (unborn) child.[144] Adoptive parents may confront a perceived erosion of control over pivotal aspects of family life, accompanied by a sense of deviation from the societal ideal of a 'typical' family.[145] For the adopted child, loss involves the separation from biological parents and family, the rupture of genealogical continuity,[146] and often feelings of rejection.[147]

The decision to adopt is of profound life significance.[148] The motivations of adoptive parents are crucial to the functioning of the emerging family.[149] Decision-making around adoption is often accompanied by a crisis, especially when spouses have differing attitudes toward it.[150] Thus, adoptive parents frequently carry a significant emotional burden,[151] further compounded by the complexity of the multi-stage adoption and judicial procedures.[152]

Adoptive parents assume care of a child to whose earlier life stages they were not biologically connected. Yet, the parent–child bond begins as early as the prenatal stage.[153] Adoption inevitably impacts attachment development,[154] requiring careful attention not only at home but also in educational settings.[155] The entire family must therefore reexamine and adjust their expectations concerning family life.[156]

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[139] See, e.g, Duvall, 1977; Haley, 1973.
[140] Kalus, 2014, p. 332.
[141] See, e.g,, Brodzinsky, 1990.
[142] See, e.g,,Wąsiński, 2018.
[143] Kalus, 2014, p. 333.
[144] See, e.g,,Schier, 1998.
[145] Kalus, 2014, p. 341.
[146] Ibid.
[147] Ibid.
[148] See, e.g., Jarmołowska, 2007.
[149] See, e.g., D'Andrea, 2010.
[150] See, e.g., Kościelska, 1999.
[151] Kalus, 2014, p. 347.
[152] See, e.g., Kucharewicz, 2017.
[153] See, e.g., Harwas-Napierała, 2008.
[154] See, e.g., Piotrowska, 2013.
[155] See, e.g.,Kostyło, 2023.
[156] Kalus, 2014, p. 333.

Research by Howe and Feast suggests that the child's age at adoption significantly influences their experience of adoption.[157] The older the child at the time of adoption, the higher the risk of feelings of being unloved or different. The success of adopting preschool- and school-aged children largely depends on the degree to which adoptive parents accept the uniqueness of the adoptive family compared to biological families.[158] Regardless of the child's age, it is essential not to negate the child's pre-adoption history.[159] While the child fully belongs to the adoptive family, genetic ties and physical resemblances with the biological family remain.[160] The child's history should be integrated into the jointly constructed present and future.[161] Engaging in conversations about the child's experiences, even when difficult, is vital.[162] Grotevant and McRoy distinguish four styles of communication regarding adoption.[163] The first model is characterized by the absence of ongoing dialogue regarding the child's adoptive origin, limited instead to a one-time disclosure—if at all—which is sometimes referred to as the 'minimal disclosure' or 'no-discussion' approach. The second model is that of passive communication, in which adoptive parents respond to the child's questions about adoption but do not initiate discussions themselves. The third model is that of active communication, where adoptive parents not only respond to the child's questions, but also take the initiative in starting conversations about adoption. The fourth model is excessive communication, where adoption-related topics are frequently emphasized, potentially leading to an overemphasis on adoption in the child's life, sometimes making it the central focus of their identity. Communication strategies should be age-appropriate, including integrating adoption themes into storytelling, viewing photographs together, or celebrating both biological and adoptive birthdays.[164]

The child's development presents evolving challenges for adoptive parents.[165] However, children do not fully understand the meaning of adoption before the ages of 5–7.[166] Nevertheless, preschool-aged children may inquire about their origins.[167] During adolescence, when individuals increasingly seek autonomy and form external relationships, critical

[157] Howe and Feast, 2000.
[158] Kalus, 2014, p. 350.
[159] See, e.g, Ładyżyński, 2009.
[160] Kalus, 2014, p. 342-343.
[161] Ibid.
[162] D'Andrea, 2010, p. 63, 80.
[163] Grotevant and McRoy, 1998.
[164] Kalus, 2014 and quoted sources.
[165] Ibid.
[166] Ibid.
[167] Ibid.

reassessment of adoption may emerge.[168] This requires adoptive parents to develop new, open, and empathetic parenting strategies.[169]

According to Gutowska[170] the perception of differences inherent in adoptive parenting evolves over the course of the adoptive family's life cycle. Parental attitudes toward these differences tend to shift across developmental phases: during the initial stages, when the priority is the formation of secure attachments with the child, it is natural for parents to deny or downplay distinctions between adoptive and biological families. As the child matures and the family progresses through subsequent stages of development, these differences become increasingly recognized and accepted.

The legal understanding of the adoptive family is therefore not absolute and its specificity in psychological or social functioning needs to be taken into account. However, the primary focus of this work is on the legal implications of these issues, particularly in terms of protecting the child's identity and other related rights.

### 3.3. Protection of Identity in Adoption

The issue of identity protection is most relevant in the case of 'full' adoption or intercountry adoption. According to Philip Alston, Nigel Cantwell, and John Tobin, 'national adoption presents challenges in preserving a child's identity. These problems are likely to be magnified in inter-country adoptions which generally sever not only the physical ties with a child's biological parents or previous carers, but the social, racial, cultural, linguistic, and religious ties between an adopted child and his or her country of origin.'[171] However, it is also relevant for alternative care in general (see Article 20 para.3). A child's identity is somehow disrupted when the child is not taken care of by the biological parents. There may be a tension between child's identity and their integration to the new family, between the truth (about biological parents or about adoption) and protection of the child, their safety, security, peace and development.[172] These are essential legal issues and human issue at the level of the individual family, of course taking into account age, and development of the child.[173] Particularly in relation to international adoption (involving cultural, ethnic, religious issues), the question arises

[168] Ibid.
[169] Ibid.
[170] Gutowska, 2006.
[171] Alston, Cantwell and Tobin, 2019, p. 804.
[172] In favour of adoption secrecy on Polish example, see Gajda, 2012.
[173] Kuźnicka, 2016, p. 184 and quoted sources.

as to when a child's identity is formed and when choices should be left to the child.[174] Consideration of all relevant factors is required to protect the best interests of the child.

Before deciding on an appropriate measure of alternative care, in particular adoption and on the choice of adoptive parents, the issue of the continuity in upbringing is of great importance. It can be defined as the protection of what has been good in child-rearing so far.[175] From the other angle, once the decision to adopt has been taken, the child's right to know their origins takes on particular importance. There are also safeguards in place to protect the child's rights to a name and nationality in an adoption situation.[176] Particular attention will be given to the child's right to know their origins. Samantha Besson defines it as 'amounting to know one's parentage, i.e. one's biological family and ascendance, and one's condition's of birth. It protects each individual's interest to identify where she comes from.'[177] She further notes that:

> 'Knowing one's origins is something most of us who know our parents take for granted, but for those who do not, it is an interest which has only very recently been acknowledged legally by the recognition of a full-blown right to know. This reluctance can be explained by the complexity of the issue. To start with, the situations in which a child's interest to know may be violated are so diverse as to prevent a holistic solution. For instance, an adopted child's relationship with her social or legal parents is different from an Al. [artificially inseminated] child's relationship with her birth parents or that of a child born out of wedlock with her father. Moreover, the ethical and legal issues are complicated by conflicting technical, psychological and sociological considerations that make a global evaluation of the child's situation difficult. Finally, and most importantly, the child's right to know conflicts with other people's rights as well as with public interests or even other interests of the child. One may think, for instance, of the competing rights to autonomy and privacy of the mother, the father, the adoptive parents or the gamete donor.'[178]

The right to know one's origin is particularly discussed in recent decades due to development of medical sciences which entails different possibilities of conceiving a child and facilitates the identification of the child's parents.[179] In recent years, this issue may have received more attention in the literature and the activities of various organizations than the protection of identity in the context of adoption.[180] Indeed, this is an area that, with

[174] Ibid., p. 185.
[175] Zajączkowska-Burtowy and Burtowy, p. 102, citing importantly the works of Andrzejewski.
[176] See, e.g., Art. 8 of UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally, UN General Assembly Resolution, A/RES/41/85, 3 December 1986.
[177] Besson, 2007, p. 140.
[178] Ibid., p. 138.
[179] Ibid.
[180] See, e.g., Nagy 2024 and quoted sources.

the advancement of medical technology, requires increasing attention, while legal solutions have struggled to keep pace with this development.[181] In the case of surrogacy, there is also the issue of the child's access to information about the woman who gave birth to them.[182] Furthermore, surrogacy, especially cross-border surrogacy, presents significant challenges for civil status registration.[183]

While these issues are not the subject of this paper, it is worth noting that although the dilemmas surrounding the identity of children in relation to assisted reproduction and surrogacy require considerable attention and urgent action at both the international and national levels, the unresolved dilemmas within adoption should not be overlooked. Addressing these adoption-related challenges could provide a point of reference for discussions on assisted reproduction and surrogacy.

In this complex reality, we undoubtedly observe the phenomenon of competing rights and the need to weigh up conflicting goods and interests.[184] The rights in conflict with the child's right to know their origin include the rights of biological parents,[185] the adoptive parents or other rights of the child.

Knowing one's origins is indeed an important element of one's psychological balance.[186] Due to its fundamental character it is regarded as a human right.[187] Samantha Besson notes that '[adopted children], who depend on the goodwill of authorities or their social parents to know about their origins, suffer from discrimination by comparison to children whose social and genetic parents match.'[188]

The right to know one's origins and the duty bearers is equally important for both children and adults (the right-bearers), as it is essential for understanding one's identity.[189] However, in practice, the ways in which this right is protected differ between children and adults, due to the special protection of the child, mostly their best interests, including their evolving maturity.[190] The most important question is that of the child's access to their (genetic) data and the point at which this access should take place.[191]

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[181] Ibid.
[182] Ibid.
[183] See, e.g., Kowalski and Masłowiec, 2023.
[184] See, e.g., Stadniczeńko, p. 44 and quoted sources.
[185] And in the case of assisted reproduction- gamete donor.
[186] Besson, 2007, p. 140; Bosek, 2008, p. 948.
[187] See, e.g., Freeman, 1996, p. 276-277.
[188] Besson, 2007, p. 140.
[189] Ibid., p. 141.
[190] Ibid., p. 144.
[191] Ibid.

One should remember that these data pay a role also for medical reasons.[192] In case that a child faces a health danger or is at risk of developing a hereditary disease, having access to their medical records and medical history is essential to protecting their right to healthcare and treatment.[193] It enables blood transfusion, organ transplantation, bone marrow donation and other medical procedures.[194] Also, knowing one's origins prevents sanguineous relationships.[195]

According to Samantha Besson,[196] the primary responsibility for ensuring a child's right to know their origins lies with the State. The State must avoid interfering with this right and is tasked with organizing birth registration and gathering and providing all relevant identity information. The State also enforces legal obligations on individuals, such as requiring a mother to identify the father or provide her own identification, and imposes sanctions for failing to comply with these duties. Most legal protections of this right are directed against the State. However, there is a question of whether individuals should also have direct responsibilities related to this right. For example, a mother's role in registering the child is vital because she typically has the most information about the child's origins. While most legal frameworks do not impose direct obligations on individuals, they do require the State to enforce both negative and positive duties to protect the right to know from violations by both public entities and private persons.

Given the importance of the right to know one's origins and the possible conflicts with other rights, the question arises as to the scope of its protection. This is a highly contentious issue. There are claims that it is not absolute,[197] as well as calls for the widest possible protection in the case of a child.[198]

The child's right to know their origin is increasingly recognized in both international legal instruments and domestic legal systems; however, significant divergences persist.[199] While some countries—such as Ireland—entirely deny this right, others differ regarding the age at which the child may exercise it, ranging from 14 to as late as 25 years.[200] Legal systems also vary in how the right is conceptualized: in some jurisdictions, such as Sweden, it is treated as an absolute right that prevails over parental anonymity, whereas in others, such as

[192]Ostojska, 2012, p. 18.
[193]Nagy, 2024, p. 18.
[194] Ostojska, 2012, p. 18.
[195]Tobin, 2019, p. 267.
[196]Besson, 2007, p. 144-145.
[197]E. g., Besson, 2007; p. 139; Bosek, 2008, p. 960; Fortin, 2009, p. 354.
[198]E. g., Freeman, 1996; Tobin, 2019, p. 241, Fenton-Glynn, 2021, p. 61.
[199] See, e.g. Krajlić, 2021.
[200] Ibid.

Slovenia, its exercise is contingent upon the biological parents' consent to disclose identifying information.[201] Moreover, certain countries, including Bosnia and Herzegovina and Croatia, impose a legal obligation on adoptive parents to inform the child of their adoption, underscoring the ethical importance of transparency in adoptive relationships.[202] Differences also arise regarding the procedures for accessing information about one's origins and the authorities responsible for managing such requests—whether through civil registry offices, adoption agencies, or other designated bodies.[203]

Most important in this context is the question of concrete solutions, above all at national level, especially those concerning the disclosure of data about the child's origin, as well as the existence of solutions concerning anonymous births (without disclosure of the mother's data) or the anonymous relinquishment of the child ('baby-boxes').This will be examined in following sections of the work, however, preceded by a presentation of the basis in international law for the protection of the right to identity.

## 4. Partial Conclusion

Identity is a complex concept, significant from the perspective of many different disciplines. It also carries multiple dimensions in terms of legal protection. Childhood is particularly crucial for the formation of identity throughout a person's life. Family relationships and cultural factors play a particularly important role in this process. For this reason, the protection of identity is of special importance in the case of children, especially in the context of adoption.

The above considerations reveal that civil status registration of the child following adoption is of particular importance in this context. The analysis underscores the significance of civil status registration not merely as a formal mechanism of legal identification, but also as a foundational element enabling access to and realisation of other individual rights.

This concerns the manner in which newly created family relationships and the child's name are registered, as civil status registration is inherently linked to identity protection. Furthermore, continuity in upbringing, especially in its cultural aspects, is also of great significance. However, the issue that reveals the most tension is the child's right to know their origins in which different emphases are placed by various scholars and national legal systems,

[201] Ibid.
[202] Ibid.
[203] Ibid.

especially concerning the extent to which this right is protected in relation to, and potentially limited by, the rights of the biological parents.

From a different angle, psychological research underscores that the specific nature of the adoptive family must not be overlooked. Although the aim is to create a genuine family environment, it arises under unique circumstances, in which the histories of both the child and the adoptive parents must not be denied or disregarded.

The next chapter will present specific international legal regulations relating to human identity, with particular emphasis on child adoption.

# Chapter II. Identity Protection in International Law with Regard to the Adoption of the Child

## 1. Introduction to Chapter II

The objective of this chapter is to provide a comprehensive overview of international legal sources pertinent to the protection of human identity, with particular emphasis on the context of child adoption. The analysis shall commence with an examination of instruments established within the universal human rights framework. This part shall conclude with an in-depth analysis of the relevant provisions of the CRC.

Subsequently, the analysis will focus on instruments of the regional human rights protection system, those developed under the auspices of the Council of Europe. However, a separate Chapter III of the thesis will be devoted to the European Convention on Human Rights.

Although this work focuses on domestic adoption, certain cross-border elements will also be addressed. The presentation of the European Union's legal framework will complement the discussion on the child's identity within the European system. Additionally, the 1993 Hague Convention on Intercountry Adoption will be presented.

## 2. Child's Identity Protection in International Documents in the Universal System of Human Rights Protection

### 2.1. Universal Declaration of Human Rights

Several key instruments provide the international legal basis for the protection of the right to identity or its elements. Chronologically first of them is UDHR established in 1948 by the United Nations General Assembly. It outlines essential human rights that ought to be safeguarded for all people. To the UN system, inaugurated by the UDHR, we owe the contemporary understanding of rights and the role attributed to them in states and international relations.[204] Protecting everybody, this system gave special care and attention to children, which was later reinforced and developed, as to the children, in the CRC.[205]

[204] Kuźnicka, 2016, p. 183.
[205] Ibid.

A person's right to identity is supported and upheld by several of the UDHR's provisions, even though it is not specifically mentioned. These rights are essential to making sure that each and every person in society is valued and acknowledged as a unique individual.

Article 25 of the UDHR guarantee special care and assistance to mother and children. It ensures the same protection for children born in and out of wedlock.[206] Firstly, Article 6 of the UDHR secures the right of everyone to recognition before the law.[207] It establishes the foundation for legal identity and ensures that every individual is acknowledged as a person with rights and obligations under the law (see also the abovementioned reflections on birth registration).

Article 12 provides for the protection against arbitrary interference with one's privacy, family, home or correspondence and against attacks upon ones honour and reputation.[208]It served as a model for other subsequent human rights instruments on the protection of private and family life.[209]

Furthermore, Article 15 plays a role, stating a right to a nationality and providing protection against arbitrary deprivation of nationality or denial the change of their nationality.[210] It is a crucial aspect of one's identity, connecting individuals to a state and providing them with legal and social recognition. This article underscores the importance of having a nationality and the protection against its arbitrary deprivation by the State.

Additionally, Article 16 recognizes family ties and relations as essential components of a person's identity. The family is named a fundamental and natural unit of society, having the right to be protected by both society and the State.[211] One should note that family contributes to an individual's sense of identity and belonging.

[206]Art. 25 para. 2 of the UDHR: Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.
[207]Art. 6 of the UDHR: Everyone has the right to recognition everywhere as a person before the law.
[208]Art. 12 of the UDHR: 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.
[209] Michałkiewicz-Kądziela, 2020, p. 61.
[210]Art. 15 of the UDHR: 1. Everyone has the right to a nationality. 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.
[211] Art. 16 para. 3 of the UDHR: The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Although not legally binding, the UDHR has significantly influenced international human rights law, promoting the protection and respect of human rights worldwide, having a strong symbolic meaning.[212]

## 2.2. International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights

The International Covenant on Civil and Political Rights [hereinafter: ICCPR] or the International Covenant on Economic, Social and Cultural Rights [hereinafter: ICESCR], both from 1966, refer to the rights of the child, including aspects of their identity or the rights of the family. Both the ICCPR and ICESCR expand upon the UDHR by translating its principles into binding international law. The ICCPR and ICESCR complement each other by covering different sets of rights. While the ICCPR focuses on civil and political rights, the ICESCR focuses on economic, social, and cultural rights. Consequently, together, they provide a comprehensive framework for the protection of human rights.[213]

Starting from ICCPR, Article 16 guarantees to everyone the right to recognition before the law.[214] The importance of this provision is connected to the protection of a human subjectivity. This is even a fundamental characteristic of today's understanding of law and human beings, which is understood more broadly than legal capacity for civil law purposes, including protection against arbitrariness.[215]

Article 17 of the ICCPR provides for protection against arbitrary or unlawful intrusions of one's privacy, family, home, or communications, or unlawful attacks on their honour or reputation.[216] This provision refers to the important elements of child's identity, protected under privacy and family. The right to know one's origins is said to derive implicitly from the right to privacy.[217]

[212] See, e.g., Florczak-Wątor and Kowalski, 2019.
[213] E.g., Paczolay, 2022, p. 134.
[214] Art. 16 of the ICCPR: Everyone shall have the right to recognition everywhere as a person before the law.
[215] Kuźnicka, 2016, 185-186.
[216] Art.17 of the ICCPR: 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.
[217] Besson, 2007, p. 141 and quoted sources.

Article 24 of ICCPR refers explicitly to the protection of children's rights.[218] It provides for several guarantees, such as the right to protection against discrimination on the grounds of race, colour, sex, language, religion, national or social origin, property or birth and the right to special measures of protection from the family, the society and the state (para. 1). It lays down the right to registration immediately after birth, and the right to have a name (para. 2), and nationality (para. 3).

Entering into force in 1966, the ICCPR represents the first explicit protection of the right to birth registration under international human rights law.[219] Moreover, it states, essential for constitution and preservation of child's identity, the right to name and nationality.[220]

The right to identity enjoys further protection under the normative content of Article 27 of the ICCPR,[221] which recognizes cultural rights of persons belonging to ethnic religious or linguistic minorities, including children.[222]

An elaboration of this provision is the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.[223] Erzsébet Sándor-Szalay notes significantly:

> 'The question of whether Article 27 of the Covenant is intended to protect only traditional, indigenous, and historical minorities, or whether it also covers new minorities such as immigrants is a matter of ongoing debate. In this context, it is now accepted that a distinction can and should be made between the two groups, with classical minority rights being reserved for historical minorities. However, new minorities should also benefit from at least the prohibition of discrimination.'[224]

The direct applicability of the Article 27 to the child's right to identity in adoption is, therefore, very limited. However, indirectly, it points out the importance of ethnic, religious and linguistic aspects of human life, which is undoubtedly related to identity.

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[218] Art. 24 of ICCPR: 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. 2. Every child shall be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality.
[219] Elmolla, 2019, p. 543.
[220] Besson, 2007, p. 141.
[221] Art. 27 of the ICCPR: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.
[222] See on minority protection in general, e.g., Sándor- Szalay, 2022, p. 162-165; or Zombory, 2022, p. 254-256.
[223] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities UN General Assembly resolution 47/135 adopted on 18 December 1992.
[224] Sándor- Szalay, 2022, p. 165.

In connection to the recognition of child's right to identity, several provisions of the ICESCR are relevant. First, Article 10 para. 1 of ICESCR recognizes the need for widest possible protection and assistance for the family. The role of the family is described as 'the natural and fundamental group unit of society', which is responsible for the care and education of children.[225] Article 10 para. 2 ensures special protection to mothers before and after childbirth.[226] Additionally, Article 10 para. 3[227] requires that special protective and supportive measures should be provided for all children and young people, without discrimination based on parentage or other circumstances. They must also be safeguarded against economic and social exploitation. Furthermore, supporting and upholding the right to identity in the ICESCR is possible under its provisions on non-discrimination (Article 2 para. 2),[228] education (Article 13),[229] and cultural participation (Article 15 para. 1 (a)).[230]

2.3. Other Relevant Instruments

Attention should be drawn to the conventions on nationality, which have provided special mechanisms to protect adopted children in this respect.[231]

Such a mechanism was already provided for in the Convention on Certain Questions relating to the Conflict of Nationality Laws[232] enacted under the auspices of the League

[225]Art. 10 para. 1 of the ICESCR: The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

[226]Art. 10 para. 2 of the ICESCR: Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

[227] Art. 10 para. 3 of the ICESCR: Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. (...).

[228] Art. 2 para. 2 of the ICESCR: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[229] Art. 13 para. 1 of the ICESCR: The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

[230] Art. 15 para. 1 (a) of the ICESCR: The States Parties to the present Covenant recognize the right of everyone to take part in cultural life.

[231] On the relationship between them and the crucial Arts. 7 and 8 of CRC see Hodgson, 1993.

[232] Convention on Certain Questions relating to the Conflict of Nationality Laws signed at the Hague on 12 April 1930, League of Nations, Treaty Series , vol. 179, p. 89; The Convention is in force in 21 countries, including Poland who ratified it in 1934.

of Nations. One of its provisions (Article 17)[233] stipulates that if the law of a given State allows for the loss of nationality as a consequence of adoption, such loss is permitted only on the condition that the adopted person acquires the nationality of the adoptive parent, in accordance with the national law of the State of the adoptive parent concerning the effects of adoption on nationality.

A similar mechanism is provided for in the Convention on the Reduction of Statelessness[234] prepared by the United Nations. According to Article 5 para. 1,[235] where the law of a State provides for the loss of nationality as a result of a change in personal status (such as adoption), such loss is permissible only if the individual already possesses or acquires another nationality.

Also, one should remember that in the given adoption case, it may be needed to include the special needs of a child (or parents) resulting, e.g., from their disability.[236]

Additionally, some of the auxiliary, non-binding instruments are relevant for interpreting rights of the child and states obligations. The first of them is UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally.[237] This document influenced the drafting of Article 21 of CRC.[238]

### 2.4. Convention on the Rights of the Child

As noted by Ton Liefaard and Julia Sloth-Nielsen: 'With the adoption of the CRC, children are seen as individual rights-holders, in that they are entitled to human rights and fundamental freedoms as any other human being is. At the same time, they have special entitlements

[233] Art. 17 of the Convention on Certain Questions relating to the Conflict of Nationality Laws: If the law of a State recognises that its nationality may be lost as the result of adoption, this loss shall be conditional upon the acquisition by the person adopted of the nationality of the person by whom he is adopted, under the law of the State of which the latter is a national relating to the effect of adoption upon nationality.
[234] Convention on the Reduction of Statelessness signed at New York on 30 August 1961, UNTS, vol. 989, p. 175; 80 states are party to this Convention, including Czech Republic, Hungary, Serbia, Slovakia.
[235] Art.5 para. 1 of the Convention on the Reduction of Statelessness: If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality.
[236] See Convention on the Rights of Persons with Disabilities signed at New York on 13 December 2006, UNTS. vol. 2515, p. 3.
[237] UN General Assembly Resolution, A/RES/41/85, 3 December 1986
[238] See, e.g. Vaghri et al, 2022, p. 172 and quoted sources.

and unique rights that attest to their differences to adults, including their parents or legal guardians.'[239]

As a widely accepted international agreement of mostly universal character, the CRC serve as a basic international standard-setter on the rights of the child.[240] With 196 State Parties, it remains the most widely ratified international human rights treaty.[241] The Convention entered into force more than 30 years ago.[242] Poland and Polish legal scholars, particularly Prof. Tadeusz Smyczyński, played a distinguished role in the drafting process of the CRC.[243]

The CRC is characterized by the holistic approach to the situation of a child with the special emphasis on fundamental values, aforementioned.[244] The provisions of the Convention are supplemented by three optional protocols: on the involvement of children in armed conflict,[245] on the sale of children, child prostitution and child pornography[246] and on a communications procedure.[247] They bind 173, 178 and 52 countries respectively.[248]

Given the comprehensive character and holistic approach of the CRC, as well as the complex nature of the concept of identity, there could be no end to the reflections

[239]Liefaard and Sloth-Nielsen, 2016, p. 1.
[240]Ibid.
[241]See status as of 16 November 2024, available at the United Nations Treaty Collection website: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4 [last accessed: 16 November 2024].
[242] The Convention entered into force on 2 September 1990, see, ibid.
[243] E.g. the presentation of Dr. hab. Marek Andrzejewski, prof. INP PAN entitled *The role of Professor Tadeusz Smyczyński as a drafter of Convention on the Rights of the Child* during the conference *Children's Rights Days 2* on 30 November 2023 in Budapest.
https://www.youtube.com/watch?v=eU_VCmpIrGo&list=PLp75_Jffd855sphkEtCR-BgW8fqAoyo6U&index=5 [last accessed: 10 October 2024].
[244] As expressed by the Committee on the Rights of the Child, General comment No. 5, para. 12: 'holistic concept, embraces the child´s physical, mental, spiritual, moral, psychological and social development'.
[245] Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UNTS, vol. 2173, p.222' status table available at the United Nations Treaty Collection website: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11-b&chapter=4&clang=_en [last accessed: 16 November 2024].
[246] Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, UNTS, vol. 2171, p.227; status table available at the United Nations Treaty Collection website: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11-c&chapter=4&clang=_en [last accessed: 16 November 2024].
[247] Optional Protocol to the Convention on the Rights of the Child on a communications procedure, vol. 2983, p.135; ; status table available at the United Nations Treaty Collection website: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4 [last accessed: 16 November 2024].
[248] According to status as of 15 November 2024, see links indicated above.

on the protection of the right to identity in the Convention. As noted by Zsófia Nagy: 'the UN CRC is encapsulating [the elements of identity] separately in its Articles, by focusing on practical legal tools to maintain the identity, which leads to the child's identity to be „constructed" by these external elements, instead of it being „self-constructed"'.[249]

Following considerations will present guarantees under the provisions of the CRC which have the greatest relevance from the point of view of the analyzed interaction of identity and adoption. The CRC explicitly recognizes the child's rights connected with identity in several contexts. [250] Of greatest importance for the protection of the child's to know their origins are the guarantees contained in Article 7 and 8 of the CRC.[251] Article 20 para. 3 of the CRC deals explicitly with the issue of the continuity in upbringing.

### 2.4.1. Preservation of Identity

The CRC's Article 8 essentially encapsulates the right of the child to preserve their identity.[252] Since it explicitly mentions the word 'identity', one may claim that it is justified to analyze it first. Article 8 para. 1 of the CRC imposes on states parties to respect the child's right to preserve their identity. It includes the protection of nationality, name and family relations as recognized by law. They cannot be subjected to unlawful interferences. Article 8 para. 2 of the CRC recognizes States Parties' obligation to provide appropriate assistance and protection where a child is illegally deprived of some or all elements of their identity, with a view to re-establishing it promptly.

Article 8 is the first human rights law provision to specifically recognise the right to the preservation of a child's identity, which makes it unique.[253] Historically, adoption of this provision is linked to the problem of abduction of children by military authorities and their disappearances in Latin American countries.[254] Therefore the similar frameworks are provided for in International Convention for the Protection of All Persons from Enforced

[249] Nagy, 2024, p. 20.
[250] Besson, 2007, p. 142 on the right to know one's origins.
[251] Brown and Wade, 2022, p. 32.
[252] Art. 8 CRC: 1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.
[253] Vaghri et al, 2022, p. 60
[254] See, e.g. Doek, 2006, p.7; Hodgkin and Newell, 2007, p. 113; Tobin, p. 296-297.

Disappearance.[255] Thus, the protection of the right to identity under Article 8 was intended to respond to a harmful, yet specific, phenomenon. Therefore, it was questionable during the drafting of the Convention what its scope was. And whether it does not constitute an unnecessary repetition of other guarantees, such as those contained in Article 7 on right, from birth, to a name, nationality and to know and be cared for by parents.[256] George A. Stewart indicates in this respect the role of Article 8 in encompassing 'borderline and unusual conditions'.[257] Following the intentions of the Argentinian initiators of the provision, it can cover the situation of abductions and disappearances. The positive obligation of re-establishment of a child's identity (from para. 2) is here particularly relevant. According to Stewart, the situation of a child in alternative care and adoption is another area covered by the requirement of preservation of identity under Article 8.[258] However, one should consider the separate requirements of Articles 20 and 21, which essentially allow adoption under them.[259]

Returning directly to the text of the provision, states are obliged by Article 8 to respect a child's right to the preservation of their identity, including their name, nationality, and familial ties as recognised by the law. The list is not exhaustive,[260] referring to the most relevant elements, which, among others, form a child's identity. Other articles of the Convention already protect these elements. However, their understanding in Article 8 is supplemented by putting them in the context of the child's identity and its preservation obligation.[261] Numerous other facets of the child's identity are also considered to be safeguarded by this provision, including the child's past, race, culture, religion, language, physical attributes, aptitudes, and inclinations.[262]

Commentators saw the novelty of Article 8 in the 'progressive call' to the direction of the right of the child to information about their origin.[263] It is notably relevant in the field of medically assisted reproduction. This topic has not received sufficient attention from states to date, especially in the context of particularly challenging phenomena such as (commercial)

[255]International Convention for the Protection of All Persons from Enforced Disappearance signed at New York on 20 December 2006, UNTS, vol. 2716, p. 3, mostly Art. 24 para. 1 (a) and para. 4.
[256]See Stewart, 1992 and his in-depth analysis of *Travaux préparatoires.*
[257]Ibid. p. 224.
[258]Ibid.
[259]See Doek, 2006, p. 9.
[260]'Merely illustrative' as Hodgson put it, p. 265
[261]Tobin., 2019, p. 296.
[262]See, e. g., Hodgson, 1993, 265, Hodgkin and Newell, 2007, p. 115.
[263]Stewart, 1992, p. 233.

surrogacy.[264] The right to know one's origins may be respectively controversial in relation to anonymous births and the secrecy of adoption. However, some scholars argue that national restrictions should not be permitted to contradict international obligations.[265] Under Article 8, understanding one's family ties is typically understood to include knowing one's biological and birth parents in addition to one's legal parents.[266]

It is worth noting that the respect for identity, as seen for example on birth registration, transforms biological entity into legal being.[267] Consequently, it may be called a prerequisite for the exercise of all other human rights guarantees for children.[268]

### 2.4.2. Birth Registration, Name and Nationality

Special attention should be paid to the requirements of the Article 7 on birth registration, name and nationality.[269] It secures the child's right to be registered immediately after birth, the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by their parents. Article 7 para. 2 obliges states parties to implement these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Articles. 7 and 8 are closely interconnected.[270] Due to the direct reference to the notion of identity, Article 8 was discussed first. Chronologically in the history of the child, however, they are first protected by Article 7 referring to the acquisition of identity, which will later be preserved under Article 8. According to Article 7, every child has the right to have their birth promptly registered at the appropriate civil registry, to have their name given to them, to become a citizen, to know their parents as far as possible, and to receive their care. Article 7, referring specifically to the issue of birth registration, as well as information on basic

[264] See, e. g., Dambach and Cantwell, 2024.
[265] Besson, 2007, p. 143 and quoted sources.
[266] Ibid.
[267] Tobin, 2019, p. 279 and quoted sources.
[268] Vaghri et al., 2022, p. 60.
[269] Art. 7 CRC: 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.
[270] Vandenhole, Erdem Türkelli and Lembrechts, 2019, p. 108.

family ties, protects the matters typically covered by civil status registration. Sometimes these issues include also nationality.[271]

However, in relation to the already presented requirements of the UDHR or ICCPR, the most important aspect in Article 7 is 'as far as possible, the right to know and be cared for by his or her parents.' The sentence is interpreted as including different 'types' of parenthood: biological, genetic, adoptive, social.[272] Furthermore, 'knowing' parents does not necessarily mean 'being with parents.'[273] Article 7 is, however, of interpretative relevance to Article 21.[274] Adoption falls within the term 'as far as possible' provided that the biological parents were not forced to give up the child (they received the support they needed).[275] Moreover, it is from this provision that the child's right to know his or her origin is derived.[276] Here, the issue of interpreting 'as far as possible' is particularly relevant.[277] The problem is particularly evident with assisted reproduction (anonymous donor),[278] but is far from obvious in the context of adoption.[279] Balancing the 'parents' right to privacy with the child's right to know their identity can be particularly challenging. As already mentioned, different approaches are noticeable here. Some note that the right to know one's background is not absolute and that restrictions on a child's access to information are permissible, if only according to their age.[280] In addition, one should remember that several countries, including Poland, have entered reservations to this article, particularly in the context of confidentiality of adoption under national law.[281]

### 2.4.3. Continuity in Upbringing

Article 20 para. 3 *in fine* of the CRC states that 'when considering solutions [for ensuring alternative care for a child], due regard shall be paid to the desirability of continuity

[271] See, e.g., the area of activity of the International Commission on Civil Status, intergovernmental organisation specialised in the matters of personal law and nationality, Art. 1 of the Protocol relating to the International Commission on Civil Status concluded at Berne on 25 September 1950, UNTS, vol. 932, p. 21.
[272] Hodgkin and Newell, 2007, p. 105.
[273] Ibid.
[274] Tobin, 2019, p. 239.
[275] Ibid., p. 273.
[276] Besson, 2007, p. 143.
[277] Ibid.
[278] E.g., Tobin, 2019, p. 267.
[279] Ibid., p. 261
[280] E.g., Bosek, 2008, pp. 960-962
[281] See, e. g. the reservation of Poland withdrawn in 2013: 'With respect to article 7 of the Convention, the Republic of Poland stipulates that the right of an adopted child to know its natural parents shall be subject to the limitations imposed by binding legal arrangements that enable adoptive parents to maintain the confidentiality of the child's origin', according to status. See below.

in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.' This is linked to the requirements of Arts. 7 and 8 analyzed above. Furthermore, the provision is a response to abuses from the past. These consisted of enforcing the compulsory removal of children from indigenous or minority populations and giving them to wealthy childless parents in violation of these rights. Even with the best of intentions, these acts demonstrate overt racism and have harmed a significant number of children and adults alike.[282] Nowadays, the tenets of placement continuity and identity preservation remain crucial components of assessments of the situation of the child, although they are not exclusively decisive. Of course, the best interests of the child are decisive, combined, however, with the importance of availability and feasibility of different solutions.[283]

Joanna Zajączkowska -Burtowy and Michał Burtowy draw conclusions with regard to the protection of children's identity in the context of alternative care.[284] Three of them are worth recalling here. Firstly, protecting the continuity in upbringing in principle serves to protect identity. However, the two may at times be in conflict with each other. Thirdly, the protection of identity included 'comprehensively' in the various CRC provisions is broader than their protection of continuity in alternative care.

### 2.4.4. Aims of Education

The issue of identity is also included in Article 29 of the CRC, which describes the aims and goals of education.[285] Article 29 para. 1 provides that the education of the child should aim to holistically develop their personality, talents, and abilities. It should also foster respect for human rights, fundamental freedoms, and the principles of the Charter of the United Nations. Furthermore, children should be prepared for responsible life in a free society, in the spirit of understanding, peace, tolerance, gender equality, and friendship among all peoples, as well as ethnic, national, and religious groups, and persons of indigenous origin,

[282] Tobin, 2019, p. 754 and quoted sources.
[283] Ibid., p. 755.
[284] Zajączkowska-Burtowy and Burtowy, 2020, p. 105.
[285] Art. 29 para. 1 CRC: States Parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) The development of respect for the natural environment.

while fostering respect for the natural environment. One should particularly emphasize the commitment to cultivating respect for the child's parents, their cultural identity, language, and values, as well as for the national values of the country where they live, their country of origin, and for other civilizations.

Gerison Lansdown, Katherine Covell and Ziba Vaghri point out that:

> 'Article 29 provides for a framework of education for the realisation of the child's human dignity and rights. This requires a curriculum far broader than the traditional focus on literacy and numeracy, and necessitates teaching on developing respect for human rights, for the child's parents, and for cultural identity as for well as the values of the country in which the child is living, for life in a free society, and for the natural environment.'[286]

This example shows CRC as the instrument protecting holistic development of the child, not only material, but also psychological and spiritual needs. One may see the right to identity in such a context as well.

### 2.4.5. Children of Minorities or of Indigenous Peoples

Additionally, it is worth noting the challenges posed by the need to protect children of minorities or of indigenous peoples, as provided for in Article 30 of the CRC.[287] It requires that in those states in which ethnic, religious or linguistic minorities or indigenous peoples exist, a child belonging to such a minority or indigenous community should enjoy the protection of their cultural identity, which implies the child's right to enjoy culture, to profess and practise their own religion, or to use their own language.

Article 30 of the CRC addresses the rights of children who belong to ethnic, religious, or linguistic minorities or who are of indigenous origin. This article ensures that these children are not denied the right to enjoy their own culture, practice their religion, or use their language in community with other members of their group, recognizing that these aspects of identity are essential for a child's sense of belonging and personal development. States Parties ought to provide exposure to and training in one's native tongue as a crucial instrument for maintaining one's identity and psychological well-being.[288] By protecting these rights,

[286] Vaghri et al., 2022, p. 265.
[287] Art. 30 CRC: In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.
[288] Ibid, p. 279.

the CRC acknowledges the unique challenges faced by minority and indigenous children and aims to prevent discrimination and marginalization. This article empowers children to maintain and celebrate their cultural heritage and traditions, fostering a sense of pride and continuity. The provision states that each individual has a right to certain parts of group identity, such as language, religion, and culture, rather than collective rights.[289] Article 30 highlights the intricate connections that support the preservation of cultural, religious, and linguistic rights while also providing special protection for children of minority and indigenous background.[290]

## 3. Child's Identity Protection in the European System of Human Rights Protection. Instruments Adopted under the Auspices of Council of Europe

### 3.1. European Convention on Human Rights – Introductory Note

One should pay particular attention to the ECHR, as the concept of the right to identity, as mentioned above, was shaped on its basis. Initially, ECtHR jurisprudence focused on the enumeration of individual elements of identity, but primarily only in relation to human identifying data.[291] Later, the elements enumerated concerned a variety of aspects of human life.[292] It also covered aspects related to respect for identity in adoption. Due to the particular significance of the Convention and the jurisprudence of the European Court of Human Rights, this issue will be addressed in a separate chapter of the thesis.

### 3.2.Convention on Human Rights and Biomedicine

Among the instruments developed under the auspices of the Council of Europe, it is worth concisely referring to the Convention on Human Rights and Biomedicine [hereinafter: Oviedo Convention].[293] It bounds 30 states.[294]

The Oviedo Convention primarily addresses the ethical and legal challenges posed by advancements in medicine and biology. According to the explanatory report:

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[289]Vandenhole, Erdem Türkelli and Lembrechts, 2019, p. 305.
[290]Vaghri et al., 2022, p.272.
[291] Michałkiewicz-Kądziela, 2020, p. 17.
[292] Ibid., p. 17-20.
[293]Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, signed at Oviedo on 4 June 1997, ETS No. 164.

[294] Including: Croatia, Czech Republic, Hungary, Romania, Serbia Slovakia and Slovenia. Poland has signed the Convention. See status as for 10 August 2024 available at the Council of Europe Treaty Office website: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=164 [last accessed: 10 August 2024].

> 'The Convention sets up safeguards, starting with the preamble where reference is made to the benefits to future generations and to all humanity, while provision is made throughout the text for the necessary legal guarantees to protect the identity of the human being.'[295]

Also, 'the aim of the Convention is to guarantee everyone's rights and fundamental freedoms and, in particular, their integrity and to secure the dignity and identity of human beings in this sphere.'[296] The very first article of the Oviedo Convention addresses the issue of identity.[297] It provides that parties to the Oviedo Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms concerning the application of biology and medicine. Additionally, State-Parties shall adopt, within their internal law, the necessary measures to implement the provisions of the Oviedo Convention effectively.

The aforementioned connection between identity and dignity is evident in this example. Ewa Michalkiewicz-Kądziela notes that referring to identity together with dignity places identity high in the hierarchy of fundamental rights, as an attribute of humanity that plays a role in solving ethical dilemmas in the field of biomedicine.[298]

### 3.3. European Adoption Conventions

Additionally, the Council of Europe had an impact on setting regional standards in adoption because of the European Convention on the Adoption of Children from 1967 [hereinafter: 1967 Convention, EAC 1967] and the European Convention on the Adoption of Children (revised) from 2008 [hereinafter: 2008 Convention; revised version; EAC 2008] concluded under its auspices. They contain provisions on issues related to elements of the child's identity.

The European Adoption Conventions' aim was to harmonize domestic regulation on adoption.[299] The Convention from 1967 was the first international document referring

[295] *Explanatory Report to the* Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, available at the Council of Europe Treaty Office website https://rm.coe.int/1680a8e4d0 [last accessed: 10 August 2024], para. 14.
[296] Ibid., para. 17.
[297] Art. 1 Oviedo Convention: Parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine. Each Party shall take in its internal law the necessary measures to give effect to the provisions of this Convention.
[298] Michałkiewicz-Kądziela, 2020, p. 24.
[299] See, e.g., Morawska, 2016, p. 169 and quoted sources.

in details to the substantial aspects of adoption.[300] Among others, the European Adoption Conventions address the issue of the effects of adoption and restrictions on revoking or annulling an adoption, which, as to the principle, should create parent-child relationship, be one and permanent. It is worth noting that the European Adoption Conventions are binding upon limited number of states only.[301]

The following comments are based on the content of the 1967 Convention and its 2008 revised version (their comparisons) and the guidance provided in the explanatory report to the newer version.[302] Due to their limited (and non-overlapping) territorial scope of application, both Conventions could potentially be a reference point for European standards for adoption.

The 2008 Convention provides for the possibility of making reservations. These may relate to provisions on the consent of the child to adoption (mainly the aspect of age limits; Article 5) [303] and the status of a person or couple capable of adopting a child (Article 7)[304]. What is, however, particularly relevant to the issue of identity, is that making reservations is also allowed on the access of the adopted child to information concerning their origin (Article 22 para. 3).[305]

The revision of the European Convention provides for the adoption either by a couple or by one person (above-mentioned Article 7). This may include registered partners, unmarried couples; different and same-sex couples, to which the states are free to extend the scope of the Convention. Nevertheless, they are not obliged to introduce to the domestic law unknown institutions, such as registered partnerships of any kind.

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[300] Ibid., p. 171 and quoted sources.

[301] As of 1 February 2024: the European Convention of 1967 upon 16 States, among them the Czech Republic, Poland and Romania; the revised version of 2008 upon 10 States, Romania among them.

[302] *Explanatory Report to the European Convention on the Adoption of Children (Revised)*, available at the Council of Europe website https://rm.coe.int/16800d3833 [last accessed: 28 April 2024].

[303] See Art. 5 para.1 subsection (b) EAC 2008: (…) an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn: the consent of the child considered by law as having sufficient understanding; a child shall be considered as having sufficient understanding on attaining an age which shall be prescribed by law and shall not be more than 14 years.

[304] Art. 7 EAC 2008: 1. The law shall permit a child to be adopted: (a) by two persons of different sex (i) who are married to each other, or (ii) where such an institution exists, have entered into a registered partnership together; (b) by one person. 2. States are free to extend the scope of this Convention to same sex couples who are married to each other or who have entered into a registered partnership together. They are also free to extend the scope of this Convention to different sex couples and same sex couples who are living together in a stable relationship.

[305] Art. 22 para.3 EAC 2008: The adopted child shall have access to information held by the competent authorities concerning his or her origins. Where his or her parents of origin have a legal right not to disclose their identity, it shall remain open to the competent authority, to the extent permitted by law, to determine whether to override that right and disclose identifying information, having regard to the circumstances and to the respective rights of the child and his or her parents of origin. Appropriate guidance may be given to an adopted child not having reached the age of majority.

Shortly after the revised Convention came into being, from a Polish perspective, Anna Natalia Schulz positively assessed the possibility of making reservations as a pragmatic solution.[306] As it turned out, however, this did not translate into the popularity of the Convention among States. The above-mentioned questions—the child's consent to adoption, their possible access to information on their origin, and the issue of access to adoption for registered partners—are ones that the 2008 Convention addresses differently from its predecessor from 1967. A different approach is also remarkable with regard to the position of the biological father, which is linked to the disappearance of the distinction between 'legitimate' and 'illegitimate' children.[307] The latter also entails the 'modernized' language of the 2008 Convention.

It is worth noting the differences between the 1967 European Convention and its 2008 revised version in the matters related to a child's identity. The first change concerns the catalogue of factors to be taken into account in adoption enquiries.[308] They concern the motivation and personal situation of prospective adoptive parents, while the 2008 Convention also refers to the ethnic, religious, and cultural background of both the adopter and the child.[309] Either way, however, the catalogue is exemplary in nature. Furthermore, the revised version approaches differently the question of the child's surname after adoption. According to the Convention from 1967, the adopted person should generally be able to acquire the adopter's surname, either replacing or adding to their original surname.[310] The Convention of 2008 allows states to make exceptions regarding the child's surname's change.[311] One may note that the revised version is characterized by a stronger openness to forms of adoption with limited effects, those preserving some elements of the child's contact with their roots in terms of name or family ties. However, for the integration and protection of a child from statelessness, both Conventions provide that the adopted child should acquire the nationality of the adoptive parents.[312]

Access to and disclosure of information is another essential issue to which attitudes have changed in recent decades.[313] It reveals the tension between 'open' and 'secret' adoption. Both versions of the European Adoption Convention allow the adopter and the adopted person

[306] Schulz, 2008, p. 118.
[307] See, e.g., Shannon et al., 2013, p. 5.
[308] Cf. Art. 9 of the 1967 Convention and Art. 10 of the 2008 Convention.
[309] Cf. Art. 9 para. 2 subsection (g) of the 1967 Convention and Art. 10 para. 2 subsection (f) of the 2008 Convention.
[310] See, Art. 10 para. 3 of the 1967 Convention.
[311] See Art. 11 para. 3 of the 2008 Convention, see also, para. 67a of the Explanatory report.
[312] See Art. 11 of the 1967 Convention and Art. 12 of the 2008 Convention.
[313] Cf. Art. 20 of the 1967 Convention and Art. 22 of the 2008 Convention.

to obtain a document that attests to the date and place of birth without revealing the fact of adoption or the identity of the biological parents. Also, they both require public records to be kept and reproduced in a manner that prevents individuals without a legitimate interest from learning about the adoption or the identity of the biological parents. Nevertheless, provisions of the older Convention does not address the adopted child's access to information about their origins. In contrast to the revised one, which explicitly grants the adopted child access to information about their origins held by the competent authorities. Furthermore, it provides a mechanism for potentially overriding the biological parents' right to anonymity, considering the circumstances and rights involved. Also, the analyzed Convention from 2008 specifies that information regarding an adoption must be collected and retained for at least 50 years after the adoption becomes final. The Convention takes a broad perspective on a challenging and complex matter. It is worth recalling that reservations to the provision on access to information concerning child's origin are allowed (Art. 22 para. 3).[314]

Challenging and controversial questions, such as issues related to the child's identity in adoption, can be encountered by the European Court of Human Rights in the context of specific cases of specific individuals. The European Convention on Human Rights law gains even greater significance when considering the relatively limited applicability of the specialized European treaty arrangements with regard to adoption.

### 3.4 European Convention on the Exercise of Children's Rights

Among documents that cover children's rights more generally, the European Convention on the Exercise of Children's Rights[315] requires mentioning. In the context of adoption, it is particularly important to refer to this Convention as the one focused on empowering child's participation in the decision-making process. It is devoted particularly to the procedural measures of promoting the exercise of children's rights.

[314] As of 14 May 2024, a reservation in relation to a child's access to information about their origin was made only by Finland, which will not apply the given provision to granting access to information for a child under 15 years of age.

[315] European Convention on the Exercise of Children's Rights signed at Strasbourg on 25 January 1996, ETS 160.
As of 12 May 2024 the Convention was ratified by 20 states, including Croatia, the Czech Republic, Poland and Slovenia. From Central European countries, the Convention was respectively signed by Hungary, Serbia and Slovak Republic.

## 4. The Role of the European Union and the Hague Conference on Private International Law in Safeguarding the Child's Identity. Cross-border Child Protection and Intercountry Adoption

### 4.1. The EU Context

#### 4.1.1. Charter of Fundamental Rights

As stated in the Article 2 of the Treaty on European Union [hereinafter: TEU]: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.'[316] Also, Article 3 para. 3 of the TUE refers to the role of the Union in promoting protection of the rights of the child.[317]

The EU instrument on fundamental rights is the Charter of 7 December 2000 [hereinafter: CFR].[318] Its provisions that could potentially provide a basis for protecting a child's right to identity (or elements thereof, including in the context of adoption) are those relating to the protection of human dignity (Article 1), the right to education (Article 14) or respect for cultural, religious and linguistic diversity (Article 22).Moreover, the Article 7 regulates the protection of private life, stating that everyone has the right to respect for their private and family life, home and communications.[319]

The normative content of the CFR is not interpreted on its own, given that the catalogue of human rights contained therein has become a compilation of rights derived from a number of other legal acts, including the ECHR, as well as rights that derive from the national law of individual Member States and from the case law of the ECtHR and the Court of Justice of the European Union [hereinafter: CJUE].[320] The consequence of this is the similar content of Article 7 of the CFR to that of Article 8 of the ECHR.[321] The protection under the right to privacy in the European Union has therefore also been

[316]Treaty on European Union, consolidated version, OJ C 202 7.6.2016.
[317] Art. 3 para. 3 of the TUE *in medio:* [The Union] shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.
[318]Charter of Fundamental Rights of the European Union, OJ C 202, 7.6.2016, p. 389–405.
[319] Art. 7 CFR: Everyone has the right to respect for his or her private and family life, home and communications.
[320]Michałkiewicz-Kądziela, 2020, p. 20.
[321] Ibid.

extended to human identity.[322] The CJEU's rulings in this respect refer to the ECtHR's rulings.[323]

The CFR also contains a norm that refers explicitly to the rights of the child.[324] Article 24 para. 1 of the CFR provides for the children's right to protection and care as is necessary for their well-being, as well as the right to express their views freely, which can be taken into account in accordance with the child's age and maturity. Article 24 para. 2 lays down the principle of the best interests of the child, while Article 24 para. 3 recognizes that every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to their interests.

It would seem that since the rights of the child are mentioned explicitly in the CFR (and this is not even the case in the ECHR), this constitutes an asset. However, it should be noted what is the field of application of the Charter.[325] According to Article 51 para. 1, the provisions of the CFR apply to the institutions and agencies of the European Union, respecting the principle of subsidiarity, and to Member States only when implementing Union law. They must uphold rights, observe principles, and promote their application within the limits of the Union's powers as defined by the Treaties. The Charter can therefore only be applied during the application and implementation of EU law. According to Article 51 para. 2 of the CRC, the document does not extend the field of application of EU law beyond the powers of the EU or establish any new power or task for the EU. These in turn are defined by the principle of conferral. It is stated by the TEU (Articles 4 and 5).[326] It sets the limits

[322] Wróbel, 2020, p. 223; 239.

[323] See, e.g., CJEU, Judgment of 26 June 2018, *MB v. Secretary of State for Work and Pensions*, case C-451/16.

[324] Art. 24 CFR on the rights of the child: 1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.
See also Stalford and Schuurman, 2011.

[325] See Art. 51 CFR: 1.The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties. 2. 2.The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

[326] Art. 4. 1. In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

of the Union's competences. The EU acts only within the limits of the competences conferred on it by the Member States in the Treaties to attain the objectives set out therein. Any competence not conferred upon the Union in the Treaties remains with the Member States.[327]

One should remember that the Member States have not delegated competence to the European Union with regard to substantive family law and, among these, issues of identity - such as the origin of the child (maternity and paternity), the rules on names and surnames or, precisely, adoption. These issues are the domain of the national legislatures in the individual Member States. Therefore, the application of the Charter to the matters of child's right to identity is very limited.[328] However, a Charter plays a role in interpretation of the secondary EU law and in implementation of EU law.[329] Also, it provides guidelines for the CJEU.[330]

It is worth mentioning the complementarity between the Charter and the constitutional orders of the Member States, as well as the Council of Europe system headed by the ECHR, and other international agreements (the standards of the CRC among them). Based on Article 53 of CFR:

> Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

As to the aspects of the elements of human's identity, to a certain extent, however, the European Union takes an interest in matters of civil status as a result of the need to ensure free movement for its citizens. The jurisprudence of the CJEU and its interpretation of Article 21 the Treaty on the Functioning of the European Union [hereinafter: TFEU][331] is of

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Art. 5. 1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality. 2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

[327] See, e.g., Osztovits and Bóka, , 2022, p. 26.

[328] Cf. Peers, Hervey, Kenner and Ward, 2022, pp. 693-724 on limits and chances of the Art. 24.

[329] Ibid., 2022, p. 1712.

[330] Ibid.

[331] Treaty on the Functioning of the European Union, *OJ C 326, 26.10.2012, p. 47–390.*

great importance for this issue. It lays down the right of every citizen the right to move and reside freely within the territory of the Member States.[332]

Among the judgments affecting children, it is worth mentioning cases concerning recognition of names abroad. Among the many rulings on names, it is worth recalling the *Garcia Avello* case.[333] This case is significant as it reinforced the principle that EU member states must respect the personal status of EU citizens, particularly in cross-border situations, and ensure that national laws do not infringe upon the rights guaranteed by EU law. A similar example is the case *Grunkin-Paul.*[334]

It is worth mentioning one more ruling on a different issue. The *Valcheva* case[335] can be used as an example of weighing the rights of the child, and to some extent the issue related to respect of the child's origins. This example emphasises the significance of broadening the right of access to 'other persons with whom it is important for the child to maintain a personal relationship, among others, that child's grandparents,'[336] in addition to parents. The EU Brussels II *bis* Regulation[337] constituted the legal basis for the CJEU's considerations.

### 4.1.2. Brussels II ter Regulation and the Protection of Identity

The Regulation 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction is relevant for the protection of child's identity in matters covered by its scope

[332] Art. 21 TFEU: Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. 2. If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1. 3. For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament.

[333] CJEU, Judgment of 2 October 2003, *Garcia Avello v Belgian State*, case C-148/02.

[334] CJEU, Judgment of the Court (Grand Chamber) of 14 October 2008, *Stefan Grunkin and Dorothee Regina Paul,* case C-353/06.

[335] CJEU, Judgment of 31 May 2018, *Neli Valcheva v. Georgios Babanarakis*, case C-335/17.

[336] Ibid., para. 33.

[337] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ 2003 L 338, p. 1.

of application .[338] It is referred to as 'Brussels II *ter*' or 'Brussels IIb', being an amendment to the solutions provided by the previous regulations.[339]

As for basic information, Brussels II *ter* became applicable on 1 August 2022.[340] It applies in all EU Member States (i.e. no longer in the United Kingdom[341]) except Denmark.[342] As a general rule, in parental responsibility matters, the court of the States of the habitual residence of the child retain jurisdiction.[343]

As the title itself indicates, the Regulation deals with jurisdiction, recognition and enforcement of decisions in certain family matters, some aspects of the cross-border situation of the child among them. One should remember that the Regulation 2019/1111 does not apply neither to decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption,[344] nor to the name and forenames of a child.[345] It applies, however, to the placement of a child in institutional or foster care.[346] However, it is worth noting, following the commentators on the Regulation, that in practice it may not always be possible to distinguish an ordinary placement from a placement in view of adoption (a measure preparatory to adoption – excluded from the scope of application of the Regulation).[347]

The recast Regulation has brought several developments[348] in the rules on jurisdiction, recognition and enforcement compared to the previous regulation, Brussels II *bis*; which was applicable until 31 July 2022.[349] One may claim that the Brussels II *ter* has given special attention to children's rights. At least this was the intention of the drafters.[350] Among the reasons and objectives of the proposal of the Brussels II *ter* Regulation was the need for

[338] Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), OJ L 178, 2.7.2019, p. 1–115.
[339] On the origins of this name in the context of the European judicial cooperation in civil matters, see, e.g. González Beilfuss and Kruger, 2023, p. 1-3.
[340] See Art. 105(2).
[341] See, e.g. González Beilfuss, 2023, p.3.
[342] See Treaty on the Functioning of the European Union, Protocol (No 22) on the position of Denmark, *OJ C 326, 26.10.2012, p. 299–303.*
[343] Art. 7.
[344] Art. 1 para. 4 (b).
[345] Art. 1 para. 4 (c).
[346] Art. 1 para. 1 (d), see also González Beilfuss, 2023, p. 22-23.
[347] Ibid., p. 24.
[348] See, e.g. González Beilfuss, 2023, p.4-5.
[349] See, art. 100 para. 1 of Brussels II ter: This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements registered on or after 1 August 2022.
[350] On the evaluation of the outcomes see, e.g., Biagioni and Carpaneto, 2020/2021.

'better protection of the best interests of the child by simplifying the procedures and enhancing their efficiency'.[351]

One of the recitals of the Regulation cites the CRC, the aforementioned Article 24 of CFR, and the principle of best interests of the child.[352]

Indeed, cross-border family cases, with various factual specificities, are those in which the protection of a child's right requires particular attention. Cross-border family matters pose numerous challenges from the point of view of the child's identity protection.

Brussels II *ter* Regulation in Recital 84 provides that where a decision on the placement of a child in institutional or foster care is being contemplated in the Member State of the habitual residence of the child, the court should consider, at the earliest stage of the proceedings, appropriate measures to ensure respect of the rights of the child, in particular the right to preserve their identity and the right to maintain contact with the parents, or, where appropriate, with other relatives, in light of Articles 8, 9 and 20 of the CRC. Courts deciding on the matter must prioritize the child's best interests when considering cross-border placements, consulting relevant Member States if a close connection exists. However, national laws on placement prevail, and other Member States are not obligated to accept or participate in placement decisions.

The content of the Recital No. 84 was based on the proposal of the Polish Ministry of Justice, and aimed to secure the protection of the cultural identity of children in the European Union.[353] The following comments serve to trace what lies behind this wording. The government's communication was published in June 2019, shortly after the adoption of the text of the Regulation. Commentators on the aforementioned communication not yet familiar with the content of the forthcoming provisions might have expected the new Regulation to join the normative sources of protection of the child's identity in the context of foster care.[354] They called for strengthening the obligation to protect

[351]Explanatory Memorandum to COM(2016)411 - Jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0411, p. 1 [last accessed: 25 July 2024].

[352] Recital (19) Brussels II *ter*: The grounds of jurisdiction in matters of parental responsibility are shaped in the light of the best interests of the child and should be applied in accordance with them. Any reference to the best interests of the child should be interpreted in light of Article 24 of the Charter of Fundamental Rights of the European Union ('the Charter') and the United Nations Convention on the Rights of the Child of 20 November 1989 ('UN Convention on the Rights of the Child') as implemented by national law and procedure.

[353]https://www.gov.pl/web/sprawiedliwosc/wielki-sukces-polski-unia-europejska-bedzie-chronic-tozsamosc-kulturowa-dzieci [last accessed: 25 July 2024].

[354]Zajączkowska-Burtowy and Burtowy, 2020, p. 103.

continuity in the upbringing of the child and for the possible tension between identity and continuity to be assessed through the prism of the child's best interests.[355] Furthermore, they noted the need to explicitly include national identity within the normative scope of the concept of the protected identity.[356] While calling for a precise wording, but also flexible character of the new rules.[357] Nevertheless, concerns have been expressed that the future provision might be a *superfluum* or *lex specialis* to the provisions of Article 20 para. 3 CRC.[358]

One should remember, however, that Recitals to EU regulations are not legally binding as the actual provisions are. Nevertheless, they play an important role in the EU law, mostly an interpretative one.[359] Recital 84. is relevant to the interpretation of the regime of cross-border placement, regulated in Article 82 of the Brussels II *ter* Regulation.[360] It concerns the consultation procedure when the authorities of one Member State are considering placing a child in another Member State. Art. 82 sets out the conditions under

[355] Ibid., p. 105.
[356]Ibid., p. 108.
[357]Ibid., p. 109.
[358]Ibid., p. 114.
[359]See, e.g., den Heijer, van Os van den Abeelen and Maslyka, 2019 and quoted case-law of the Court of Justice.
[360]Art. 82 Brussels II *ter* on placement of a child in another Member State: 1. Where a court or a competent authority contemplates the placement of a child in another Member State, it shall first obtain the consent of the competent authority in that other Member State. To that effect the Central Authority of the requesting Member State shall transmit to the Central Authority of the requested Member State where the child is to be placed a request for consent which includes a report on the child together with the reasons for the proposed placement or provision of care, information on any contemplated funding and any other information it considers relevant, such as the expected duration of the placement. 2. Paragraph 1 shall not apply where the child is to be placed with a parent.
Member States may decide that their consent pursuant to paragraph 1 is not required for placements within their own territory with certain categories of close relatives in addition to parents. Those categories shall be communicated to the Commission pursuant to Article 103. 3. The Central Authority of another Member State may inform a court or competent authority which contemplates a placement of a child of a close connection of the child with that Member State. This shall not affect the national law and procedure of the Member State contemplating the placement. 4. The request and any additional documents referred to in paragraph 1 shall be accompanied by a translation into the official language of the requested Member State or, where there are several official languages in that Member State, into the official language or one of the official languages of the place where the request is to be carried out, or any other language that the requested Member State expressly accepts. Member States shall communicate such acceptance to the Commission in accordance with Article 103. 5. The placement referred to in paragraph 1 shall only be ordered or arranged by the requesting Member State after the competent authority of the requested Member State has consented to the placement. 6. Except where exceptional circumstances make this impossible, the decision granting or refusing consent shall be transmitted to the requesting Central Authority no later than three months following the receipt of the request. 7. The procedure for obtaining consent shall be governed by the national law of the requested Member State. 8. This Article shall not preclude Central Authorities or competent authorities from entering into or maintaining existing agreements or arrangements with Central Authorities or competent authorities of one or more other Member States simplifying the consultation procedure for obtaining consent in their mutual relations.
See, González Beilfuss, 2023, p. 571.

which prior consent from the second state is required and establishes cooperation between the Central Authorities of both States in this process.

The regime of cross-border placement is considered the most significant novelty of the Brussels II *ter* among the protection measures from the perspective of children.[361] In addition, the cooperation of the Central Authorities in the Member States as such should serve enhancing the rights of the child.[362] This mechanism is known from the instruments of the Hague Conference on Private International Law, one of which will be presented below.

### 4.2. Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

The Hague Conference on Private International Law is the leading international organization in the field of private international law.[363] Largely understood family matters (including forms of the will or protection of adults) are a vital area of HCCH's activities. The organization created a number of Conventions during the last few decades with the express purpose of addressing dangers and cross-border concerns that families and children experience when operating under civil law.[364] One of its key instruments is the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

The number of Contracting Parties to the Hague Adoption Convention reached 106 after the accession of Angola in March 2024.[365] The Convention was created in response to the increasing number of international adoptions in the second half of the 20th century and the risks resulting from them. The crucial objectives were to prevent the abuses by establishing minimal standards for intercountry adoption and a system of co-operation between States. The Convention emphasizes a role of Central Authorities of the State of Origin and Receiving State, and of accredited bodies and other competent – judicial and administrative – authorities. Moreover, the Convention secures the automatic recognition of adoptions made following its requirements. The HCCH 1993 Convention respectively refers to post adoption matters, noting that what happens during the adoption procedure will be relevant to the adopted child at a later stage in life.

[361] Biagioni and Carpaneto, 2020/2021, p. 151.
[362] González Beilfuss, 2023, pp. 537 – 538 and quoted sources.
[363] See, the webpage of the Hague Conference on Private International Law : https://www.hcch.net/en/instruments/conventions [last accessed: 25 July 2024].
[364] See, e.g. Loon , 2017, p. 32.
[365] See status table at the webpage of the Hague Conference on Private International Law: https://www.hcch.net/en/instruments/conventions/status-table/?cid=69 [last accessed: 25 July 2024].

Since its signature, the United Nations Fund for Children and the Committee on the Rights of the Child have given the HCCH Adoption Convention particular consideration and support, seeing it as a crucial implementation tool of the CRC. [366] The HCCH 1993 Convention has encouraged the enactment of laws and rules, stronger protocols, more stringent controls, and the processing of intercountry adoptions by authorized authorities. These have all aided in generating the political will to step up measures to stop and deal with unethical intercountry adoption operations. Being a Party to the Convention, however, has no bearing if the Contracting States fail to carry it out properly, and illegal activities may continue. Therefore, the HCCH itself promote evaluation of good practices and challenges, addressing particularly risks and illicit practices.[367]

It is necessary to clarify that the Hague Convention 'does not cover all international adoption cases, but only one class of them: those expressly indicated in Article 2, i.e. the adoption of a child habitually resident in one State (the "State of origin") by spouses or a person habitually resident in another State (the "receiving State").'[368] One may note that all adoptions are potentially international, e.g., in the case of a family moving abroad, when the need to recognize adoption in a different country appears.[369]

The 1993 Hague Convention plays a pivotal role in upholding the best interests of the child within the context of cross-border adoptions. Although primarily an instrument of private international law, its overarching aim is the protection of children through the establishment of minimum standards and procedural safeguards for intercountry adoption. One of its key provisions, Article 24, stipulates that recognition of a foreign adoption may be refused by a Contracting State only if the adoption is manifestly contrary to its public policy, expressly requiring consideration of the best interests of the child.[370] This provision affirms that the principle not only guides domestic adoption decisions but must also be respected in the international recognition process. At the same time, the Convention allows significant

[366] Ibid., p. 41.
[367] See, e.g. *Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption*, Hague Conference on Private International Law 2023, available at https://www.hcch.net/en/publications-and-studies/details4/?pid=8530&dtid=3 [last accessed: 29 April 2024].
[368] Parra–Aranguren, 1993, para. 34.
[369] See, e.g., *Recommandation (n°11) relative à la reconnaissance de certaines décisions d'adoption rendues ou reconnues dans un État membre de la Commission Internationale de l'État Civil,* adoptée à Strasbourg le 17 septembre 2015, available at the wesbsite of the International Commission on Civil Status https://www.ciec1.org/recommandation-11-fr [last accessed: 9 April 2024].
See also, Masłowiec, 2022.
[370] Art. 24 of the Hague Adoption Convention: The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

flexibility to national legal systems, acknowledging the diversity of legal traditions and adoption frameworks among Contracting States. By concentrating on essential procedural elements—such as cooperation between authorities, consent requirements, and safeguards against abduction or trafficking—the Hague Convention promotes an international legal infrastructure aligned with the principles of the CRC, particularly the child's right to protection and care. Thus, while its scope is limited to procedural and recognition matters, the HCCH effectively reinforces the centrality of the child's best interests.

Additionally, the principle of subsidiarity dictates that the primary responsibility for the care and upbringing of a child lies with the child's biological family and, failing that, within the child's country of origin. Only when these options are not in the best interest of the child should intercountry adoption be considered by competent authorities. Domestic adoption is seen preferable because it allows the child to remain within their own cultural, social, and linguistic environment. However, the care by a family (even abroad) should be prioritized over the institutionalized forms of care. Also, as stated in para. 123 of the explanatory report to the Hague Convention:

> 'notwithstanding the express acceptance of the subsidiarity principle, there was consensus that, in certain circumstances, the best interests of the child may require that he or she be placed for adoption abroad, even though there is a family available in the State of origin, for instance, in cases of adoption among relatives, or of a child with a special handicap and he or she cannot adequately be taken care of.'

The subsidiarity principle requires balancing the child's best interests with respect for the sovereignty and capabilities of the child's country of origin. This can be a delicate and complex process, particularly in cases involving differing cultural norms and legal standards. These challenges are reflected also from the perspective of an individual child and respect for their original identity.

The idea of subsidiarity of intercountry adoption is upheld by both the CRC and the HCCH 1993 Adoption Convention, guaranteeing that intercountry adoption is a last resort. While the Hague Convention offers a precise procedural framework expressly for intercountry adoption, guaranteeing ethical procedures and careful examination of domestic alternatives, the CRC provides a generic framework emphasizing the best interests of the child and giving priority to domestic options. When used in tandem, these tools support and safeguard children's rights throughout the adoption process.

Also, the Hague Convention mandates in its Article 4[371] that the biological parents' consent must be counselled, informed, free from coercion, and given in the proper legal form. One should also remember about the requirements of Article 29[372] of the Hague Convention, that prohibits, as a rule, personal contacts between prospective adoptive parents and the child's parents or guardians until the consent requirements are met. Also, child's right to be heard is reflected in the Hague Convention (Article 4 (d) or Article 21 para. 2[373]).

Mechanisms of CRC, starting with Article 35,[374] aim to prevent sale in children. Achieving improper financial benefits from adoption could lead to it. For intercountry adoption, it is explicitly addressed by Article 21 (d) of the CRC and continued by the Hague Convention. The consent of parents and children, cannot be induced by payment or compensation of any kind. Article 32 para. 1 establishes an additional safeguard by prohibiting the receipt of improper financial or other benefits arising from activities related to intercountry adoption.[375] According to Article 16[376] of the Hague Convention, information

[371] Art. 4 of the Hague Adoption Convention: An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin: a) have established that the child is adoptable;
b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests; c) have ensured that (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin, (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing, (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and (4) the consent of the mother, where required, has been given only after the birth of the child; and d) have ensured, having regard to the age and degree of maturity of the child, that (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required, (2) consideration has been given to the child's wishes and opinions,
(3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and (4) such consent has not been induced by payment or compensation of any kind.

[372] Art. 29 of the Hague Adoption Convention: There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs *a)* to *c)*, and Article 5, sub-paragraph *a)*, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.
See also, Art. 5 (a): An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State have determined that the prospective adoptive parents are eligible and suited to adopt.

[373] Art. 21 para. 2 of the Hague Adoption Convention: Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

[374] Art. 35 CRC: States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

[375] Art. 32 para. 1 of the Hague Adoption Convention: No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

[376] Art. 16 of the Hague Adoption Convention: (1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child; b) give due consideration to the child's upbringing and to his or her ethnic, religious

about a child's background, social environment and medical or family history have a role in the process of deciding on the (intercountry) adoptability of a child . Also, in this respect, due consideration shall be given to the ethnic, religious and cultural background of the child.

Also, the Hague Convention refers to the preservation of the information concerning a child's origin and access to them by the child and its representative (in so far as is permitted by the law of the State), as well as data protection.

## 5. Partial Conclusion

The individual's protection standards in identity protection and adoption are included in instruments of universal importance as well as regional, European, ones. These instruments address a wide spectrum of issues; however, not all of them are directly relevant to the context of adoption.

The most important instrument concerning the child's situation is the CRC. It refers explicitly to factors that may be relevant in the context of identity, as well as to alternative care and adoption. The Hague Adoption Convention develops the CRC's requirements for intercountry adoption.

In the field of family law, the activity of the European Union should, in principle, be considered alongside that of the Hague Conference on Private International Law. Although the Union's efforts are directed towards the protection of children's rights, they do not apply to domestic adoption, due to the EU's limited competences governed by the principle of conferral.

The 1967 Adoption Convention and its 2008 revised version differ in their approach to certain issues, such as means of protection of the child's right to identity. Controversial and challenging issues can be encountered by the European Court of Human Rights in the context of specific cases of specific individuals. The European Convention on Human Rights law gains even greater significance when considering the relatively limited applicability of the specialized European treaty arrangements with regard to adoption.

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and cultural background; c)ensure that consents have been obtained in accordance with Article 4; and d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child. (2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

# Chapter III. European Convention on Human Rights and the Protection of the Child's Identity in Adoption

## 1. Introduction to Chapter III

The preceding chapter presented the sources of international law relevant to the issues of adoption, children's rights, and the protection of individual identity. The following remarks aim to outline the legal standards established by the European Convention on Human Rights in this regard. The delineation of issues related to ECHR law is justified due to its particular role within the framework of international law, as well as the significant interactions between the jurisprudence of the European Court of Human Rights and the rights of the child as articulated in the CRC (see below).

ECHR law cannot exist and be interpreted in a vacuum. It belongs to international law and collaborates with other acts, in the case of child adoption headed by the specialized instruments abovementioned, such as CRC, the European Adoption Conventions or the Hague Adoption Convention. They may also be the source of interpretation of concise provisions of the ECHR in specific matters.[377]

The question of the place of international human rights law [hereinafter: IHRL] within general international law remains complex.[378] One may also address it more precisely, asking about the place of the ECHR law in general international law.[379] It is clear that the ECHR does not exist independently of other instruments of international law and that its application must conform to international law, notwithstanding its particular status and the interpretation methods and tools. The ECtHR has emphasised this numerous times.[380]

As Anna van Aaken, Iulia Motoc and Johan Justus Vasel put it:

> 'The ECtHR is one of the main players in the interpretation of IHRL where issues of general international law arise. While developing its own jurisprudence for the protection of human rights in the European context, it remains embedded in the developments of general international law; the ECHR is not interpreted in *"clinical isolation"* from general international law and does not always follow general international law closely but the Court develops its own doctrines. Its decisions however are important for national courts as well as other international

[377] See, e.g., ECtHR, *Todorova v. Italy,* judgment of 13 January 2009, Application no. 33932/06, paras. 64-66 in which the applicant (natural mother) and responding State referred in their argumentation to the 2008 European Adoption Convention's provisions on consent to adoption.

[378] See e.g.: Burgorgue–Larsen, 2020; Cançado Trindade, 2020; Kamminga, Menno and Scheinin; 2009, Meron, 2006; Peters, 2016.

[379] See e.g.: Aaken and Motoc, 2018; Sicilianos, 2019; Szymczak and Touzé, 2019, 2020, 2021.

[380] E.g.: ECtHR, *Al-Adsani v. the United Kingdom* judgment (Grand Chamber) of 21 November 2001, Application no. 35763/97, para. 55.

courts and tribunals, and therefore guides general international law. The direction of influence thus goes both ways.'[381]

Crucial elements of these interactions are the issues of jurisdiction, State responsibility and immunities.[382] General international law influences - makes evolving or limits - human rights law.[383] From a different angle, human rights law remains a factor in the evolution of international law.[384]

Among other issues, noting the role of the ECtHR, one may point out particularly reinforcing the position of the individual through widely accessible individual application[385] and the 'invention' of evolutive interpretation of the treaty.[386] The latter of them is widely referred to, in addition to matters relating to technological development or environmental issues,[387] in the protection of private and family law.[388] Article 8 of the ECHR provides a legal basis for the protection of these fundamental aspects of an individual's life.[389]

The ECHR State-parties[390] are obliged, under Article 1[391], to secure the conventional rights and freedoms to everyone within their jurisdiction. Therefore, it covers all children and all individuals involved in the adoption process. Enforcement and interpretation mechanisms and tools of the European Convention, with the key importance of the mechanism of individual application, have been designed to ensure high effectiveness of the guaranteed rights and freedoms.[392]

Central European countries, following the collapse of the communist regimes, are the party to the ECHR. This is particularly relevant to Poland and Hungary, as well as the Czech

[381] Aaken, Motoc and Vasel, 2018, p. 3.
[382] See, e.g, Sicilianos, 2024
[383] See, e.g., ibid.
[384] See, e.g., ibid.
[385] Art. 34 ECHR: The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.
[386] See, e.g., ECtHR, *Tyrer v. UK*, judgment of 25 April 1978, Application no. 5856/72.
[387] See, e.g, Sicilianos, 2024
[388] See, e.g., Draghici, 2019.
[389] Art. 8 ECHR: 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
[390] 46 Members of the Council of Europe, See status as of 16 November 2024, available at the Council of Europe Treaty Office website: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=005 [last accessed: 15 November 2024].
[391] Art. 1 ECHR: The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.
[392] Cf., e.g., Harris, O'Boyle and Warbrick, 1995, p. 4 and the quoted sources.

Republic and Slovakia, which will be the subject of analysis in the next chapter of this work. ECHR law is therefore worth discussing in the context of Central Europe.[393]

In next paragraphs special emphasis will be placed on safeguarding a child's identity with regard to adoption. The most important rulings of the ECHR concerning a child's identity will be mentioned, including those illustrating key issues related to the identity of an adopted person. The aim of the following remarks is to deepen the discussion on adoption in the context of the ECHR, particularly regarding the protection of a child's identity. In this context, rulings in cases against Central European states will also be discussed.

## 2. The Significance of Article 8 in the Context of Children's Rights

Article 8 of the ECHR guarantees each person the right to respect for their private and family life, their residence, and personal communications. However, these rights are not absolute. According to paragraph 2 of Article 8, public authorities may interfere with the exercise of this right only if such interference is in accordance with the law, necessary in a democratic society, and serves one of the following legitimate aims: national security, public safety, the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others. Article 8 applies to issues related to personal identity, the relationship between parents and children, as well as the adoption of a child.[394]

At this point it is worth referring to the general considerations on protection of private life, from which the right to identity was importantly derived.[395] Among the rights protected under Article 8 para. 1, the right to respect for private and family life comes to the fore, due to the number of cases in which they are invoked.[396] The most straightforward way to describe private life is negative. This way, it would encompass the personal aspects of an individual's activities other than family life, home and correspondence.[397] There is ‘no neat dividing line’ between private and family life.[398] This provides flexibility but requires a case-by-case analysis from the Court. The notion of private life is therefore imprecise and`

[393] See, e.g., Paczolay, 2022.
[394] On the scope of application of ECHR in connection to adoption see e.g. Draghici, 2011.
[395] See, e.g., Michałkiewicz-Kądziela, p. 43.
[396] Schabas, 2015, p. 366.
[397] Garlicki, 2010, Legalis, para. 23.
[398] Schabas, 2015, p. 366.

ambiguous, not susceptible to exhaustive definition.[399] It covers a variety of issues of a child's situation, among many others protection of data and image of the child. [400]

Family life, as understood under Article 8, encompasses close and lasting personal relationships, particularly those grounded in biological or legal connections, such as parenthood or marriage.[401] Special emphasis is placed on the bond between parents and their children, who are regarded as part of the family from birth, regardless of the marital status of their parents.[402] However, the ECHR does not protect the mere aspiration or intention to establish a family. It safeguards family life only when such a relationship already exists.[403]

Importantly, Article 8 covers the right to identity, including the right of the child to access information on their biological origins as a part of development of their identity.[404] As deduced from the case law by Claire Fenton-Glynn:

> 'this does not necessarily relate to the determination of legal ties—although it can do—but instead concerns a separate right: the right to identity, which the Court has identified as a central tenet of the right to respect for private life.'[405]

Article 8 para 2 ECHR expressly recognizes the possibility of restricting the rights, including the identity-related rights,[406] when it conflicts with other rights. However, under specific conditions, which apply also to the other freedoms under ECHR.[407] The legal protection of rights and freedoms under the ECHR involves both positive and negative obligations. Positive obligations require states to establish an appropriate legal and institutional framework to ensure the effective enjoyment of these rights, including their application in relationships between private individuals. Negative obligations, on the other hand, impose a duty on public authorities to refrain from arbitrary or unjustified interference with individuals' rights. When the European Court assesses a potential violation in the context of a negative obligation, it must first determine whether there has been an interference with a right protected by the ECHR. If such interference is established, the Court then examines

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[399] Fenton-Glynn, 2021, p. 46.
[400] Ibid., pp. 46-57 and the case-law referred to.
[401] Garlicki, 2010*,* Legalis, para. 58.
[402] See, e.g., ECtHR, *Keegan v. Ireland*, judgment of 26 May 1994, Application no. 16969/90– case concerning placing a child for adoption without the knowledge and consent of a natural father.
[403] See, e.g., ECtHR, *Marcx v. Belgium*, judgment (plenary) of 13 June 1979, Application no. 6833/74, para. 31
[404] Fenton-Glynn, 2021, p. 58.
[405] Ibid.
See, e.g., the cases , presented below: ECtHR, *Mikulić v. Croatia,* judgment (Chamber) of 7 February 2002, Application no. 53176/99 or *Jäggi v Switzerland.*
[406] Besson, 2007, p. 150.
[407]Garlicki, 2010, Legalis, para. 1.

whether it was carried out in accordance with the law, pursued a legitimate aim, and was necessary in a democratic society.

As to Article 8, the possible 'legitimate aims' are covered quite broadly.[408] The analysis of necessity involves proportionality of the measures taken to the aims and seeking a balance between the interests of the individual and the general interest ('pressing social need')[409]. The question must be asked whether, in the context of the entire case, the justifications offered for the contested measures were adequate for Article 8 para. 2. This is particularly relevant when assessing the best interests of the child.[410] The question of necessity in a democratic society is also the place to test the limits of the margin of appreciation. As to the principle, in the questions touching on ethically sensitive issues, such as adoption or taking child into care, states have wide margin of appreciation[411].On more than one occasion, these criteria have been applied by the Court in cases involving the child's right to identity.

Addressing the issues connected to ECHR law is crucial due to important connections between the rulings of the ECtHR and the rights of the child as outlined in the CRC. As indicated in the previous chapter of this work, children's rights—including the special role of family protection—are enshrined in the CRC. The relationship between the ECtHR and CRC is very complex.[412] There is no direct obligation of ECtHR towards CRC or vice versa. However, as Trond Helland and Ragnild Hollekim noted:

> 'Similarities are apparent between the Contracting States' positive obligations to protect children under the ECHR and CRC. However, while the ECHR focuses on *all* individuals (adults and children alike), the CRC revolves around only children's rights and thus has a more comprehensive approach to these rights. The ECtHR seems to acknowledge that the CRC is more comprehensive concerning children's rights (...)'.[413]

Particularly, concerning children:

> 'the Court considers that the positive obligations that Article 8 lays on the Contracting States (…) must be interpreted in the light of the Convention on the Rights of the Child of 20 November 1989'.[414]

[408]Schabas, 2015, p. 404.
[409] See, e.g. in ECtHR, *Saviny v. Ukraine*, judgment (Chamber) of 18 December 2008, Application no 39948/06 – case concerning the removal of children from blind parents living in bad material conditions.
[410] See, e.g. in ECtHR, *Söderbäck v. Sweden*, judgment (Chamber) of 28 October 1998, Application no 24484/94 – case concerning adoption by the mother's husband in the absence of the biological father's consent.
[411] See ECtHR, *Paradiso and Campanelli v. Italy*, judgement (Grand Chamber) of 24 January 2017, Application no. 25358/12, para. 193.
[412] See e.g., Helland and Hollekim, 2023 and quoted sources, Kilkelly, 2015.
[413] Helland and Hollekim, 2023, p. 214.
[414] ECtHR, *Wagner and J.M.W.L v. Luxembourg*, judgment (Chamber) of 28 June 2007, Application no 76240/01, para. 120.

The CRC is undoubtedly a point of reference in ECtHR's cases concerning children and, as such, contributes to the development of children's rights in the law of the ECHR. However, the reference to the provisions of the CRC is considered by some scholars to be inconsistent, with subsequent analysis often deemed insufficient.[415] Claire Fenton-Glynn points out that: "[unfortunalety] children are notable more for their absence in the litigation before the Court, and the cases are framed by adults and according to adult interests—even if the welfare of the child is used as a figurehead."[416]

The ECtHR's adoption of a child-centred approach, as well as its interpretation of the best interests of the child, presents a multifaceted and nuanced issue.[417] Additionally, the significance of the substantial international instruments in the field of adoption was recognized by the ECtHR in the significant case *Pini and others v. Romania*. The Court stated explicitly that

> 'the Convention must be applied in accordance with the rules of international law, in particular those concerning the international protection of human rights' and that 'with regard in particular to the obligations imposed by Article 8 of the Convention on the Contracting States in the field of adoption, and to the effects of adoption on the relationship between adopters and those being adopted, they must be interpreted in the light of [specialized international agreements]'.[418]

## 3. Identity Protection and Adoption in the Case Law of the European Court of Human Rights: General Aspects

### 3.1. Protection of the Child's Identity – Fundamental Issues

The criteria for assessing potential violations of the ECHR's provisions on private and family life, as mentioned above, have been applied by the Court in many cases. These are especially relevant in matters concerning the child's right to identity. One of the relevant cases is *Mikulić v. Croatia,*[419] which underscores the essential nature of the right to identity within the broader context of the right to private life. In this landmark case, a child and her mother filed a paternity suit to establish the identity of her father. Despite court orders for a DNA test, the alleged father repeatedly failed to attend, resulting in the courts being unable to establish paternity. The child then appealed to the Court arguing that the lack of a mechanism to determine a biological connection with the alleged father violated her right to respect

[415] Fenton-Glynn, 2021, p. 394.
[416] Ibid.
[417] See, e.g., Guštin, 2024.
[418] ECtHR, *Pini and others v. Romania*, judgment (Chamber) of 22 June 2004, Application no 780028/01 and 780030/01, paras. 138-139.
[419] ECtHR, *Mikulić v. Croatia*.

for private life. The ECtHR recognized that individuals in the applicant's situation have a crucial interest, protected by the Convention, in obtaining information essential to uncover the truth about their personal identity. However, the Court also noted the need to protect third parties from being forced into medical tests, including DNA tests, against their will. The Court emphasized that domestic authorities must balance the rights of the putative father and the child, always considering the child's best interests. The Court found that Croatian law's lack of procedural measures to compel the alleged father to comply with court orders was only acceptable if alternative means were provided to allow an independent authority to swiftly determine paternity. Since no such procedures were available in this case, the Court concluded there was a violation of Article 8.

The Court returned to this issue in *Jäggi v Switzerland.*[420] It dealt with a 60-year-old man seeking to establish the identity of his father through a DNA test on the deceased man's remains. The Swiss Federal Court linked the 'right to know one's parents' with the 'right to be raised by them' and argued that, the applicant had lived most of his life without knowing his parentage and without suffering medically documented harm. However, the ECtHR disagreed, finding a violation of Art. 8. The Court emphasized that the right to identity, including the right to know one's biological parentage, is a crucial aspect of private life and does not diminish with age. The applicant's lifelong effort to uncover his parentage suggested ongoing mental and psychological suffering, even if it was not medically documented. The case also highlighted a distinction in the Court's approach when dealing with the right to know one's origins. In *Mikulić* and *Jäggi*,[421] the identity of the father was unestablished but not secret, and the issue was whether DNA tests could be conducted.

The judgment in the case of *Boljević v. Serbia*[422] is also of particular relevance. The applicant, born in 1969, had believed throughout his life that a man identified as A was his father. It was not until 2011, following A's death and in the course of inheritance proceedings, that he became aware of a 1971 court decision declaring that A was not his biological father. The applicant had no prior knowledge of this judgment. In 2012, he sought to reopen the proceedings in order to obtain DNA testing—a method unavailable in the 1970s. However, the Serbian courts rejected his application as time-barred, citing the expiry of a five-year limitation period, which had lapsed in 1977. The ECHR held that the applicant had a compelling and legitimate interest in determining the identity of his biological father, which

[420] ECtHR, *Jäggi v Switzerland*.
[421] See also, e.g., ECtHR, *Ebru and Tayfun Engin Çolak v. Turkey*, judgment (Chamber) of 30 May 2006, Application no. 60176/00.
[422] See also, e.g., ECtHR, *Boljević v. Serbia*, judgment (Chamber) of 16 June 2020, Application no. 47443/14.

constitutes a fundamental aspect of personal identity. Domestic legislation did not allow for the consideration of the applicant's exceptional circumstances—namely, his lack of awareness of the earlier judgment and the advent of new scientific methods such as DNA testing. The Court emphasized that legal certainty established by the domestic Court's decision alone cannot justify denying an individual the right to establish their biological origins. Accordingly, the Court found a violation of Article 8 of the ECHR. This ruling underscores the State's positive obligation to provide individuals with effective means to ascertain their biological heritage, particularly when modern scientific advances make such determination possible. Legal certainty must not automatically override the individual's right to identity.

From the perspective of the child, in addition to the information on parenthood and biological origins, the European Court has also acknowledged that people have a right to information about their early years and upbringing in order to comprehend their past. This issue was already raised many years ago in the *Gaskin v. United Kingdom* case.[423] In this case, the applicant spent much of his childhood in foster care, where the local authority kept confidential records about him, compiled by various professionals involved in his care. Believing he had been mistreated by the care authority, the applicant sought access to these records to potentially pursue legal action. However, his request was denied, with the authorities arguing that confidentiality was crucial to maintaining the effectiveness of the childcare system, as future contributors might withhold information without it. The applicant's primary goal was to understand the circumstances of his alleged mistreatment and gain self-knowledge for personal development, rather than to activate any legal claim. The ECtHR recognized the applicant's vital interest in accessing information about his own childhood, emphasizing that individuals have a fundamental right to know and understand their own early life experiences for the sake of self-development. Although the judgment didn't explicitly address identity protection, it underscored the importance of an individual's right to access personal information as part of their self-development.

Also, precisely on the aspect of the right of the child to access information on their (biological) origins as a part of the development of their identity, the cases of adoption resulting from anonymous birth are significant. Before these issues are presented, it is worth addressing the broader topics related to adoption.

[423] ECtHR, *Gaskin v. United Kingdom*, judgment (plenary) of 7 July 1989, Application no. 10454/83.

### 3.2. Adoption as the Formation and Dissolution of Family Ties

As outlined by Michał Kowalski and Maria Masłowiec:

> 'The scope of the protection of family life is crucial in regard to adoption proceedings and adoption decisions. Noting that an adoption decision significantly alters the family lives of the child, the adoptive parents, and the parents of origin is obvious. However, in the course of usually long-lasting and complicated adoption procedures, it may happen that there is discrepancy between the legal status (child-parent relationship under the law) and the factual situation (regarding each other as child/parent).'[424]

In this context, the previously mentioned judgment in the case of *Pini and others v. Romania* is of particular significance. The judgment includes an important statement regarding the understanding of family life in the context of adoption. According to the European Court: "the relations between an adoptive parent and an adopted child are as a rule of the same nature as the family relations protected by Article 8 of the Convention."[425] This aligns with the understanding of adoption presented in the previous chapter, as defined by the CRC, which views adoption as providing a family to a child deprived of one.

The case *Pini and others v. Romania* involved the adoption of two girls from Romania by Italian couples. In accordance with the requirements for international adoption, the Romanian authorities authorized the adoption, and the proceedings were concluded with final adoption decision. However, the girls explicitly refused to leave the institution where they had been living and join their adoptive parents abroad. As a result, the Court was tasked with balancing the rights of all parties involved, with particular emphasis on the children's best interests under Article 8. A key issue was whether the children's right to have their opinions considered, particularly their consent to adoption, was respected, as they were over 10 years old. From the children's perspective, there were no grounds for forming emotional bonds with the adoptive parents against their will, as the relationship had thus far been purely formal. While the adoptive parents could rely on the Romanian court's adoption decision, their desire to create a new family did not warrant absolute protection that would compel the children to join them. Consequently, the children's interests took precedence over those of the adoptive parents, especially within the context of a child-centred approach to adoption. Therefore, the state's obligation to formalize the previously established family was not absolute. However, the ECtHR suggested that insufficient preparation and a lack of psychological support for the girls may have contributed to their refusal to join their

[424] Kowalski and Masłowiec, 2024, forthcoming.

[425] ECtHR, *Pini…,* para. 140 and the decisions of the European Commission of Human Rights quoted there. Note that in the *Pini* case, the children were not yet in the actual custody of their adoptive parents; on the contrary, they did not want it to be started; see below.

adoptive parents. Although this issue was not raised with the authorities, the Court emphasized that the need for support for the family, especially for the children, after the adoption decision should not be overlooked. The *Pini case* thus demonstrates that the goal of adoption is to create a family, but always within the boundaries of the child's best interests.

Relationships that are recognized as family life may also exist between adults and a child placed in their care on a pre-adoptive basis.[426] In contrast to the situation in the *Pini case*, the decisive factor here is the factual bonds that have been established between the parties.[427] Similarly, in the case of *Wagner and J.M.W.L. v. Luxembourg*, the ECtHR recognized the relationship between the woman and the child as family life, considering the factual attachment and years of care provided to the child. The case involved a single woman from Luxembourg who adopted a child in Peru through a full adoption process sanctioned by the Peruvian court. However, her attempt to have the full adoption recognized in Luxembourg was unsuccessful, as national law only allowed single parents to pursue a simple adoption. As a result, the child retained a legal connection with her biological family under Luxembourg law, even though Peruvian law did not acknowledge this connection. The ECtHR found that the child had been subjected to discrimination in violation of Article 14 of the ECHR, in conjunction with Article 8, which protects the right to respect for private and family life. The Court determined that while the Peruvian adoption judgment severed the child's ties with her biological family, the Luxembourg authorities' decision left the child without an alternative legal relationship with her adoptive mother, creating a legal void for the child.[428] The ruling in the case *Wagner and J.M.W.L. v. Luxembourg* is significant in terms of protecting the child's identity, particularly regarding their nationality. [429] It also illustrates the issues that may arise in cross-border situations, such as the challenges of recognition of adoption in the country of the child's current residence and the consequences of non-recognition.[430]

Similarly to the case *Wagner and J.M.W.L. v. Luxembourg,* the ECtHR's case law reflects a growing recognition of the importance of safeguarding the real, day-to-day

[426] See ECtHR, *J. Ł. and M. H.-Ł v. Poland*, decision as to the admissibility (Chamber) of 23 January 2007, Application no. 16240/02.
[427] Ibid., para. 2.
[428] See also Fenton-Glynn, 2016, p. 327.
[429] See e.g., van Loon and Sindres, 2019.
[430] See also cases related to *kafalah*, such as, ECtHR, *Harroudj v. France*, judgment of 4 October 2012, Application no. 43631/09.

relationships between adults and the children in their care.[431] This aligns with legal developments in several Council of Europe member states, where domestic frameworks increasingly acknowledge the rights and responsibilities of individuals—such as step-parents or foster carers—who are actively involved in a child's upbringing.[432] However, the reliance on factual relationships as the basis for recognising family life may raise concerns regarding the scope and consistency of its legal protection. This is particularly evident in contexts involving institutions lacking a uniform consensus among Council of Europe member states, such as surrogacy.[433]

Approaching the issue from a different angle, the case of *I.S. v. Germany*[434] clearly illustrates how the Court interpret the termination of family life. The applicant, Ms. I.S., had given her twin daughters up for adoption shortly after their birth. The children were born from an extramarital relationship, and at the time, the applicant was facing a difficult family situation and severe mental distress. A few months after the birth, she gave her formal and irrevocable consent to the adoption in accordance with the legal requirements. This declaration included an acknowledgment of the finality of the decision. An informal agreement was reached with the prospective adoptive parents, who undertook to send the applicant annual updates and photographs of the children. The adoption was finalized by court decision, and the children's names were legally changed. However, approximately one and a half years later, the applicant initiated proceedings to annul her consent, claiming she had suffered from significant psychological issues at the time of the declaration. She also sought legal recognition of her right to contact the children. After exhausting all domestic legal remedies, she brought the case before the ECtHR. The Court noted that by signing the adoption consent, the applicant had potentially severed any relationship with the children that could qualify as "family life" under Article 8 of the European Convention on Human Rights. The ECtHR reiterated that biological kinship alone does not suffice to establish family life in the absence of additional factual or legal elements indicating a close personal bond.[435] Consequently, the applicant's desire to re-establish contact was assessed under the lens of her right to respect for private life rather than family life. Ultimately, the Court ruled that the

[431] See, e.g., in ECtHR, *Nazarenko v. Russia*, judgment (Chamber) of 16 July 2015, Application no 39438/13 – granting protection on the ground of 'family life' to the relationship between a child and a man who, as the mother's ex-husband, turned out not to be the child's biological father.
[432] On Hungarian example see Barzó and Lenkovics (eds.), 2021, pp. 144 – 145.
[433] See, e.g., Kowalski and Masłowiec, 2023 and quoted sources.
[434] ECtHR, *I. S. v. Germany*, judgment (Chamber) of 5 June 2014, Application no 31021/08.
[435] See, e.g., ECtHR, *Schneider v. Germany*, judgment (Chamber) of 15 September 2011, Application no 17080/07.

interests of the adoptive family—particularly their right to develop a stable family environment free from external interference—took precedence. This was especially compelling given that the children had been adopted as newborns and remained very young during the relevant proceedings.

The issues and tensions highlighted in the context of child identity protection, as clearly illustrated by the case of *I.S. v. Germany*, will be addressed by national law and its commentators (see Chapter IV). These include the difficult life circumstances in which a biological mother may find herself, the stability of a family created through adoption, and the impact of the child's age on matters concerning their identity. Also, the issue of post-adoption contact from the perspective of natural parents remains significant.[436]

### 3.3. Other Key Aspects of Individual Protection Standards under the Law of the European Convention on Human Rights

It is important to highlight that standards surrounding adoption also concern the protection of individuals seeking to adopt a child. These standards include issues such as the eligibility of homosexual individuals and same-sex couples to adopt, examined in the context of discrimination, particularly under Article 14[437] of the Convention in conjunction with Article 8.[438] Additionally, the issues of discrimination of potential candidates based on age[439] or nationality[440] have been analyzed by the Court.

Significantly, the issues of availability of adoption for homosexual individuals and same-sex couples were widely discussed in cases reviewed by the ECHR. This issue is considered by the Court to fall within the ambit of an individual's private life, construed as encompassing personal growth and the formation and continuation of interpersonal relationships.[441] In this context, the question of 'availability of adoption' is sometimes described as the 'right to adopt.'[442] However, the ECtHR However, has clarified that Article 8

[436] See e.g., Fenton- Glynn, 2021, pp. 361 and 388-389.
[437] Art. 14 ECHR: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
[438] ECtHR, *Fretté v. France*, judgment of 26 February 2002, Application no 36515/97, ECtHR, *E.B. v. France*, judgment (Grand Chamber) of 22 January 2008, Application no. 43546/02; , *Gas Dubois v. France*, judgment of 15 March 2012, Application no 25951/07 and ECtHR, *X and Others v. Austria*, judgment (Grand Chamber) of 19 February 2013, Application no19010/07.
[439] E.g.: ECtHR, *Schwizgebel v. Switzerland*, judgment of 10 June 2010, Application no. 25762/07.
[440] E.g. ECtHR, *A.H. and others v. Russia*, judgment of 17.01.2017, Application nos. 6033/13, 8927/13, 10549/13, 12275/13, 23890/13, 26309/13, 27161/13, 29197/13, 32224/13, 32331/13, 32351/13, 32368/13, 37173/13, 38490/13, 42340/13 and 42403/13.
[441] See, e.g.: ECtHR, *E.B.*
[442] See, e.g., Doty, 2009; Cf., Rainey, Wicks and Ovey, 2017, pp. 383-386.

does not confer a right to found a family or to adopt.[443] Moreover, the Court has emphasised that the primary purpose of adoption is to provide a family for a child, rather than to satisfy an adult's desire to have a child.[444] However, precisely analyzing the case-law concerning refusal of authorities to consent to adoption to a homosexual person, Carmen Draghici noted that: 'the lack of recognition by the Court of a right to adopt under Article 8 no longer has any practical effect, since the Court is willing to accept that adoption-related matters fall within the general ambit of Article 8.'[445]

It is nevertheless important that, in discussions concerning access to adoption, its primary objective—the best interests of the child—remains central. That said, the issue is highly complex and multifaceted.[446]

From a different perspective—and bearing in mind the historical development of the institution of adoption—it is worth noting that adult adoption is a noteworthy legal phenomenon recognised in the national laws of certain countries, such as the Czech Republic[447] and Finland, and has been addressed by the European Court of Human Rights in an advisory opinion.[448] This form of adoption reflects an expanded interpretation of family relationships; however, adult adoption is substantially different from the adoption of a child as understood under instruments such as the CRC, the European Adoption Conventions and the 1993 Hague Convention on Intercountry Adoption, applying to the adoption of the child under the age of 18.[449]

## 4. Key Issues in Protecting Identity in Adoption in ECtHR Jurisprudence

### 4.1. Anonymous Birth and the Protection of a Child's Identity and Interests of Parents

An issue worth discussing, and already signalled, , is anonymous childbirths. It was analysed by the ECtHR. The case law illustrates the dilemmas and rationales that matter in the context of the child's identity.

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[443] ECtHR, *E.B*, para. 41.
[444] ECtHR, *Fretté*, para. 42.
[445] Draghici, 2019, p. 279.
[446] Cf. Decisions of the Constitutional Court of the Republic of Slovenia No. U-I-486/20, Up-572/18 and No. U-I-91/21, Up-675/19, dated 16 June 2022, especially paras. 61-65, 71; referring to the issues of the best interests of the child, available in English at the Constitutional Court website https://www.us-rs.si/?lang=en [last accessed: 25 March 2025].
[447] See e.g., Barzó and Lenkovics (eds.), 2021, p. 99.
[448] ECtHR, *Advisory Opinion on the procedural status and rights of a biological parent in proceedings for the adoption of an adult requested by the Supreme Court of Finland*, 13 April 2023, Request no. P16-2022-001.
See also, Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms, CETS. No. 214.
[449] See Art. 1 of CRC, Art. 3 of HCCH 1993 Adoption Convention, Art. 3 of European Adoption Convention, Art. 1 para. 1 of European Adoption Convention (revised).

Anonymous childbirth[450] allows a woman to give birth while keeping her identity confidential from both medical staff and hospital administration. As a result, no legal parent-child relationship is established between the mother and the child, nor between the child and their father. Legally, it is as if the woman never gave birth, and the child's birth certificate lists the mother as "unknown." The newborn is immediately placed under the care of adoption agencies, making them eligible for adoption proceedings.

The French legal context is particularly significant for the institution of anonymous childbirth (in French: *accouchement sous X*),[451] as France has a long history of it and a comprehensive regulatory framework that has undergone major reforms in recent decades.[452] A key case in this regard is *Odièvre v. France*.[453] The case was examined by the ECtHR in 2003. However, it remains a key point of reference, particularly in highlighting the tensions between various competing interests.[454]

The applicant, who was adopted following an anonymous birth, was granted access only to non-identifying information about her family. The Court considered whether the non-disclosure of identifying information about the family (especially the mother) constituted a violation of the right to private and family life protected by the ECHR.

The mother's choice to maintain her anonymity led to the birth certificate not revealing her identify. The applicant made an attempt to learn more about her birth family as an adult. She was not satisfied, though, with the information that was provided, regarding her parents' cohabitation and the presence of siblings. Most importantly, the parents' identities were kept a secret. In her application to the ECtHR, Ms. Odièvre stated that her identity was essential to her family and private lives. Ms. Odièvre said that the confidentiality laws in France had kept her from forming relationships with her biological family. The Court acknowledged the right to one's origins as a matter of private life. This right is not an absolute one, though. There needs to be a balance between the right of the child to know where they come from and the right of the parent of origin to remain anonymous. Within the State's margin of appreciation, this delicate topic pertaining to individual relations must be handled by an appropriate

[450] See, e.g., Muraszko, 2013, p. 7.
[451] See, Article 326 of the French Civil Code: During childbirth, the mother may request that her admission and identity be kept secret. The official text of the French Civil Code available at https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/ [last accessed: 27 March 2025], translation by the Author. See also, a guide on this institution is available on the French administration's website: https://www.service-public.fr/particuliers/vosdroits/F3136 [last accessed: 27 March 2025].
[452] See, e.g., Gründler, 2013.
[453] ECtHR, *Odièvre v. France*, judgment (Grand Chamber) of 13 February 2003, Application no. 42326/98.
[454] See, e.g., *Cherrier v. France*, judgment of 30 January 2024, Application no. 18843/20 or *Vagdalt v. Hungary*, judgment of 7 March 2024, Application no. 9525/19.

domestic authority. However, the State-parties must introduce some elements of balance between the right of the child to know their origin with other relevant considerations. The Court emphasized it in the case *Godelli v. Italy*.[455] In this case, the Court ruled that the Italian system violated the Convention because it denied a child, whose mother had claimed anonymity, access to even non-identifying information and did not allow for the disclosure of the mother's identity, even if she later consented. The Court found that these strict limitations favored the birth mother entirely, unlike the French system upheld in the *Odièvre* case, which allowed for some balancing of interests. However, some commentators consider this level of 'balance' to be insufficient.[456]

Regardless of the assessment of anonymous births or adoptions—particularly of national regulations[457] - cases concerning these matters primarily exemplify the delicate balancing of interests, which is especially challenging in the context of the right to know one's origins.

As an example of these challenges, some commentators recognise that under ECHR mothers are more widely protected than fathers, in terms of children's access to data about them confronted with parents' right to privacy.[458] The Court held in the *Mifsud v. Malta*[459] case that Maltese laws permitting a man to be made to undergo a DNA test in a paternity dispute do not violate his right to privacy because, among other things, they do not involve a difficult or painful procedure. Other circumstances, the father's personal situation, were not relevant, although they are taken into account in the case of mothers.

Also in recently, the ECtHR has addressed the issue of identity, directly in relation to adoption. On 14 May 2024, the Court ruled in the case of *Mitrevska v. North Macedonia*[460] Ms. Mitrevska, 'fully' adopted as a child, sought information about her biological family due to health concerns. However, her requests were denied based on the provision of Family Act, which classified such information as an official secret. The national procedure before the administrative and judicial authorities was not clear, but in the end all instances involved upheld the denials, stating the Family Act forbade disclosure. The European Court ruled that North Macedonia had violated its obligations under Article 8 of the ECHR .The domestic authorities failed to balance competing interests and did not ascertain whether the applicant's

[455]ECtHR, *Godelli v.Italy*, judgment of 25 September 2012, Application no. 33783/09.
[456] E.g., Fenton-Glynn, p. 61.
[457] See, e.g., Margaria, 2014.
[458] Michałkiewicz-Kądziela, 2020, p. 164-165.
[459]ECtHR, *Mifsud v. Malta*, judgment of 29 January 2019, Application no. 62257/15.
[460]ECtHR, *Mitrevska v. North Macedonia*, judgment (Grand Chamber) of 14 May 2024, Application no. 20949/21.

biological or adoptive parents wished her adoption to remain secret. The ECtHR found several issues with the Macedonian authorities' actions: they did not investigate if the adoption was meant to remain secret, failed to balance public and private interests, and did not fulfil their positive obligation to protect Ms. Mitrevska's rights under Article 8. The judgment emphasized again that knowing one's origins is part of the right to private life and stressed the necessity for legislative changes in Macedonia to prevent similar violations in the future for reinforcing individual rights in adoption. The issue of adoption secrecy will reappear in the analysis of domestic law, particularly in the context of the Polish legal system.

Additionally, similar dilemmas as those arising in the context of anonymous adoption undoubtedly recur with respect to the right to identity of children born through gamete donation and surrogacy. These issues are also the subject of ongoing academic debate and constitute a significant context in which the protection of a child's identity is discussed.[461] Moreover, surrogacy raises concerns related to civil status registration and the child's familial relationships.[462] Adoption is sometimes considered one of the legal mechanisms for establishing such relationships—even in the advisory opinion of the Court.[463] The complex and ambiguous relationship between adoption and surrogacy will also be addressed in the next chapter of the work, using the example of the legal framework of the Czech Republic.

### 4.2. The Protection of Biological Family and the Continuity in Upbringing

As regards to other than the right to know one's origins aspects of the child's identity, the case of *Abdi Ibrahim v. Norway*[464] is the very illustrative one as on the issue of the right of the child to have their original (cultural) identity preserved. It is therefore about the continuity in upbringing as required by Article 20 para. 3 of CRC. The case questioned questioned whether Norwegian authorities had complied with Article 8 standards by placing the son of a Somali national (minor at the moment of giving birth) to adoption by the Christian family. The European Court acknowledged the significance of the child preserving his or her original identity, including their ethnic, religious, cultural, and linguistic heritage.

[461] See e.g., Brown, and Wade, 2023.
[462] See, e.g., ECtHR, *K.K. and others v. Denmark*, judgment of 6 December 2022, Application no. 25212/21.
[463] ECtHR, *Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother* (Grand Chamber), request no. P16-2018-001, French Court of Cassation, 10 April 2019.
See also, e.g.: Margaria, 2020; Bracken, 2021.
[464] ECtHR, *Abdi Ibrahim v. Norway*, judgment (Grand Chamber) of 10 December 2021, Application no. 15379/16.

Nonetheless, the State's need to take this into account during the adoption process reflects an obligation of means rather than one of result.

This case is also one of many in the Court's jurisprudence concerning the issue of the separation of children from their parents as a result of State organ's intervention. They concern both the protection of biological parents and the best interests of the child. [465] These cases, particularly the Norwegian ones, have been the subject of extensive analysis and debate.[466] As in *Abdi Ibrahim v. Norway*, such discussions often revolve around the specific vulnerability of migrant children in this context.[467] Similar concerns have also been raised in the Central European context, due to the need to protect families migrating from the region to other countries—including the preservation of children's identity—especially when state interventions appear unjustified or the measures applied are excessively harsh.[468]

In reference to these issues, it is worth mentioning the *Wallová and Walla v. the Czech Republic.*[469] The case concerned the removal of five children from their parents due to poor housing conditions. In the course of proceedings before domestic courts, decisions were also taken to replace the consent of biological parents to adoption. It is particularly important to emphasize that:

> '(...) the fact that a child can be accommodated in a context more conducive to his education can not in itself justify being forcibly removed from the care of his biological parents; such interference with the right of parents, under article 8 of the Convention, to enjoy family life with their child must in addition be "necessary" because of other circumstances.'[470]

The complete severance of family ties should be regarded as a measure of last resort, reserved for the most serious cases. State authorities are required to consider less intrusive alternatives before resorting to permanent removal, in order to satisfy the principle of proportionality.[471] These conclusions strongly affirm the principle that the biological family should have primary responsibility for the upbringing of the child.

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[465] See, e.g., ECtHR, *Strand Lobben and others v. Norway*, judgment (Grand Chamber) of 10 September 2019, Application no 37283/13.
[466] See, e.g., Zdechovský , Pirošíková and Fialová, 2021.
[467] Ibid.
[468] Ibid.
[469] ECtHR, Wallová *and Walla v. the Czech Republic*, judgment (Chamber) of 26 October 2006, Application no 23848/04.
[470] ECtHR, Wallová *and Walla,* para. 71.
[471] See, ibid., paras. 73-74.

## 5. Partial Conclusion

The aforementioned considerations continued the discussion on the sources of law relevant to the protection of a child's identity in the context of adoption, as well as the applicable protection standards.

The standards established by the European Convention on Human Rights are of particular significance due to the role of the individual application mechanism and the possibility of interpreting the CRC and other specialised instruments in its light. For this reason, it was essential to discuss the ECHR as a crucial and unique legal source in the context of adoption and the protection of the child's identity.

The Court addresses these issues in cases concerning various matters, among which those related to anonymous birth (and subsequent adoption) or the protection of the biological family should be regarded as particularly significant. They vividly reveal the dynamics of the relationship between the biological parent and the child, as well as the child's best interests, in the context of identity protection. Moreover, in this regard, compelling legal questions arise concerning the conceptual scope and interpretation of the right to private and family life. Indeed, issues concerning the identity of the child and adoption are among those where the relationship between the individual needs and development of the child (or more broadly – the child's best interests) and the needs of the family as a whole proves particularly complex and legally compelling.

Based on the previous discussions, no cases have emerged that are particularly significant or common to the countries of Central Europe (or more specifically Poland, Hungary, Slovakia, and the Czech Republic). There have been no recurring cases in this area brought before the Court. This contrasts with the situation in Norway for instance, where cases concerning the protection of biological families have appeared more systematically. The next chapter of the thesis will therefore aim to draw conclusions regarding the national regulations. The analysis will focus particularly on issues related to the civil status of the adopted child, the protection of continuity in their upbringing, and the right to know their origins.

# Chapter IV. Selected Legal Aspects of Protecting a Child's Right to Identity in the Context of Adoption in the Domestic Legal Regulations of Certain Central-European States

## 1. Introduction to Chapter IV

The previous chapters of the study introduces the issues of protecting a child's identity in the context of adoption. It emphasizes key guarantees under international law, especially international children's rights norms and human rights law norms. The objective of the following chapter is to outline the most significant aspects of protecting a child's identity in adoption from the perspective of private law.[472] The analysis will examine which institutions safeguard a child's identity in adoption and how this issue is regulated at the national level. Domestic law is closest to the specific circumstances of the child, and domestic authorities and courts make binding decisions that shape the lives of the child and the family.[473]

This study analyzes in details the civil law provisions of Poland and Hungary. The aim is to present identity protection within the broader context of the overall adoption regulatory framework, including their historical development. Additionally, it examines the legal provisions of the Czech Republic and Slovakia, though only selected issues directly related to a child's identity in adoption. Comparing Polish and Hungarian legal solutions within their national family law systems provides a basis for evaluating whether identity regulation forms an integral part of adoption law. Incorporating the legal framework of the Czech Republic and Slovakia offers a more comprehensive perspective on identity protection in adoption across Central Europe. Here, Central Europe refers specifically to the Visegrad Group[474] countries, which share many similarities in their legal culture. This approach facilitates the formulation of meaningful conclusions.

As an introduction to the issue of a child's identity protection in adoption, it is worth once again highlighting the significance of Article 7 of the Convention on the Rights of the Child guarantees a child's right to immediate registration upon birth, the right to a name

[472] Noting, however, that the distinction between private law and public law has been gradually fading for several decades, and at the same time, the practical importance of this division has decreased, see, e.g. Andrzejewski, p. 221-222 and quoted sources.

[473] See, e.g., ECtHR, *Antkowiak v. Poland*, decision of 22 May 2018, Application no. 27025/17, para. 72.
The Court emphasized that domestic authorities must carefully balance competing interests in complex adoption cases while prioritizing the best interests of the child, as required by international law. Although such decisions may cause emotional hardship to the parties involved, the child's best interests remains paramount and cannot be overridden by the rights of others. The domestic authorities are directly engaged with all concerned parties.

[474] See https://www.visegradgroup.eu/ [last accessed: 31 January 2025].

from birth, the right to acquire a nationality, and, to the greatest extent possible, the right to know and be raised by their parents. Paragraph 2 of this article imposes an obligation on State parties to enforce these rights in compliance with their domestic legal frameworks and their commitments under relevant international instruments. Fundamentally, Article 7 places a positive duty on State parties to ensure that children remain legally recognized and not overlooked by the legal system.

The issue of citizenship will not be subject to further analysis at this point. However, it is worth noting that it may be relevant in cases of international adoption[475] as well as in the context of the recognition of an adoption judgment in another state. Meanwhile, the issues of parenthood and civil status registration require an introduction to the methods of their protection under domestic private law.

In both literature and practice, as well as in the English translations of domestic legal acts (even their titles), various terms may be used to refer to the same phenomenon. It may also be the case that the differences between certain terms are exceedingly subtle or depend on the perspective adopted, such as the legal traditions of a particular state or the assumptions inherent in specific legal-philosophical frameworks.[476] For this reason, due to the citation of various authors and different translations, full standardization of terminology in this work appears to be impossible.

The family, regardless of the specific names of legal institutions, is protected in Central European countries under the specific framework.[477] As a rule, the principle mater *semper certa est* and the presumption of paternity apply.[478] Adoption deviates from the situation where the origin of the child is linked to the woman who gave birth to them.[479] It is a different way of establishing parental bonds.[480]The separation of biological origin and the care provided to the child gives rise to the issue of the child's right to know their original (biological, genetic) origin. Its implementation in some countries involves access to the original birth certificate, which is altered after adoption. A consequence

[475]See the international instruments mentioned in the first chapter, e.g., Convention on Certain Questions relating to the Conflict of Nationality Laws; Convention on the Reduction of Statelessness; European Adoption Conventions, pertaining to the acquisition of citizenship by an adopted child and protection against statelessness.
[476]E.g., discussion on the use of terms ‘parental authority’, ‘parental responsibility’ or ‘parental care’, see, e.g., the presentation of Dr. Lilla Garayová entitled *Parental Authority and the Best Interest of the Child* during the conference *Contemporary threats to parental responsibility - Selected legal aspects* on 5 December 2023 in Miskolc, https://youtu.be/jmG9ma17s80?si=S4gw1iS1aQriRvdV[last accessed: 10 October 2024].
[477] See, e.g., Barzó and Lenkovics, 2021.
[478] Barzó, 2021, p. 304-310.
[479]See, e.g., Besson, 2007, p. 138.
[480]See, e.g., Sápi, 2022.

of adoption is also typically a change in the child's name. Establishing parental bonds also involves acquiring parental rights and responsibilities. This, in turn, highlights the need for continuity in the child's upbringing. Different countries regulate abovementioned issues in various ways, especially in terms of access to information about the child's origin.[481] The aspects of civil registration of the child's status, continuity of upbringing, and the disclosure of information about the child's origin will be discussed in the following chapter, using specific solutions in national law as examples.

## 2. Selected Legal Aspects of Protecting a Child's Right to Identity in the Context of Adoption in the Domestic Legal Regulations of Poland and Hungary

### 2.1. Poland

#### 2. 1.1. Adoption in the Polish Law

As indicated in the previous chapters of the study, the protection of identity, which can be challenged by adoption, is examined within the framework of children's rights.[482] They are protected at national level by the Constitution of the Republic of Poland of 2 April 1997.[483] The most relevant in this respect is the Article 72.[484] It guarantees the subjectivity and dignity of a child (para. 1).[485] It also emphasizes the necessity for public authorities to provide support to a child lacking parental care and the responsibility of public authorities and those caring for the child to listen to and, where feasible, consider the child's opinions on matters that directly or indirectly affect them (paras. 2 and 3). As indicated by Elżbieta Holewińska-Łapińska:

> 'The right to be brought up in one's own family - in the first instance by the parents from whom the child is born - is a consequence of the natural, biologically determined order of things and has a moral dimension.'[486]

[481] See, e.g., Kraljić, 2021.
[482] See particularly, Art. 7 and 8 of the CRC; Convention was published in Poland in Dz.U. 1991 nr 120 poz. 526.
[483] The Constitution of the Republic of Poland of 2 April 1997 (Dz.U. 1997 nr 78 poz. 483), translation from the website of the Polish Sejm https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm [last accessed: 13 September 2024].
[484] Art. 72. 1. The Republic of Poland shall ensure protection of the rights of the child. Everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense. 2. A child deprived of parental care shall have the right to care and assistance provided by public authorities. 3. Organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child. 4. The competence and procedure for appointment of the Commissioner for Children's Rights shall be specified by statute.
[485] Andrzejewski, 2021, p. 180.
[486] Holewińska-Łapińska, 2011, p. 497 and quoted sources; citation translated by the Author.

Adoption, however, is intended to provide a family environment for a child when they are deprived of the care of natural parents.[487] The aim of adoption is to welcome the child into the family and to create the conditions for his or her proper development, both physically and spiritually (psychologically).[488] Adoption can also have a family unifying function, for example when a parent has remarried.[489] Although the notion of adoption (in Polish *przysposobienie*, while *adopcja* is used mostly colloquially) occurs in numerous Polish normative acts, it is not defined by the legislator.[490] The primary source of law for adoption in Poland is the Family and Guardianship Code from 25 February 1964 [hereinafter: FGC].[491] The opening provision of its chapter on adoption emphasizes the role of the best interests of the child in adoption (Article 114. § 1 FGC).Undefined best interests of the child, as a guiding principle in family and guardianship law, is determined based on the specific circumstances of each case.[492]

The year 1918 and the regaining of independence, which involved inheriting non-uniform regulations from the partitioning states, is significant in the history of Polish law, including family law.[493] A common feature of the various (Austrian, German, Russian and French-modelled) statutory solutions was the treatment of adoption as an option for individuals without 'legitimate' children and who were unlikely to have any in the future, permitting only 'simple' adoption.[494] Both children and adults could be adopted, and it was also possible to adopt one's own extramarital child to enhance the child's legal status.[495] Consent from specific individuals, especially the adoptee's parents (even for adults), was required.[496] However, the purpose of adoption was usually to guarantee the continuity of the family's property interests.[497] As with other family law issues, the regulation of the relationship between parents and children including adoption was not unified in the inter-war

[487]Ibid.
[488]See, e.g., Resolution of the Supreme Court of the Republic of Poland of 25 October 1983, sig. III CRN 234/83.
[489]Wybrańczyk, 2017, p. 92.
[490] Ibid., p. 91.
[491]Family and Guardianship Code of 25 February 1964 (Ustawa z dnia 25 lutego 1964 r. - Kodeks rodzinny i opiekuńczy, Dz.U. 1964 Nr 9, poz. 59, t.j. Dz.U. z 2023 r. poz. 2809).
[492]Wybrańczyk, 2017, p. 95 and quoted sources, Holewińska-Łapińska, 2011, p. 586-592.
[493] See, e.g., Dziadzio, 2021, pp. 255-260.
[494]Holewińska-Łapińska, 2011, p. 501.
[495]Ibid.
[496]Ibid.
[497]Stelmachowski, 1957, p. 77.

period, despite the drafts of the Codification Commission from 1934 and 1938.[498] Some provisions of the 1938 draft provided a model for post-war regulations.[499]

However, it is worth noting that shortly before the Second World War, on 13 July 1939, the Polish Parliament enacted the Act on Facilitating the Adoption of Minors.[500] The Act aimed to address the issue of child abandonment while simultaneously responding to the desires of childless couples who wished to care for a child and fully integrate them into their family.[501] Interestingly, during the drafting of the law, considerations were given to issues related to the child's identity, such as the appropriateness of not disclosing the child's illegitimate origin in official documents, as well as matters concerning the religion of both the adoptee and the adoptive parents.[502] Although limited in scope compared to the drafters' original intentions, the Act introduced innovative measures for the welfare of minors, including provisions for the full adoption of abandoned children, renaming of the child, and judicial oversight of the adoption process.[503] The Act of 13 July 1939 on Facilitating the Adoption of Minors contributed to the provision of care for war orphans during the Second World War.[504]

Family law, including adoption, was unified by the Decree of 22 January 1946 on Family Law, continuing the facilitation of minors' adoptions.[505] The Decree was replaced by the Family Code from 27 June 1950.[506] This regulation is called innovative for the time, introducing standards comparable to those imposed by the European Convention on the Adoption of Children from 1967.[507] As mentioned above, the current (as amended) Family and Guardianship Code dates from 1964.Among the decrees on civil law enacted between 1945 and 1946 was a Decree of 25 September 1945 on Civil Registry Records

[498] See, e.g., Leciak, 2014.
[499]Holewińska-Łapińska, 2011, p. 504.
[500] Act on Facilitating the Adoption of Minors (Ustawa z dnia 13 lipca 1939 r. o ułatwieniu przysposobienia małoletnich, Dz.U. 1939 nr 63 poz. 416). The Act primarily addressed the situation of children up to the age of 7.
[501]Fiedorczyk, 2016, p. 304.
[502]Ibid., p. 308-310, analyzing the draft and *travaux preparatoires*.
[503]Ibid., p. 311.
[504]Stelmachowski, 1957, p. 81.
[505]Decree of 22 January 1946 on Family Law (Dekret z dnia 22 stycznia 1946 r. - Prawo rodzinne, Dz.U. 1946 nr 6 poz. 52).
[506]Family Code of 27 June 1950 (Ustawa z dnia 27 czerwca 1950 r. Kodeks rodzinny, Dz.U. 1950 nr 34 poz. 308).
[507]Holewińska-Łapińska, 2011, p. 507; European Convention on the Adoption of Children signed at Strasbourg on 24 April 1967, ETS 58, published in Poland in Dz.U. 1999 nr 99 poz. 1157.

respectively.[508]This is currently regulated by the Act of 28 November 2014 on Civil Registry Records [hereinafter: ACRR].[509]

Under the Polish law currently in force, adoption can only apply to minors and for the sole purpose of their good. According to the Family and Guardianship Code, the adoptive parent must be significantly older than the adopted child and possess the personal qualities necessary to handle the responsibilities of raising a child (Article $114^1$ FGC). The Act of 9 June 2011 on Supporting the Family and the Foster Care System governs the functioning of adoption centres carrying out the qualification procedure.[510] Only spouses can jointly adopt a child (Article 115 FGC). Adoption is granted by a court upon the adopter's request (Article 117 FGC).[511] As a general rule, consent of the adoptee is required if they are over 13[512], while younger children should be heard by the court, if capable of understanding adoption (Aricle 118 FGC). As noted by Marek Andrzejewski: 'A child is qualified for adoption if his or her parents fail to exercise parental authority over him/her because they are dead, unknown, have been relieved of their parental authority or have consented to the adoption of their child.'[513]

### 2.1.2. Types of Adoption under Polish Law

Adoption always gives rise to such rights and obligations for the parties to it as exist between the parents and the child (Article 121. § 1 FGC). Additionally, the effects of adoption shall also always extend to the adopted person's descendants (Article 121 § 4 and Article124 § 1 *in* fine FGC). However, on the basis of the FGC, three types of adoption may be distinguished.[514]

The first of them is full adoption *(adoptio plena).* which is to be considered the primary type of adoption in the Family and Guardianship Code.[515] As a result of adoption, the adoptive parent(s) acquires full parental authority.[516] This means they raise the child and care for them (Article 96 FGC), manage the child's property (Article 101 FCG), and act

[508]Decree of 25 September 1945 on Civil Registry Records (Dekret z 25 września 1945 r. Prawo o aktach stanu cywilnego , Dz.U. 1945 nr 48 poz. 272). See, e.g., Papis, 2006, p. 5.
[509]Act of 28 November 2014 on Civil Registry Records (Ustawa z dnia 28 listopada 2014 r. Prawo o aktach stanu cywilnego, Dz.U. z 2014 r. poz. 1741, t.j. Dz.U. z 2023 r. poz. 1378).
[510]Act of 9 June 2011 on Supporting the Family and the Foster Care System (Ustawa z dnia 9 czerwca 2011 r. o wspieraniu rodziny i systemie pieczy zastępczej, Dz.U. 2011 nr 149 poz. 887, t.j. Dz.U. z 2024 r. poz. 177).
[511]See also Art. 585 of the Code of Civil Procedure of 17 November 1964 (Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego, Dz.U. 1964 Nr 43, poz. 296, t.j. Dz.U. z 2023 r. poz. 1550).
[512] This is the boundary of limited legal capacity, see Art. 12 of Civil Code of 23 April 1964 (Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny; Dz. U. 1964 Nr 16 poz. 93; t.j. Dz. U. z 2024 r. poz. 1061, 1237).
[513]Andrzejewski, 2021, p. 182.
[514]In detail about the types of adoption in Holewińska-Łapińska, 2011, pp. 648-672.
[515]Ibid., p. 648.
[516] See Andrzejewski, 2022; Pietrzykowski,2023, Komentarz do Art. 92.

as their legal representative (Article 98 FGC).It is clear that the reciprocal rights and obligations of adoptive parents and the child also concern providing maintenance and statutory inheritance rights.[517] At the same time, as a consequence of *adoptio plena*, the reciprocal rights and obligations of the adoptee cease in relation to their relatives (Article 121 § 3 FGC). As a result of adoption the adoptee and their descendants are treated as relatives of the adopter(s). Importantly, legal family relations, including those related to maintenance and inheritance, are also established between the adopted child and the relatives of the adoptive parent(s) (Article 121 § 2 FGC) However, *adoptio plena* may be dissolved for important reasons, at the request of the adopted child or the adoptive parent, and within the best interests of the child (Article 125 § 1 FGC).

The second type of adoption under Polish law is 'blanket' adoption (*adoptio plenissima*), which, unlike 'full' adoption, cannot be dissolved (Article $125^1$§ 1 FGC). It is granted in cases where the parents have passed away or have given consent for the child's adoption without specifying an adopter ('blanket' authorization). This type of adoption leads to an irreversible break in the existing family bond.[518]

The third type is simple adoption *(adoptio minus plena),* in which no rights and obligations arise between the adoptee and their descendants, and the adopter's relatives (Article 124 § 1 FGC).[519] Therefore, no rights and obligations arise between the adopted child and the relatives of the adoptive parent(s) in matters of maintenance (Article 131 FGC) or statutory inheritance (Article 937 Civil Code). This type of adoption is an exception in Polish law.[520]

The distinction between these three types is relevant to matters of civil status, because the type specified in the adoption order determines whether a new birth certificate will be issued.[521]

The Polish family and guardianship law also provides for subsidiary intercountry adoption (Article $114^2$ FGC). Poland is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.[522] However, the following comments

[517]See, Art. 128-129; 133 FCG (on maintenance); Art. 936 Civil Code (on inheritance). See also, e.g., Fras and Habdas, 2023, Komentarz do Art. 121.
[518]Wojewoda, 2022, p. 420 and quoted sources.
[519]See also, e.g., Resolution of the Supreme Court of the Republic of Poland of 23 June 2016, sig. V CSK 619/15.
[520]Osajda, 2024a, Komentarz do Art. 124.
[521]See., e.g., Wybrańczyk, 2017, p. 92-93.
[522]Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, UNTS, vol. 1870, p. 167, see status table at the webpage of the Hague Conference on Private International Law

will primarily disregard the cross-border aspects of adoption,[523] concentrating instead on the key issues related to protecting the child's identity in domestic adoption.Furthermore, greater emphasis will be placed on the establishment of the adoption relationship rather than on its termination in exceptional circumstances.

### 2.1.3. Safeguarding Child's Right to Birth Registration and the Right to a Name

As indicated above, adoption of each of the three aforementioned types invariably establishes the same rights and responsibilities between adoptive parents and the adopted child as those between biological parents and their child. This section will address the implications of adoption related to the child's civil status. Its proper safeguarding is fundamental to the protection of the individual. [524] Thus, also the child's right to identity. The establishment of an adoption relationship is an event that results in a change in the child's civil status.[525] The issue of their registration is particularly important because of the role of civil status records as exclusive evidence of the events stated therein (Article 3 ACRR).[526] In the case of a birth certificate, this includes the child's descent from specific parents and name, and surname of the parents.[527]

The first issue to be addressed is whether a new birth certificate is drawn up for the child as a result of the adoption. Another area worth examining is the issue of the child's given name and surname, specifically the question of their alteration following adoption. The effects on civil status (and civil status records) and name are sometimes mentioned by commentators first among the civil rights effects of adoption.[528]

In the case of *adoptio plena*, according to Article 72 § 1 of ACRR, as a general rule, a new birth certificate is not issued, instead the fact of adoption shall be recorded as a notice in the existing certificate. Adoption can potentially be dissolved; therefore, there is a need to protect the child's natural civil status.[529]However, a new birth certificate, indicating the adoptive parent (s) as child's parent(s), is issued when ordered by the court(Article 72 § 2 of ACRR)A request from the adoptive parent and the consent of the adopted child, if they are over 13 years old,

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https://www.hcch.net/en/instruments/conventions/status-table/?cid=69[last accessed: 29 September 2024]; published in Poland in Dz.U. 2000 nr 39 poz. 448.

[523]Particularly, intercountry adoption, including the operation of the Hague Convention in Polish legal order; recognition of foreign adoption decisions and subsequent actions by the civil status registrars.See, e.g., Bagan-Kurluta, 2019; Wysocka-Bar, 2018; Wojewoda, 2018a.

[524] Hrynicki, 2016, p. 371. From a different angle, issues of civil status are elements of identity.

[525]Wojewoda, 2018b, p. 53; Wojewoda, 2022, p. 419.

[526]See, e.g., Wojewoda, 2018b., p. 54.

[527]Resolution of the Supreme Court of the Republic of Poland 11 December 2002, sig. I CK 348/02.

[528]Pietrzykowski, 2023, Komentarz do Art. 114.

[529] See, e.g., Fras and Habdas, 2023, Komentarz do Art. 121.

or a request from the adopted child and the consent of the adoptive parent, is required. The rules on hearing a child also applies.

In the case of *adoptio minus plena*, under Article 75 § 1 of ACRR,[530] a mention regarding the adoption is added to the child's birth certificate, and a new birth certificate is not issued. According to Article 75 § 2 of ACRR, at the request of the adopter and with the consent of the persons whose consent to the adoption is needed, the court may exclude the possibility of indicating the adopter(s) as the child's parent(s) in the abridged copies of the birth certificate. In this particular situation, only a full copy reveals the adoption.[531] The abridged copies, on the other hand, list only the biological parents and omit information on the legal bond established with the adopter(s).In deciding the case in this respect, the court should have the best interests of the adopted child as its primary consideration.[532]

The situation is completely different for *adoption plenissima.*[533] Under Article 71 ACRR, always, a new birth certificate with the data of adoptive parent(s) is drawn up. [534] The effect of *adoption plenissima* is that the adoptee loses his or her natural civil status, which was represented through the existing birth certificate.[535] The acquisition by the adoptee of the civil status following adoption results in the need for a new birth certificate.[536] If a new birth certificate is issued as a result of the adoption, a notice on the establishment of the new birth certificate shall be attached to the existing birth certificate of the adopted person, and shall not, as a rule, be disclosed (Article 73 § 1 and 2 ACRR). As a result, all copies of the birth certificate issued from the register (abridged and complete) will only show the adopters.[537]

Adoption also affects the child's surname.[538] This is because a surname is the outward expression of family belonging.[539] The rule is to take the adopter's surname or, in the case of joint adoption, of the children born or to be born of the adopters' marriage (Article 122 § 1 FGC). In cases where a new birth certificate is not issued,[540] the guardianship court may, upon the request of the adopted person and with the consent of the adopter, order that the adopted

[530] See Art. 75 ACRR.
[531] Wojewoda, 2022, p. 420.
[532]Osajda, 2024b, Komentarz do Art.75.
[533] See Art. 71 ACRR.
[534] *Ex officio,* see, Czajkowska, Basior and Sorbian, 2015, p. 140.
[535]Osajda, 2024b, Komentarz do Art.71.
[536] Ibid.
[537]Wojewoda, 2022, p. 421.
[538] Wojewoda, 2018b, p. 61.
[539]Holewińska-Łapińska, 2011, p. 649.
[540] I.e. *adoptio minus plena* or in some cases *adoptio plena.*

person bear a surname combining their current surname with that of the adopter (Article 122 § 2 FGC).[541] As noted by Aleksandra Graffke and Mirosława Graffke:

> 'Such regulation of the surname issue in the case of child adoption is based on the assumption that adoption creates a relationship between the adopter and the adoptee similar to that between parents and children. Therefore, the Family and Guardianship Code does not provide for any other way to regulate the child's surname in the case of adoption (except as outlined in Art. 122 § 1 and § 2 of the FGC), nor does it allow for the possibility of restoring the child's original surname while the adoption relationship is still in effect.'[542]

In addition, Elżbieta Holewińska-Łapińska explains that:

> 'A hyphenated surname distinguishes the adopted child from their new "adoptive family," particularly from other children of the adoptive parents, and reveals their connection to the "family of origin," hindering full integration into the new family (...). While it is not possible for the adopted person to fully retain their original surname, a hyphenated surname may hold significant importance, especially if the adoptee has consciously used it for an extended period due to their age (...).'[543]

Another issue is changing a child's given name. This matter is governed by Article 122 § 2 FGC. As a rule, it remains unchanged. It can only be modified by the court at the request of the adopters. Elżbieta Holewińska-Łapińska further notes:

> 'At the request of the adoptive parent, the court may change the first name or names of the adopted child in the adoption ruling. The child's consent is required if they are 13 years old or older (younger children should be heard on this matter). It is particularly worth noting that, unlike decisions regarding a hyphenated surname, the court is not bound by the request concerning the child's name change. It seems that such a request, especially if the child is no longer an infant, should be considered with great caution and care. A child's identification with a specific name occurs much earlier than with a surname, and none of the arguments justifying a surname change can be applied to the change of the first name.'[544]

It is worth examining the issues discussed above from the point of view of the child's identity. Adoption significantly impacts the personal status of the adoptee, altering their civil status and affecting various personal rights, such as the right to a specific name or surname.[545] Interestingly, commentators suggest that aligning the adopted child's surname with that of the adoptive family is part of the broader process of establishing a new identity

[541] If either party has a multi-part surname, the court will determine which elements will be included in the adopted person's new surname.
[542] Graffke and Graffke, 2021, p. 216citation translated by the Author.
[543] Holewińska-Łapińska, 2011, p. 650; citation translated by the Author.
[544] Ibid., p. 651, citation translated by the Author.
[545] Ibid.,p. 567.

for the adoptee through adoption, and may even serve as a way of obscuring the child's natural origins.[546] In a way, therefore, the child loses its previous identity and gains a new one, or maybe rather gains new elements of their single identity. In any case, the changes result from the need for integration within the family that has taken on the care of the child and are intended to serve the integration purposes.[547] It is worth noting that the inability to 'fully integrate' was a problem in the past, when *adoptio plena* did not yet exist in the Polish system.[548]

However, in view of the existence of a certain tension between the child's 'original identity' and the 'new identity' resulting from being part of an adoptive family, it is worth highlighting several issues. Firstly, it is important to remember the primacy of the premise of the child's best interests in the permissibility of adoption, as well as its role in family law in general.[549]Elements of the adoption judgment, such as the question of drawing up a new birth certificate[550] or changing the child's name,[551] are therefore subject to this premise. The realisation of the child's best interests is required not only when it is used *expressis verbis* in the wording of the provision concerned.[552] Secondly, the issue of the participation of the child (the consent of at least 13 years old and the hearing of younger ones) is relevant both to the issue of the admissibility of adoption and to partial decisions within it, such as those on new birth certificate in *adoptio plena*, hyphenated surnames or first name changes. Although, as a rule, the consent of a 13-year-old child is required for an adoption to be granted, an exception exists to protect the child's identity when it is likely that the child believes they are biologically related to their prospective adoptive parents.[553] In every case, however, the issue of the child's consent or being heard is ultimately guided by the child's best interests (Article 118 § 3 FGC).

Despite the important role of this principle within adoption, situations might occur, where the best interests of the child has not sufficiently been taken into account by the Polish legislator, especially in the context of the child's identity. An example of such situation

[546]Załucki, 2023, Komentarz do Art. 122 and quoted sources.
[547] As pointed out, for instance, by the aforementioned Aleksandra Graffke and Mirosława Graffke or Elżbieta Holewińska-Łapińska on the example of the surname.
[548]See, e.g., Fiedorczyk, 2016, p. 305.
[549]See, e.g., Pietrzykowski, Komentarz do Art.114.See also Łukasiewicz, 2019, p. 73.
[550]See, e.g., Wojewoda, 2022, p. 421 on the admissibility of applying for a new birth certificate after the adoption has been decided.
[551]See, e.g., Holewińska –Łapińska, 2011, p. 650, stating that the court should inform the child about the automatic name change due to adoption and consider the child's strong opposition as a factor in assessing the adoption's alignment with the child's best interests.
[552] Łukasiewicz, 2019, p. 74.
[553]See, e.g., Holewińska –Łapińska, 2011, p. 566-570.

is the impossibility of remaining with one's own surname in any situation, or the lack of precise regulation regarding the child's consent to a given name change in case of children younger than 13 years old.[554] In the case of infants (e.g. six weeks old, when the biological parents' consent to adoption can be given at the earliest, see Art. $119^2$ FGC), a first name change can be motivated by the adopters' need to attach themselves to their 'own' child from now on.[555] However, as for the later age, e.g., later than 3, advocates of amendments in this regard argue that where adopters are decided to adopt and are guided by the best interests of the child, the need to remain with the minor's existing first name should not discourage them.[556]

One should also note that changes to a child's civil status can only occur within the limits prescribed by law, meaning there is no possibility of altering details such as the date or place of birth in the birth certificate.[557]

2.1.4. Protecting Child's Cultural, Ethnic or Religious Identity (Continuity in Upbringing)

Article 20 para. 3 of the CRC imposes on the state authorities the obligation to respect cultural, ethnic or religious identity of a child undergoing adoption. Poland was the initiator of the Convention and is a party to it from 7 July 1991.[558] The Convention is directly applicable in Poland.[559] Article 20 para. 3 of the CRC refers to 'alternative care,'[560] which includes not only adoption but also all forms of child care, such as foster care and institutionalized care, which are regulated separately from adoption in Poland.[561] In relation to foster care, the required continuity in the child's upbringing is interpreted as preserving the positive aspects of the child's previous upbringing by their former parents, along with maintaining the child's ethnic, religious, cultural, and linguistic identity.[562]

In the context of adoption, these issues are primarily addressed in case law[563] and literature[564] concerning the adoption of a child from Poland to a foreign country (intercountry adoption). As to adoption in Poland, evaluating a prospective adoptive parent's capacity to maintain the child's identity is crucial in adoption cases involving a minor

[554] Ibid., p. 148-149 and quoted sources.
[555] Ibid.
[556] Ibid.
[557]Resolution of the Supreme Court of the Republic of Poland of 6 December 2007, sig. IV CSK 274/07.
[558] See, e.g., Zajączkowska-Burtowy and Burtowy, 2020, p. 101 and quoted sources.
[559]Ibid., see also Resolution of the Supreme Court of the Republic of Poland of12 June 1992, sig. III CZP 48/92.
[560]On terminology, see, e.g., Andrzejewski, 2011, p. 389.
[561] In the Family and Guardianship Code and the Act on Supporting the Family and the Foster Care System.
[562]Zajączkowska-Burtowy and Burtowy, p. 102, citing importantly the works of Andrzejewski.
[563]See, e.g., Resolution of the Supreme Court of the Republic of Poland of12 June 1992, sig. III CZP 48/92.
[564]See, e.g., Holewińska –Łapińska, 2011, p. 646-647.

from abroad or a child from an ethnic or national minority in Poland,[565] the latter enjoying protection guaranteed to national and ethnic minorities by the Polish Constitution.[566] There are several potential conflicts of interest that might arise in this area. First, the Polish Constitution guarantees the right of parents to raise their children in line with their own beliefs, including providing moral and religious education,[567] on the other hand, the child's identity is protected by the aforementioned constitutional and convention-based guarantees concerning children's rights, taking into account the child's identity. Additionally, considering the safeguards stemming from Article 53 para. 7 of the Constitution, the adoption proceedings must ensure that prospective parents only voluntarily disclose their religious and philosophical convictions.[568] However, it is important to remember that the adoptive family should be chosen based on the child's needs.[569] The fundamental aim underlying all child care is to provide conditions for the full and harmonious development of the child.[570] In a given situation, the question may arise as to whether the child's best interest may suggest that an adopted child should not retain their previous ethnic and cultural identity. This issue can be particularly significant, especially in the case of older children.[571] However, at least in previous decades, adoption in Poland primarily involved young children who do not differ racially from their adoptive parents.[572]

### 2.1.5. Child's Right to Know Their Origins (Parentage)

The child's right to know their origin is one of the most topical issues pertaining to the child's identity in adoption. Adoptive parents have no connection to the child's biological parentage, making the question of the child's right to know their origin crucial. However, among Polish legal scholars there have been voices questioning the implementation of the right to know

[565] Ibid., p. 538.
[566] Art. 35: 1. The Republic of Poland shall ensure Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture. 2. National and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.Cf. Korhecz, 2022. See also, Czapliński, 2020; Gdulewicz and Popławska, 2004.
[567] See Art. 48 para. 1: Parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions.
[568] See Art. 53 para. 7: No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or belief.
[569] See, e.g., Holewińska –Łapińska, 2011, p. 589.
[570] See Preamble of the CRC, see also, e.g., Resolution of the Supreme Court of the Republic of Poland of 24 November 2016, sig. II CA 1/16.
[571] See, e.g.,Kuźnicka, 2016, p. 195.
[572] See, e.g., Holewińska –Łapińska, 2011, p. 672.

one's own origins separately from the pursuit of civil status rights, which are specifically focused on establishing biological status.[573]

In this context, one should analyze the issue of the confidentiality (secrecy) of adoption, which means concealing the child's biological origins. This notion is not present *expressis verbis* in any of the Polish legal acts.[574] Nevertheless, it is considered as a principle of adoption.[575] Some authors regard this principle, alongside the judicial oversight of adoption and the limited dissolvability of adoption, as supplementary to the main principles of adoption, which are its non-financial nature, the best interests of the child, and the equal treatment of adoption with the natural parent-child relationship.[576] The issue of the secrecy of adoption was so important that Poland made reservations to the Convention on the Rights of the Child in connection with Article 7 para 1 *in fine*, guaranteeing to the child the right to know their parents[577]:

> 'With respect to Article 7 of the Convention, the Republic of Poland stipulates that the right of an adopted child to know its natural parents shall be subject to the limitations imposed by binding legal arrangements that enable adoptive parents to maintain the confidentiality of the child's origin.' [578]

At that time, the Act of 29 September 1986 on Civil Registry Records[579] was in force in Poland, which did not allow under any circumstances for the access to the original birth certificate when a new one was drawn up for an adopted child. Regardless of the fact that Poland withdrew its reservation to the CRC in 2013,[580] the way it was formulated is worth attention. The emphasis was on adoptive parents and their ability under the law to maintain the confidentiality of the child's origin. It may be connected with the need to prevent the stress that an adopted person might experience upon discovering, after many years, that the adoptive parents are not their biological parents.[581] It also aimed at preventing biological parents

[573] Gajda, 2012, p. 278 and quoted sources.
[574] Łukasiewicz, 2019, p. 152.
[575] See, e.g., Pietrzykowski, 2023, Komentarz do Art. 114.
[576] Ignatowicz, 1985, p. 922-924.
[577] Art. 7 para. 1 CRC: 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.
[578] See, reservation made by the Republic of Poland available at the United Nations Treaty Collection website https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en [last accessed: 13 September 2024].
[579] Act of 29 September 1986 on Civil Registry Records (Ustawa z dnia 29 września 1986 r. Prawo o aktach stanu cywilnego, Dz.U. 1986 poz. 180)
[580] Oświadczenie Rządowe z dnia 27 marca 2013 r. w sprawie zmiany zakresu obowiązywania Konwencji o prawach dziecka, przyjętej dnia 20 listopada 1989 r. w Nowym Jorku (Dz.U. z 2013 r. poz. 677).
[581] See, e.g., Pietrzykowski, 2023, Komentarz do Art. 121.

from disturbing the adoptive family, and to provide adoptive parents with the satisfaction of being recognized as the sole parents of the adopted child.[582]

The confidentiality of adoption is considered in both internal contexts, i.e. between adoptive parents and children, as well as external ones, with relation to third parties, regardless of the relationship between parents and children.[583] Adoptive parents decide on the timing and manner of disclosing the fact of adoption to third parties or choosing not to disclose it.[584] They also influence how state authorities should handle the disclosure of this information.[585].The relationships between parents and children in this regard are not regulated by Polish law.[586] Nevertheless, here, important issues of protecting the child's right to identity become apparent.[587] It seems important for children, in a manner and at a time appropriate for their best interests, to learn about the fact of their adoption.[588] However, on the other hand, a broad protection of the secrecy of adoption can be justified primarily with the reasons connected to maintaining the stability of the family created by adoption.[589]

The confidentiality of adoption is most strongly protected in the case of *adoption plenissima*, where a new birth certificate for the child is always issued and the existing file shall not be disclosed (Article 73 ACRR).However, the confidentiality of adoption is not absolute.[590] As mentioned above, Poland has withdrawn its reservations to the CRC. Previously, changes were made to the Act of 29 September 1986 on Civil Registry Records.[591] The protection of the child's right to identity, even in the case of *adoption plenissima*, is to be ensured by the possibility for an adult adoptee to apply for access to the original birth certificate.[592] However, there are voices, from the point of view of the child's right to identity, that such a construction insufficiently protects them.[593] The child still has no guarantee that the adoptive parents will inform them of the adoption, and

[582] Ibid.
[583]Holewińska –Łapińska, 2011, p. 672.
[584]Gajda, 2012, p. 27.
[585] Ibid.
[586]Holewińska –Łapińska, 2011, p. 673.
[587]See., e.g., Fras and Habdas, 2023, Komentarz do Art. 121.
[588]See, e.g. Holewińska –Łapińska, 2011, p. 570 and quoted sources; Andrzejewski, 2008, pp. 22-23. See also, Resolution of the Supreme Court of the Republic of Poland of 6 December 2007, sig. IV CSK 274/07.
[589]Gajda, 2008, p. 272-275.
[590]See, e.g., Resolution of the Supreme Court of the Republic of Poland of 6 December 2007, sig. IV CSK 274/07.
[591]Amendment of 26 May 1995 (Ustawa o zmianie ustawy kodeks rodzinny i opiekuńczy i niektórych innych ustaw z dnia 26 maja 1995 r., Dz.U. Nr 83, poz. 417). See more Holewińska –Łapińska, 2011, p. 692.
[592]Art. 73 ofthe Act of 28 November 2014 on Civil Registry Records, currently in force).
[593]Michałkiewicz-Kądziela, 2020, p. 197-199.

therefore whether the adoptee, once they have reached the age of majority, will be able to consult the original birth certificate.[594]

The functioning of 'baby boxes' in Poland raises other issues related to the protection of child's identity. These are the places in which parent(s) can leave their child, who will receive immediate care.[595] In Poland they are known under the name of 'windows of life.'[596] The situation of children left in 'baby boxes' is not directly regulated by Polish law, for example in terms of special adoption procedures.[597] Additionally, UN Committee on the Rights of the Child[598] raised numerous concerns about their functioning from the perspective of child's identity, both in the case of Poland[599] and other countries.[600] There is also an argument for their operation. Insofar as they do indeed directly protect children's lives, without it there is no question of the need to protect identity.[601]

Important issues related to the identity of the child and the issue of the secrecy of adoption are also those related to the right to privacy. The privacy of the adoptive family against the unauthorised disclosure of the data of the family member (adopted child) to third parties is undoubtedly subject to protection in the context of adoption secrecy.[602] This is particularly relevant in view of the doubts about the legitimacy of treating adoption secrecy as such as falling within the category of personal rights.[603]

The question of respecting the privacy of the parents[604] of origin is also very relevant.

There may be a tension (or even a collision) between the child's right to know their origins and the privacy of the biological parents. The Polish law on an adult adoptee's access to the first birth certificate does not address this problem in any way. As Rafał Łukasiewicz points out:

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[594]Ibid.
[595]See, Czapliński and Kroczek-Sawicka, 2017 and quoted sources.
[596]Ibid.
[597] See about the steps taken by the state authorities towards the found child, e.g., https://www.prawo.pl/zdrowie/okno-zycia-jak-wplywa-na-adopcje-dziecka,519053.html [last accessed: 13 October 2024]. See also Art. 62 ACRR.
[598]The group of eighteen impartial specialists that oversees the States party to the Convention on the Rights of the Child's implementation, see https://www.ohchr.org/en/treaty-bodies/crc [last accessed: 13 October 2024].
[599] Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Poland, 30 October 2015, CRC/C/POL/CO/3-4.
[600] See, e.g., Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Czech Republic, 4 August 2011, CRC/C/CZE/3-4.
[601]Michałkiewicz-Kądziela, 2020, p. 160.
[602]Resolution of the Supreme Court of the Republic of Poland of 6 February 2018, sig. IV CSK 60/17.
[603]Ibid.
[604] Polish law does not generally distinguish between the position of the natural mother and the natural father strictly in the context of the secrecy of adoption. Some practical differences may arise from the very construction of motherhood in Polish law (*mater semper certa est*) and technical matters. See, Art. 61 ACRR.

> ‘There is no doubt that an adopted person should have the right to know certain information about his or her biological origin, in such a extent that the legitimate interests of others are also taken into account. It would appear that the key to achieving the necessary compromise would have to be a remodelling of the procedure for obtaining data on the biological parents. In particular, such a procedure could concern cases of *adoption plenissima* (...). Separating thereof is due to the fact that blanket consent externalizes the will to absolutely sever any ties with the adoptee.’[605]

Polish law does not distinguish between data identifying the biological parents (enabling them to be traced) and data not identifying them (general information not allowing the parents' identity to be established, e.g., nationality, occupation, state of health).[606] Furthermore, the possibility of disclosing the original birth certificate and thus knowing the name of the parents (mother) is not dependent on the consent of the natural parents, either at the time of placing the child for adoption or later when the certificate is to be disclosed.[607]

Solutions regarding non-identifying data and the issue of natural parents' consent to disclosure of identifiers are known to the law of some other countries, such as Hungary.[608]

## 2.2. Hungary

### 2.2.1. Adoption in the Hungarian Law

The Fundamental Law of Hungary of 25 April 2011,[609] provides for a legal framework on family protection. Relationships between parents and children are afforded special consideration.[610] In this context, adoption is a significant legal institution since it represents the second legal situation strongly related to kinship, alongside blood descent.[611] The status of a biological child and that of an adopted child are treated equivalently.[612] As indicated by Edit Sápi:

> ‘From the perspective of the child, therefore, no distinction can be observed in the mode of descent, that is, by blood or adoption It is of utmost importance that a child cannot be discriminated against based on how their parental status was

[605] Łukasiewicz, 2019, p. 158-159, citation translated by the Author.
[606] Ibid.
[607] Ibid.
[608] See, e.g., ibid., p. 162.
[609] In Hungarian: *Magyarország Alaptörvénye (2011. április 25.).* English translation of the Fundamental Law of Hungary of 25 April 2011, as amended, available at the webpage of the Hungarian National Assembly https://www.parlament.hu/documents/125505/138409/Fundamental+law/ [last accessed: 5 November 2024].
[610] See Art. L (1) of the Fundamental Law of Hungary of 25 April 2011, as amended: Hungary shall protect the institution of marriage as the union of one man and one woman established by voluntary decision, and the family as the basis of the survival of the nation. Family ties shall be based on marriage or the relationship between parents and children. The mother shall be a woman, the father shall be a man.
[611] Sápi, 2022, p. 178.
[612] Section 4:119 § (1) of the Hungarian Act V of 2013 on the Civil Code.

> established, that is, whether the child was born out of marriage, cohabitation, or occasional sexual intercourse, or whether they were raised and cared for by biological or adoptive parents This applies to the family law consequences of the parent-child relationship and to all other legal effects.'[613]

The regulation of adoption in Hungary combines elements of both private and public law.[614] The most important source of national law in this area is the Act V of 2013 on the Civil Code, as amended [hereinafter: Civil Code; Code; CC],[615] particularly its Family Law Book.[616]However, with regard to other sources pertinent to adoption issues, the Act XXXI of 1997 on the Protection of Children and Guardianship Administration [hereinafter: Act on Protection of Children and Guardianship Administration],[617] along with several government decrees,[618] is also of considerable importance. Moreover, to the extent that adoption is related to the registration of civil status, also in technical aspects, the provisions of the Act I of 2010 on Civil Status Registration Procedures apply.[619] To adoption with cross-border aspects, the relevant provisions of the Act XXVIII of 2017 on Private International Law[620] are applicable.[621]

In historical Hungarian law,[622] adoption was characterized by a contractual nature, emphasizing the legal agreement between the adoptive parties rather than functioning as an instrument of family law governed by state regulations. Inheritance aspects and settlement of the status of an 'illegitimate' child were particularly significant at that time. Subsequently, adoption gained prominence in family law, increasingly focused on securing heirs to preserve family lines and facilitate the inheritance of titles.[623] However, in feudal

[613]Sápi, 2022, p. 178.
[614]Barzó and Kriston, forthcoming.
[615]In Hungarian: *2013. évi V. törvény a Polgári Törvénykönyvről*. English translation of the Act V of 2013 on the Civil Code available at the webpage of the Hungarian National Legislation Databasehttps://njt.hu/jogszabaly/en/2013-5-00-00[last accessed: 5 November 2024].
[616] However, as indicated e.g. by Sápi, 2021, p. 138: 'In addition to the Family Law Book of the Civil Code, the Succession Law Book also contains the inheritance effects of adoption.'
See also Szeibert, 2017, p. 174.
[617] In Hungarian: *1997. évi XXXI. Törvény a gyermekek védelméről és a gyámügyi igazgatásról.*
[618]See Government Decree No 149/1997 (IX.10.) on Guardianship Authorities and Child Protection and Guardianship Proceedings; Government Decree No 29/2003. (V.20.) on Professional and Examination Requirements for the Training of Alternate Parents, Foster Parents and Family Day-care Operators, as well as on Pre-adoption Counselling and Preparation courses; Government Decree No 72/2014 (III.13.) on the Activities and Licensing of Public Benefit Organizations Facilitating Adoption and Following Adoption.
[619]In Hungarian:2010. évi I. törvény az anyakönyvi eljárásról.
[620]In Hungarian: *2017. évi XXVIII. törvény a nemzetközi magánjogról.*
[621]Barzó and Kriston, forthcoming.
[622]On the development of the institution of adoption in the history of Hungarian law see more in RékasinéAdamkó, 2021; Katonáné Pehr, 2023a; Katonáné Pehr, 2023b.
[623]Barzó and Kriston, forthcoming.

Hungarian society, adoption remained less accepted, as property retention within the bloodline was prioritized.[624]

Nevertheless, throughout social and legal transformations, the significance of adoption has evolved. Act IV of 1952 on Marriage, Family, and Guardianship [hereinafter: Act of 1952][625] is often regarded as marking a turning point in the development of various aspects of adoption regulation.[626] It identified the provision of a family environment and upbringing for the adopted minor as the primary objective of adoption, leading importantly to the exclusion of adult adoption and achieving integration of the child into the new family.[627] Therefore, the contractual form of adoption was eliminated, and adoption was instead regulated through authorization by the guardianship authority.[628] However, it was primarily simple adoption that continued to play a pivotal role.[629] Nevertheless, the Act of 1952 provided for the re-registration of the child's birth.[630] An important development was introduced by the 1960 amendment to Act IV of 1952 on Marriage, Family, and Guardianship, implemented through Decree No. 12.[631] It established a full kinship relationship between the adoptee and the adoptive family, thereby legally recognizing a bond that the civil status re-registration had already created.[632] The next amendment to the Act of 1952, introduced by Decree No. 1 of 1974,[633] also addressed issues significant to the child's identity. It sought to facilitate a harmonious integration for the adopted child, making it generally possible for a biological parent to consent[634] to the adoption of their child without knowing the identity of the adoptive parent.[635] These rules reinforced the confidentiality of adoption.[636] Throughout the development of the institution of adoption, the role of the guardianship authority evolved, and in some cases, a court decisions were required.[637] Act XV

[624]Ibid.
[625]In Hungarian: *A házasságról, a családrólés a gyámságrólszóló 1952. évi IV. törvény.*
[626]Katonáné Pehr, 2018, para. [9].
[627]Ibid.
[628]Ibid.
[629]Ibid.
[630]Ibid.
[631]In Hungarian:*A házasságról, a családról és a gyámságról szóló 1952. évi IV. törvény módosításáról szóló 1960. évi 12. számú törvényerejű rendelet.*
[632]Katonáné Pehr, 2018, para. [9].
[633]In Hungarian: *A házasságról, a családról és a gyámságról szóló 1952. évi IV. törvény módosításáról szóló 1974. évi I. törvény.*
[634]This consent could not be withdrawn. See, Katonáné Pehr, 2018, para. [10].
[635]Ibid.
[636] Ibid.
[637]See, e.g., the issue of adoption without consent and the restriction of parental rights; ibid.

of 1990, which further amended the 1952 Act,[638] expanded the scope of confidential adoptions by introducing the legal institution of declaring a child adoptable.[639]

Shortly thereafter, in 1991, the CRC came into force in Hungary.[640] The aim of adopting the Act XXXI of 1997 on the Protection of Children and Guardianship Administration was to take into account the requirements of the CRC.[641] The Act on the Protection of Children and Guardianship Administration integrated child protection and guardianship reforms.[642] From the different angle, the Civil Code which is the most relevant for the present regulation of adoption, came into force on 14 March 2014.[643] It is worth noting that this is a contemporary codification of civil law, representing the fourth, post-socialist, wave of codification in Central and Eastern Europe.[644]

Under the law currently in force, adoption is viewed as the acceptance of an individual from outside the family as a full family member.[645]As expressed by section 4:119 § (1) of the Act V of 2013 on Civil Code,[646] adoption creates a familial relationship between the adoptive parent, their biological relatives, and the adopted child, with the purpose of providing a family environment for the child's upbringing. According to Tímea Barzó and Edit Kriston:

> 'The purpose of adoption in Hungary is to establish in dual form, on the one hand, family relationship between the parties, i.e. to create a bond of equal value to blood relatives between the adoptive and adopted children, with all its family law, inheritance law and private law consequences. The other goal is to raise the child in a family community.'[647]

As providing care to a child is the aim of this legal institution, adoption applies exclusively to minor children (section 4:119 § (2) CC).[648]Consequently, the provisions on adoption may be seen as those having family law and child protection character.[649]This

[638]In Hungarian*: A házasságról, a családról és a gyámságról szóló 1952. évi IV. törvény módosításáról szóló 1990. évi XV. törvény.*
[639]Katonáné Pehr, 2018, para. [10].
[640]United Nations Convention on the Rights of the Child signed at New York on 20 November 1989 was ratified by Hungary on 7 October 1991 and has been applicable since 6 November 1991, see, promulgating the Convention, Act LXIV of 1991 (in Hungarian: *Gyermek Jogairól szóló New Yorkban, 1989. november 20-án kelt Egyezmény kihirdetéséről szóló 1991. évi LXIV. törvényben).*
[641]Katonáné Pehr, 2018, para. [11].
[642]Ibid.
[643]Section 8:4 CC: This Act shall enter into force on 15 March 2014.
[644]See, e.g., Vékás, 2023.
[645]Barzó, 2017, p. 324.
[646]Section 4:119 § (1): Adoption establishes a kin relationship between the adoptive parent, the blood relativesof the adoptive parent and the adopted child with a view to bring up the adopted child in a family.
[647]Barzó and Kriston, fortcoming.
[648]Section 4:119 § (2):Only minor children can be adopted.
[649] Szeibert, 2021.

structure of the adoption institution is based on the principle, expressed in Hungarian family law, that the family safeguards the best interests of the child. This fundamental principle is clearly reflected in the provisions that open the Family Law Book of the Civil Code. Section 4:2[650] states that in family legal relationships, the interests and rights of the child shall be granted increased protection. Moreover, the child shall have the right to be brought up in their own family. However, if the child cannot be brought up in their own family, it shall be ensured that the child grow up in a family environment. Importantly, from the point of view of the child's identity, it shall be safeguarded that the child keep their own earlier family relationships, if possible. A child's right to be raised within their own family or a family-like setting, as well as their right to preserve previous family ties, may only be limited by law, and only in exceptional cases where it is deemed necessary for the child's best interests.

It is worth noting that the child's best interests are decisive in granting authorization for adoption. The guardianship authority is responsible for safeguarding this interest and for carrying out a range of other duties within the adoption and post-adoption processes. Even if other conditions for adoption (see below) are met, reference to the best interests of the child serves as a corrective clause in the provision of section 4:120 § (5)*in principio* of the Civil Code.[651] Therefore, the entirety of the child's circumstances must be considered, not only those specified in the regulations.[652] Additionally, the provision in section 4:120 § (2) of the Civil Code[653] safeguards the child's right to be heard, as required by Article12 of the CRC.[654] A child aged 14 or older, with limited capacity to act, may be adopted only with their consent. For a younger child but of sound mind, their opinion on the adoption shall be taken into account with due consideration. The age of 14 is also a significant threshold with regard to certain issues related to information about the child's origins in civil status

[650] Section 4:2: (1) In family legal relationships, the interests and rights of the child shall be granted increased protection. (2) The child shall have the right to be brought up in his own family. (3) If the child cannot be brought up in his own family, it shall be ensured that the child grow up in a family environment and keep his own earlier family relationships if possible. (4) The child's right to be brought up in his own family or in a family environment and his right to maintain his earlier family relationships may only be restricted in cases set out by an Act, exceptionally and in the interest of the child.

[651] 4:120 § (5) *in principio* CC: The guardianship authority shall only authorize the adoption, even if the conditions set out in this Act are fulfilled, if the adoption is in the interest of the minor child.

[652] Barzó, 2017, p. 325.

[653] 4:120 § (2) CC: A minor who has attained the age of 14 years having limited capacity to act may only be adopted with his consent. The opinion of a minor who has not attained the age of 14 years but who is of sound mind shall be considered with appropriate weight regarding his adoption.

[654] Art. 12 CRC: 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

records, requests for disclosure of identifying information on biological parents made to the guardianship authority, and access to the medical data of biological parents. These aspects will be outlined in subsequent sections.

Additionally, there are numerous specific conditions that must be met for an adoption to be legally effective. Firstly, regarding the conditions concerning the child, as mentioned above, only a minor child can be adopted. Additionally, apart from a second-parent adoption, only children whose parents are deceased or unable to care for them may be eligible for adoption (section 4:123 § (1) of the CC).[655] Also, under section 4:123 § (2) of the Civil Code,[656] adoption allows the adoptive parent's spouse to adopt the child. In the event of the adoptive parent's death, other individuals may also adopt the child. If the adoption occurs after the adoptive parent's death, the previous adoption is legally terminated.[657]

The second group of requirements pertains to the prospective adoptive parents. Under section 4:121 of the CC, only individuals over the age of 25 with full legal capacity are eligible to adopt. Additionally, the adopter must be at least 16 years older and no more than 45 years older than the child, while also being deemed suitable for adoption based on their personality and circumstances.[658] The age difference requirement aims to ensure that the adopter is sufficiently mature to make a responsible decision, while the upper age limit allows for a more adaptable approach to issues related to the child's age.[659] However, there are exceptions from the rules on adoptive parent's age. If an adoption application is made for a child over the age of 3, adoption may still be approved, provided that the age difference between the adoptive parent and the child does not exceed 50 years, in the best interests of the child. Also, when the adoption is by blood relatives or spouses, the age difference requirement is waived.[660] Such provisions allow for consideration of the specific

[655]Section 4:123 § (1) With the exception of adopting the spouse's minor child, children whose parents are no longer alive or are not able to bring up the child appropriately shall be available for adoption.
See also, Sápi, 2022, p. 182.
[656]Section 4:123 § (2): During adoption, the adopted child may be adopted by the spouse of the adoptive parent; after the death of the adoptive parent by other persons as well. If the adopted child is adopted after the death of the adoptive parent, the earlier adoption shall terminate.
[657]The issue of adoption termination is regulated by the provisions of sections 4:138- 4:144 of the Civil Code.
A separate provision addresses the child's name following the termination of adoption. See, section 4:142 CC: After the termination of the adoption, the adopted child and his descendants shall not continue to bear the family name taken up upon the adoption. In justified cases, the guardianship authority or the court shall, upon request, authorise the parties concerned to continue to bear the family name taken up upon the adoption.
[658]See also, 4:121 § (4): In the event of adoption as a common child, only one of the adoptive parents shall meet the conditions regarding age and the difference in age specified in paragraph (1). If siblings are adopted, the age of the elder sibling shall be taken into account.
[659]Barzó and Kriston and quoted sources.
[660]Section4:121 § (1) *in fine CC:* In the event of adoption by blood relatives or spouses, the difference in age shall be ignored.

circumstances of the child and family in each case, prioritizing, whenever possible, that the child is raised by relatives or individuals already familiar to them.[661] Regarding the requirements for adoptive parents, it is also important to consider the negative criteria for adoption. Section 4:121 § (3) of the CC provides that individuals subject to a final court ruling that revokes their parental custody,[662] bars them from public participation,[663] or whose child has been placed into care,[664] are prohibited from adopting. These restrictions stem from the requirements placed on adoptive parents regarding their ability to raise a child.[665]

Noteworthy is also the issue of joint adoption. As a main rule, only married couples can adopt a child under the Hungarian Civil Code (section 4:121 § (1) *in principio).*[666] This structure arises from the need to provide the child with a stable family environment

[661]Barzó and Kriston, forthcoming.

[662]See section 4:191 CC on judicial termination of the parental custody:(1) The court shall terminate parental custody if a) the parent is at fault in seriously harming or jeopardising the interests of the child, in particular the physical well-being, mental or moral development of the child; or b) the child is placed with another person or taken into foster care, and the parent whose parental custody rights are suspended, is at fault in not changing his conduct, lifestyle and circumstances giving rise to the child's placement or foster care. (2) If the parent has been sentenced by the court to imprisonment for an intentional criminal offence committed against the person of any of his children, the court may terminate the parent's parental custody with regard to all of the children of the parent. The court may provide that the scope of the decision on such termination shall also apply to any child to be born later on.

[663]See section 61 on exclusion from participating in public affairs of the Act C of 2012 on the Criminal Code (in Hungarian: 2012. *évi C. törvény a Büntető Törvény könyvről*): A person shall be excluded from participating in public affairs if he is sentenced to imprisonment to be served for committing an intentional criminal offence and he is unworthy of participating in public affairs. (2) A person excluded from participating in public affairs a) shall be excluded from the right to vote and to be voted for and may not participate in a referendum or popular initiative, b) shall not be a public officer c) shall not be a member of, or participate in the work of, a body or committee of an organ of popular representation, d) shall not be delegated to the general assembly or a body of an organisation established by an international treaty promulgated in an Act, e) shall not hold a military rank, f) shall not receive a domestic distinction and may not be permitted to accept a foreign distinction, g) shall not serve as a defence counsel or legal representative in an official procedure, h) shall not hold a position in a statutory professional body or public foundation, and i) shall not be an executive officer of a non-governmental organisation as defined by the Act on non-governmental organisations. (3) Upon the conclusive decision becoming final and binding, the person excluded from participating in public affairs shall be deprived of all memberships, jobs, positions, military ranks, mandates and distinctions which are excluded by paragraph (2), as well as all titular ranks.
English translation of the Act Cof 2012 on the Criminal Code available at the webpage of the Hungarian National Legislation Databasehttps://njt.hu/jogszabaly/en/2012-100-00-00[last accessed: 5 November 2024].

[664]Child protection measures are regulated by the Act on Protection of Children and Guardianship Administration, see, e.g., section 78 § (1) subsection (aa):The guardianship authority shall take the child into foster care if the child's development is endangered by his/her family environment and the endangerment could not be eliminated by the services provided in the framework of basic care and by taking the child into protection, or if the child's proper care cannot be ensured within his/her family.
The rule provided in the section 78 § (1) subsection (aa) of the Act on Protection of Children and Guardianship Administration has been translated for informational purposes using deepl.com.

[665]Barzó and Kriston, forthcoming.

[666]Section 4:121 § (1) *in principio* CC: With the exception of adoption by blood relatives and by the spouse of the parent as well as the case referred to in paragraph (4), only spouses shall be allowed to adopt a child.
See also Section 4:121 § (4) CC: Exceptionally, in an event specified by an Act and deserving special consideration, and in accordance with a procedure laid down in a government decree, the suitability for adoption of a person who wishes to solely adopt as determined therein may also be established.

and predictable life conditions, combined with the legislator's conviction that adoption by a married couple is the most suitable mean to achieve this.[667]

The following remarks will primarily concern the private law aspects of adoption that are relevant to the protection of the child's identity, especially those regulated in the Hungarian Civil Code. One should emphasize that its Family Law Book explicitly addresses the issues of the adopted child's name and surname, the importance of continuity in upbringing, as well as the child's right to know their origins. Specifically, the issues related to the child's identity in the context of the establishment and continuation of domestic adoption relationships will be addressed.

### 2.2.2. Types of Adoption under Hungarian Law

The Hungarian law distinguishes between different types of adoption, which affect the issue of secrecy of adoption and therefore also the child's access to information about their origins. It is a differentiation between open and secret adoption (also referred to as closed or confidential adoption).[668]

As noted by Edit Sápi: 'The Hungarian legislator approaches these two forms from the viewpoint of parental consent.'[669]The issues of open adoption are regulated by section 4:125 of the Civil Code,[670] while the secret adoption in the following section 4:126.[671]

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[667]See more, e.g. Barzó and Kriston, forthcoming and quoted sources.
See also, section 4:120 § (5)*in fine* CC: In the interest of the minor child, the guardianship authority shall primarily authorize adoptions by adoptive parents living in marriage.
[668]Sápi, 2022, p. 180.
[669] Ibid., p. 181.
[670]Section 4:125 CC: (1) An adoption shall be an open adoption if the biological parent grants consent to the adoption with regard to an adoptive parent known by the parent.(2) The parent may withdraw that declaration of consent within six weeks of the child's birth, with the view to the child be raised by the parent or another relative. The parent shall be notified of the possibility to withdraw the declaration.(3) If the parent has consented to the adoption, the parental custody right of the parent shall be terminated upon the child reaching six weeks of age. The termination of parental custody shall be established by the guardianship authority. (4) In cases other than adoption by blood relatives or the parent's spouse, the involvement of the local child protection service or an organisation facilitating adoption shall be required for an open adoption even if parental consent is granted.
[671]Section 4:126 CC: (1) An adoption shall be a closed adoption if the biological parent grants consent for the child to be adopted t without knowing the identity and particulars of the adoptive parent or if the parent's consent is not required under this Act. The declaration of consent may be made before the birth of the child. (2) The parent may withdraw that declaration of consent within six weeks of the child's birth, with the view to the child be raised by the parent or another relative. The parent shall be notified of the possibility to withdraw the declaration. (3) If the child has attained the age of six years or is of impaired health, the guardianship authority's approval shall be required for the declaration of consent to be valid. (4) In the case specified in paragraph (2), parental custody shall be terminated upon the child reaching six weeks of age. The termination of parental custody rights shall be established by the guardianship authority. (5) In the event of closed adoption, the parent shall not be notified of the adoption and shall not be entitled to appeal against

Edit Sápi further points out the main features of adoption types and the differences between them:

> 'According to the Civil Code, open adoption means when the biological parent approves the adoption of an adoptive parent known to them. In this case, the parent may withdraw their statement of consent within a period of six weeks following the birth of the child for the benefit of caring for and raising of the child by the parent or another relative of the child. The parents will be informed of the possibility of withdrawal. On the contrary, confidential adoption occurs when the biological parent agrees with the adoption of their child in a manner that maintains the confidentiality of the person and the identifying information of the adoptive parents, or where the parent's consent is not required in accordance with this act. A statement of consent can be made before the birth of the child. The parent may withdraw their statement of consent within a period of six weeks following the birth of the child for the benefit of caring for and raising the child by the parent or another relative of the child. The parents will be informed of the possibility of withdrawal. If the child is over six years of age or suffers from any mental disorder, the approval of the guardian is required for the validity of the statement of consent. In the process of confidential adoption, the parent is not notified of the adoption and does not seek remedy against the decision on adoption. In the process of confidential adoption, the natural identification data of the biological parent and the adoptive parent shall not be disclosed to either party.'[672]

The Hungarian law also provides for international (intercountry) adoption. It is defined in section 129 § (1) of the Civil Code as an adoption following which the child is permanently relocated to another country, regardless of the adoptive parent's nationality or whether the child's nationality changes.[673] Section 129 § (2) further clarifies the conditions for international adoption, stating that, with the exception of adoption by blood relatives or the spouse of the child's parent, international adoption may be authorized for a child who has been declared available for adoption and placed in care, provided that the child has not been adopted in Hungary due to unsuccessful adoption efforts.[674]

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the decision on adoption. (6) In the event of closed adoption, the biological parent and the adoptive parent shall not be informed of the other's natural identification data.

[672]Sápi, 2022, p. 181.

[673]Section 129 § (1) CC: It shall be an international adoption if the child is permanently moved to another country through the adoption, irrespective of the nationality of the adoptive parent and whether the child's nationality changes or not.

[674]Section 129 § (2): With the exception of adoption by blood relatives or by the parent's spouse, adoption abroad may be authorised regarding a child declared available for adoption and taken into care, provided that the child taken into care and available for adoption has not been adopted in Hungary because the measures taken for his adoption failed to bring any result.

### 2.2.3.Safeguarding Child's Right to Birth Registration and the Right to a Name

The issues related to the registration of a child's civil status, mentioned above in the context of further regulatory steps in Hungarian adoption law,[675] are of considerable importance. They are significant for the protection of the child's identity. Adoption undoubtedly has effects in the areas of parental responsibility, contact, and maintenance obligations,[676] however, as pointed out by Tímea Barzó and Edit Kriston:

> 'The most important legal effect of adoption is that the adoptee is granted a new family status. The adoptee assumes the status of biological child of the adoptive parents, and the adopters have the rights and obligations of the biological parents. In addition, a kinship relationship arises between the adopter and his relatives and the adoptee, to which the establishment of the inheritance relationship is also closely linked.'[677]

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[675]See, section 53 § (6) of the Act IV of 1952 on Marriage, Family, and Guardianship, as amended by the Decree-Law No 17 of 1982 on Civil Status Records, Marriage Registration and Naming (in Hungarian: *1982. évi 17. törvényerejű rendelet az anyakönyvekről, a házasságkötési eljárásról és a névviselésről*): Ifonlythefact of adoption has been entered in thebirthregisterattheexpressrequest of theadoptiveparents, in the event of thedeath of theadoptiveparentsortheirunknownplace of residence, thelegalrepresentative of theadoptedpersonortheadultadopteemayatanytimerequestthattheadoptiveparents be registeredas the biologicalparents.
The content of the section 53 § (6) of the Act IV of 1952 on Marriage, Family, and Guardianship, as amended by the Decree-Law No 17 of 1982 on Civil Status Records, Marriage Registration and Naminghas been translated for informational purposes using deepl.com.
The provisionreferredtothepossibility of a factualadoption, whichmeantthat,atthe explicit request of the adoptiveparents, onlythefact of theadoptionwasrecorded in thebirthregister, whilethebiologicalparentsremainedlistedasthechild'sparents.See more, e.g., Katonáné Pehr, 2018, para. [79].

[676]See principally section 4:133 CC on legal effects on rights and obligations arising from parentage: (1) Upon adoption, the rights and obligations pertaining to parental custody and blood relatives' maintenance arising from lineal kinship shall terminate, unless either spouse adopted the other spouse's child. (2) If a spouse adopts the other spouse's child, and the marriage of which the child was born terminated due to the death of the spouse, the adoption shall be without prejudice to the contact rights of the deceased spouse's blood relatives. (3) If after the death of both parents the child is adopted by a blood relative of a parent, the adoption shall be without prejudice to the contact rights of the other parent's blood relatives. (4) In exceptionally justified cases, in the event of an open adoption, the guardianship authority may grant contact rights to the biological parent who consented to his child's adoption by the other parent's spouse.

[677]Barzó and Kriston, forthcoming.
As to inheritance law implications of adoption, see rules on succession relating to adoption in the Hungarian Civil Code.
Section 7:72 CC: (1) For the duration of the adoption, adopted persons shall inherit as lineal descendants by blood of the adoptive parent after the adoptive parent and their blood relatives. (2) Adoption shall not affect the adopted person's right to inherit under intestate succession after his biological relatives if the adopted person was adopted by his lineal ascendant or sibling or another descendant of his lineal ascendants.
Section 7:73 CC: (1) Primary heirs of an adopted person shall be his descendants and his spouse; his spouse and adoptive parents if the adopted person has no descendants; his adoptive parents and the blood relatives of his adoptive parents if the adopted person has no descendants, in accordance with the rules of intestate succession. The adoptive parents and their blood relatives shall inherit if adoption prevails until the opening of succession. (2) If the persons determined in paragraph (1) do not inherit after the adopted person, his intestate heirs shall be his biological relatives in accordance with the rules of intestate succession, provided that the adopted person was adopted by his lineal ascendant, sibling or another descendant of his lineal ascendant.

As specified in section 4:132 of the Civil Code,[678] the adopted child gains the legal status of the adoptive parent's child, including in relation to the adoptive parent's biological relatives. If a child is adopted by a couple, whether jointly or separately, the child is regarded as the couple's common child. Additionally, when one spouse adopts the child of the other, the child is still considered a common child of the couple. Adoption also impacts the descendants of the adopted child.

This new family status referred to requires appropriate registration. The issue of registration following adoption is partly governed by the Act on Protection of Children and Guardianship Administration and partly under the framework of the Act I of 2010 on Civil Status Registration Procedures.

In the adoption authorization procedure, the guardianship authority informs the adoptive parent that they will be listed as the child's biological parent in the birth register. With this understanding, and except in cases of secret adoption, the adoptive parents—or if the adopted child is over 14, the adoptive parents and child together—may request through a declaration that the birth register retains the original family and given names of the biological parents.[679] From a civil status registration perspective, current Hungarian law provides for two options: biological adoption or factual adoption.[680] In the case of biological adoption, the adoption is recorded as a data change in the civil register, updating affected data fields, including the names of the child's parents, to reflect the adoptive parents' details, thereby listing them as the child's parents in the updated birth registration.[681] In the case of factual adoption, however, the biological parents' names remain in the parent section, while only the fact of the adoption is recorded in the register.

The second key issue is the matter of the adopted child's given name and family name. Recognizing the unique status and integration needs of adopted children, the Hungarian Civil Code outlines specific regulations on the naming of adopted children, distinct

[678]Section 4:132 CC: (1) The adopted child shall have the status of the adoptive parent's child with regard to the adoptive parent and his blood relatives. (2) A child adopted by a couple, either jointly or separately, shall be considered the couple's common child. Adopting the child of one spouse by the other spouse shall also qualify as adoption as common child by a couple. (3) The adoption shall affect the descendants of the adopted child

[679]Section 128/A§ (1) of the Act on Protection of Children and Guardianship Administration.
See also section 128/A§ (2) on the possible withdrawal of the declaration requesting that the birth register include the original family and given names of the biological parents and section 128/A§ (5)-(6) on the option for the later removal of biological parents' information from the register. This allows for the adopted child or adoptive parents to request that the birth register no longer includes the original family and given names of the biological parents.

[680]Katonáné Pehr, 2018, para. [80].

[681]Barzó and Kriston, forthcoming.

from the general naming rules applicable to children under parental care.[682] These specialized provisions reflect the Civil Code's commitment to fostering a sense of belonging for adopted children within their adoptive families.[683]According to section 4:134 § (1) *in principio,* as to a general rule: 'The adopted child shall bear the adoptive parent's family name at birth or the family name acquired by marriage.'[684] All children adopted by the same person should receive the same family name(section 4:134 § (1) *in fine* CC). This rule promote family unity.[685] As stipulates section 4:134 § (2) of the Civil Code, in the case of joint adoption, the adoptive parents are required to specify in the adoption application which surname of the adoptive parents will be assigned to the child.[686] However, in the context of respect for the child's original identity, it is important to highlight that the guardianship authority may exceptionally authorize the adopted child to bear the family name they have borne that far. For instance, this may be the case of the older child, using their previous surname for a long time or in cases where a relative adopts the child, often for sentimental or commemorative reasons.[687] This situation is governed by section 4:134 § (3) of the Civil Code.[688]

Typically, a child's given name remains unchanged after adoption, as inferred *a contrario* by section 4:134 § (4) of the Civil Code.[689] This section states that, in exceptionally justified cases, the guardianship authority may authorize a change to the adopted child's given name. In such cases, the given name shall be determined by the adoptive parents (section 4:134 § (4) *in fine* CC). Additionally, subsequent section

[682]Kralovánszky, 2021, p. 873.
[683]Ibid.
[684]Section 4:134§ (1) CC: The adopted child shall bear the adoptive parent's family name at birth or the family name acquired by marriage, excluding where the adoptive parent bears the spouse's full name or family name with a suffix indicating marital status. If the adoptive parent bears the name of her spouse or former spouse without a suffix indicating marital status or the joint family names of both of them as married name, the new family name of the adopted child shall be, at the choice of the adoptive parent, the family name of the spouse, former spouse, the joint family name or the adoptive parent's name at birth. More than one child adopted by the same adoptive parent shall all bear the same family name.
[685]Kralovánszky, 2021, p. 873.
[686]Section 4:134§ (2) CC: In the event of an adoption as a common child by a couple, the adoptive parents shall state in their application for adoption which adoptive parent's family name the adopted child shall bear. Upon the agreement of the adoptive parents, the adopted child may bear the family names of the adoptive parents jointly, even if the adoptive parents have not joined their family names. If the spouses have not adopted the child jointly, in the absence of their agreement, the child shall bear the family name of the adoptive parent who was the first to adopt the child.
[687]Kralovánszky, 2021, p. 873.
[688]Section 4:134 § (3) CC: The guardianship authority may exceptionally authorise the adopted child to bear the family name he has borne that far.
[689]Section 4:134 § (4) CC: (4) In exceptionally justified cases, the guardianship authority may authorise that the adopted child's given name be changed. The given name shall be determined by the adoptive parents.

4:134 § (5) specifies that both the adopted child's family name and given name shall be determined simultaneously with the authorization of the adoption.[690]

Nevertheless, one should note the serious concerns regarding the changing of a child's given name. According to Lilla Kralovánsky:

> 'Generally, adoption results in a change of the family name, and adoptive parents often request a change in the child's first name as well, driven by emotional considerations, such as a desire to sever the last connection to the child's previous family. Some adoptive parents may simply request the addition of another first name, explaining that it is one they would have chosen had the child been their biological child. However, some professionals disagree with the idea of fully changing the first name, as the first name is a fundamental component of the child's sense of identity. For this reason, changing the first name may not be advisable, even for an infant. For an older child who has identified with their first name for several years, such a change could cause significant disruption to their personal development.'[691]

It is therefore worth noting that under the Hungarian Civil Code it is possible for a child to retain their previous surname, albeit exceptionally. On the other hand, it is exceptional to change a child's given name in justified cases. This corresponds to the nature of a surname being an expression of belonging to a family that is changed as a result of adoption. A given name of a particular child, however, is not necessarily an expression of family affiliation.

### 2.2.4. Protecting Child's Cultural, Ethnic or Religious Identity (Continuity in Upbringing)

A child's past is deeply connected to their present, and experiencing a continuous life path is fundamental for developing a healthy adult personality.[692]In many cases, a child's identity may be rooted in their culture, traditions, religious affiliation, or linguistic background.[693] In the context of providing continuity in these areas, under Hungarian law, section 4:120§ (3) of the Civil Code is of key significance.[694] It constitutes one of the general conditions for adoption. It applies both to domestic and international adoption.[695] This is a provision

[690]Section 4:134 § (5) CC: The adopted child's family and given name shall be determined simultaneously with the authorisation of the adoption.
[691]Kralovánszky, 2021, p. 873; citation translated by chatgpt.com.
[692]Katonáné Pehr, 2018, para. [21].
[693]Ibid.
[694]Section 4:120 § (3) CC: During adoption, desirable continuity in the child's upbringing shall be sought, taking into account in particular the child's family relationships, nationality, religion, mother tongue and cultural roots.
[695]Katonáné Pehr, 2018, para. [21].

of domestic origin, which corresponds in normative content to Article 20 para. 3 *in fine* of the CRC.[696]

Noting the important role of the cultural, ethnic, religious, or linguistic background of each individual, including a child placed for adoption, certain significant concerns should be considered, which guardianship authorities may encounter. Erika Katonáné Pehr concluded that:

> '(...) ensuring continuity of religion or culture does not necessarily serve the child's best interests if the child was separated from their parents due to harmful religious or cultural practices. Secondly, as the child's capacities evolve, their freedoms of religion, expression, and association require respect. The guardianship authority must evaluate these matters carefully.'[697]

### 2.2.5. Child's Right to Know their Origins (Parentage)

It is important to emphasize once again the distinction between the different forms of adoption under Hungarian law, particularly in relation to the child's right to know their origins. Confidential adoption presents particular challenges with regard to issues of the child's identity. In this form of adoption, neither the biological parent nor the adoptive parent is provided with any personally identifying information about the other.[698] A subcategory of confidential adoption exists in cases where parental consent is not required, typically occurring in the most serious circumstances. [699]

From a different perspective, Hungarian law explicitly addresses the adopted child's right to know their biological parentage, section 4:135 of the Civil Code governs this matter. A separate provision, section 4:136, regulates the adopted child's and their legal representatives' access to information regarding the biological parent's medical data.

It is important to note that under Hungarian law, a child's access to information about their original identity does not involve direct access to civil status records,

[696]Art. 20 para. 3 *in fine* CRC: When considering solutions [to provide alternative care to a child], due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.
[697]Katonáné Pehr, 2018, para. [21] and quoted sources; citation translated by the Author.
[698]Kralovánszky, 2021, p. 864.
[699]Section 4:127 § (1) CC on adoption without the parent's consent: (1) The consent of the parent a) who is subject to a final and binding judgment terminating parental custody; b) whose child taken into foster care has been declared available for adoption by the guardianship authority; c) who has no capacity to act on any ground other than minority; d) whose identity is unknown, or whose whereabouts are unknown, and the search measures have failed to bring any result; or e) who left, without revealing identity, the child in a place designated for this purpose in a healthcare institution with a view to having the child brought up by others, and does not claim the child within six weeks shall not be required for the adoption.

as the procedure for requesting information is different.[700] As to the adopted child's right to know their biological parentage, section 4:135 § (1) of the Hungarian Civil Code safeguards that an adopted child may request information from the guardianship authority regarding their adoption status, the existence of biological parents and siblings, and, upon reaching 14 years of age, the personal identification data of these relatives. A child aged 14 or older may submit this request independently, without the consent of a legal representative. This right is communicated to all parties during the adoption process. Based on the subsequent § (2), for this information to be provided, the biological parent and siblings must be consulted.[701] If the adopted child is a minor, the adoptive parent or other legal representative must also be consulted. Additionally, obtaining prior consent from a minor sibling's legal representative is required before their consultation. In cases where a biological parent or sibling lacks legal capacity, their statutory representative must be consulted instead. Notably, however, the Civil Code (section 4:135 § (4)) regulates situations in which the identification data of the biological parent and sibling must not be disclosed. Specifically, disclosure of the biological parent's and sibling's identification data is restricted when conducting a hearing with the biological parent, sibling, adoptive parent, or other statutory representative is not feasible due to unknown whereabouts or insurmountable obstacles. Disclosure is also restricted if the biological parent or sibling explicitly declares that their personal identification data must not be revealed. Section 4:135 § (4) (c) addresses the protection of the child's interests, including their physical well-being, as well as their mental and moral development. Importantly, if disclosing the personal identification data of the biological parent and sibling is contrary to the interests of the minor, particularly when the biological parent's custody was revoked by the court due to the parent's actions that seriously harmed or endangered the child's well-being, such information shall not be provided to the adopted child.

The issue of a child's right to know their origins, particularly in terms of identifying biological parents and potentially establishing contact with them, poses unique challenges. A conflict of interests may arise between the child's right to learn about their origins

[700] Barzó and Kriston, fortcoming.

[701] Note, however, section 4:135 § (3) CC: The hearing of the biological parent, sibling, adoptive parent or other statutory representative shall not be required if his whereabouts are unknown or he cannot be heard due to irremovable obstacles. See also section 4:135 § (5) CC: If the biological parent is no longer alive upon the submission of the application under paragraph (1), the natural personal identification data can be disclosed to the adopted child unless the parent already declared in an earlier procedure that he does not consent to the disclosure of his data.

and the biological parents' (especially the mother's) right to privacy.[702] Considering that the circumstances leading to a child's adoption may involve very difficult life situations (such as an unplanned pregnancy or one resulting from an extramarital relationship), safeguarding the privacy of the biological parents (mother) should not be overlooked.[703] Furthermore, over time, the protection of family life for the new family established by the biological parent may also become a significant factor.[704]

Unlike the regime governing natural personal identification data, a different regime applies to information regarding the biological parent's medical data. They cannot be denied in anonymized form if it is in the child's best interest.[705] This is because the child's health and well-being could be significantly impacted by having access to knowledge about any inherited health conditions or diseases the biological parent may have had.[706] According to section 4:136 of the Civil Code, a request regarding this matter may be submitted to the guardianship authority by the statutory representative of an adopted child who has not yet attained the age of 14 or by adopted child under the age of 14 with their statutory representative.[707] Additionally, the request may also be made by the adult adopted child. Upon request, the guardianship authority shall provide the adopted child with information about the biological parent's medical data that is pertinent to their health, without disclosing the natural personal identification data of the biological parent.

## 3. Selected Legal Aspects of Protecting a Child's Right to Identity in the Context of Adoption in the Domestic Legal Regulations of Slovakia and Czech Republic

Considerations regarding the Polish and Hungarian legal systems have been aimed at providing a detailed examination of issues related to the protection of a child's identity within the broader framework of adoption regulations. The following remarks will focus on selected aspects of Czech and Slovak law, specifically from the perspective of protecting a child's identity in the context of adoption.

[702]See, Barzó, 2017, p. 366 and quoted sources.
[703] Ibid.
[704]Ibid.
[705]Kralovánszky, 2021, p. 877.
[706]Ibid.
[707]The statutory representative shall also be notified of the information requested by the adopted child who has reached the age of 14, see section 4:136 *in fine CC.*

The Slovak Republic and the Czech Republic share a history of 70 years as a single state, which consequently included a common regulation of civil and family law.[708] A unified regulation concerning family law was adopted in 1949 (Family Law Act No. 265 of 194),[709] in line with the principles of the socialist state, and was later replaced by the Family Act No. 94 of 1963.[710] Later, as noted by Miriam Laclavíková and Ingrid Lanczová: 'the liberation of family law from the shackles of totalitarian power occurred through several amendments adopted after 1989 (...).'[711] The Family Act of 1963 served as the starting point for the two separate states that emerged on 1 January 1993, following the dissolution of Czechoslovakia. Unlike in Slovakia, matters of family law in the Czech Republic were incorporated into the codification of civil law.[712] The following considerations will be conducted based on the currently applicable Slovak and Czech law, mostly Slovak Act No. 36/2005 on Family from 2005 [hereinafter: Slovak Act on Family][713] and the Czech Civil Code from 2012 [hereinafter: Czech Civil Code].[714]

### 3.1. Slovakia

Similar to Poland and Hungary, the protection of family and children's rights is enshrined in the Constitution of the Slovak Republic of 1 September 1992.[715]As indicated by Lilla Garayová: 'From a sociological perspective, a family is a group of persons connected by marriage,

[708]See, e.g., Laclavíková and Lanczová, 2023.

[709] Family Law Act No. 265 of 194 (*Zákon č. 265/1949 Zb. zo dňa 7. decembra 1949 o rodinnom práve; Zákon č. 265/1949 Sb. zo dňa 7. prosince 1949 o právu rodinném).*

[710] Family Act No. 94 of 1963 (*Zákon č.* 94/1963 Zb. *zo dňa 4. decembra 1963 o rodine; Zákon č.* 94/1963 Sb. *ze dne 4. prosince 1963 o rodině).*

[711]Laclavíková and Lanczová, 2023, p. 160.

For a detailed analysis of the historical development of the institution of adoption in Slovakia and the Czech Republic, refer to further sources, e.g., Garayová, forthcomig.

[712]See, e.g., Králíčková, 2014.

[713]Act No. 36/2005 on Family (*Zákon č.* 36/2005 Z. z. *z 19. januára 2005 o rodine a o zmene a doplnení niektorých zákonov*).

[714]Law No. 89/2012 Coll. Civil Code (*Zákon č.* 89/2012 Sb. *ze dne 3. února 2012 občanskýzákoník*).

English translation of the Law No. 89/2012 Coll. Civil Code available at the webpage of the Ministry of Justice of the Czech Republic http://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf[last accessed: 31 January 2025].

[715]English translation of the Constitution of the Slovak Republic of 1 September 1992, as amended (*Ústava Slovenskej republikyz 1. septembra 1992,* Act no. 460/1992 Coll.), available at the webpage of the Office of the President of the Slovak Republichttps://www.prezident.sk/upload-files/46422.pdf [last accessed: 31 January 2025].

See, Section 41: (1) Matrimony, parenthood, and family shall be protected by the law. Special protection of children and minors shall be guaranteed. (2) A pregnant woman shall be guaranteed a special treatment, protection in employment, and adequate working conditions. (3) Equal rights shall be guaranteed to h children born both in a legitimate matrimony and those born out of lawful wedlock. (4) Childcare shall be the right of parents; children shall have the right to parental upbringing and care. The rights of parents may be limitedand minor children may be separated from their parents against the parents' will only by a court decision, based on the law. (5) Parents taking care of their children shall have the right to assistance provided by the State. (6) Details on the rights pursuant to paragraphs 1 to 5 shall be laid down by a law.

blood, or adoption, who form one household and interact with each other; they are usually spouses, parents, children, and siblings.'[716]In this context, the institution of adoption is significant as it fully replicates the relationship between parents and children, serving as a mechanism to provide minor children with the care, affection, and education they may lack from their biological parents.[717]

As mentioned above, the source of regulation for this issue is the Slovak Act on Family, with a significant 2015 amendment[718] aimed at enhancing the protection of the best interests of the child.[719]Summarizing the evolution of the institution of adoption in Slovak legal order, Lilla Garayová notes:

> 'The shift from a strictly private law institution, focused on contractual agreements and civil law consequences, to a more inclusive and welfare-oriented legal framework underscores a significant reorientation towards the best interests of the child. Today's adoption laws, which prioritize the provision of a nurturing family environment for children, represent a departure from earlier practices. This evolution signifies a broader legal and societal recognition of adoption as a vital instrument for child welfare, reflecting changing values and understandings of family and care. Through this expansive view of adoption's legal development, we gain insight into the dynamic interplay between law, societal values, and the evolving conception of family.'[720]

In addition to the key Act on Family mentioned above, courts also apply the Civil Non-Dispute Procedure Code[721] to the procedural aspects of adoption. The Act No. 305/2005 Coll. on Social-Legal Protection of Children and Social Guardianship is also significant.[722] From the perspective of protecting the child's identity, the Act No. 300/1993 Coll. on Names and Surnames [hereinafter: Slovak Act on Names and Surnames][723] and the Act No. 154/1994 Coll. on Registry Offices[724] is relevant. With regard to certain aspects of adoption, Act No.

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[716]Garayová, 2021, p. 247.

[717] Garayová, 2021, p. 222.

According to Section 97 (1) of the Slovak Act on Family: Adoption creates the same relationship between adopter and adoptee as between parents and children. Adoption creates a kinship relationship between the adoptee and the adopter's relatives. Adoptive parents shall have the same responsibilities and the same rights and duties as parents in bringing up their children.

[718] Act No. 175/2015 Coll. (*Zákon č.* 175/2015 Z. z.*z 26. júna 2015 ktorým sa mení a dopĺňa zákon č. 36/2005 Z. z. o rodine a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a ktorým sa menia a dopĺňajú niektoré zákony).*

[719]See, e.g., Garayová, 2021, p. 222.

According to Section 99 (2) of the Slovak Act on Family: Only a minor can be adopted if the adoption is in the minor's best interests.

[720]Garayová, forthcoming.

[721]Act No. 161/2015 Coll. (*Zákon č.* 161/2015 Z. z. *z 21. mája 2015 Civilný mimosporový poriadok).*

[722] Act No. 305/2005 Coll. on Social-Legal Protection of Children and Social Guardianship (*Zákon č. 305/2005 Z. z. z 25. mája 2005 o sociálnoprávnej ochrane detí a sociálnej kuratele)*.

[723] Act No. 300/1993 Coll. on Names and Surnames (*Zákon č. 300/1993 Z. z. z 24 septembra 1993 o menei priezvisku).*

[724] Act No. 154/1994 Coll. on Registry Offices (*Zákon č. 154/1994 Z. z. z 27. mája 1994 o matrikách*).

40/1993 Coll. on the Citizenship of the Slovak Republic[725] and Act No. 97/1963 Coll. on Private International Law and Procedure[726] is relevant in the case of international adoption. However, their provisions will not be discussed here. Furthermore, one should remember that Slovakia has been a party to international agreements in the field of human rights and children's rights, including the Convention on the Rights of the Child, since 28 May 1993.[727] It guarantees, among other provisions, continuity in upbringing, preserving the child's identity. In the Slovak context, the need for special attention in alternative care, particularly in linguistic matters, applies to children from national minorities, especially those of Hungarian or Roma origins.[728]

Irrevocable and full adoption is the primary and prevailing legal model in Slovak law.[729] Another mechanism ensuring the stability of the child's situation is prioritization of adoption by married couples and the exclusivity of joint adoption to them.[730]Additionally, an appropriate age gap must exist between the adopter and the adoptee.[731] Meanwhile, a mechanism safeguarding a child's right to be heard is the recognition of their procedural capacity. If the minor child is able to comprehend the implications of the adoption, their consent to adoption is necessary.[732]

Among the effects of adoption relevant to the protection of the child's identity, changes in the child's civil status are particularly significant. According to Section 108 of the Slovak Act on Family, the adoptive parent is registered in the civil registry in place

[725] Act No. 40/1993 Coll. on the Citizenship of the Slovak Republic (*Zákon č. 40/1993 Z. z. z 19. januára 1993 o štátnom občianstve Slovenskej republiky*), see particularly section 6.
[726] Act No. 97/1963 Coll. on Private International Law and Procedure (*Zákon č. 97/1963 Zb. zo 4. decembra 1963 o medzinárodnom práve súkromnom a procesnom*), see particularly sections 25 to 27 and 41 to 41a.
[727] See status available at the United Nations Treaty Collection website: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4 [last accessed: 16 November 2024].
[728] Sixth Periodic Report of the Slovak Republic on the Implementation of the Convention on the Rights of the Child, para. 58; available on the website of the Ministry of Foreign Affairs of the Republic of Slovakia: https://mzv.sk/web/sk [last accessed: 31 January 2025].
[729]Garayová, forthcoming.
[730]Section 100 Slovak Act on Family: (1) Minor children may be adopted by spouses or by a spouse who is married to one of the parents of the child, or by the surviving spouse of the parent or adopter of the minor child. Exceptionally, a single person may also adopt a minor child if the conditions are met that the adoption would be in the best interests of the child.(2) Only spouses can adopt a minor as a joint child.(3) If the adoptive parent is the spouse of the parent of the minor child, he/she may adopt the minor child only with the consent of the other spouse; consent is not required if the other spouse has lost legal capacity or if the obtaining of consent involves an insurmountable obstacle.
[731]Section 99 (4) Slovak Act on Family: There must be an appropriate age difference between the adopter and the adoptee.
[732]Section 101 (4) Slovak Act on Family: If the minor child is capable of assessing the impact of the adoption, his or her consent is also required.

of the adoptive parent upon notification by the court.[733] Additionally, according to section 105 of the Slovak Act on Family, the adoptee will take the surname of the adopter.[734] In the case of joint adoption by spouses, the adoptee will have the surname chosen by the couple at the time of their marriage, as applicable to their other children. This rule also applies if the adopter is the husband of the adoptee's mother. Also, a change of the child's given name is possible. Under section 12 of the Slovak Act on Names and Surnames, adoptive parents have the right, within six months of the finalization of the adoption decision, to change the given name of the adoptee recorded in the civil registry or to assign an additional name through a written declaration of consent. If the adoption is by a single individual, this right is granted to that individual. However, if the adoptee is over 15 years old, written consent with an officially certified signature is required for this change.

In the context of the child's access to information about their origins, section 106(3) of the Slovak Act on Family is significant. If it serves the best interest of the adoptee, the adoptive parents may grant the adoptee access to information about their biological parents or share any relevant information in their possession, unless otherwise specified by a special regulation.[735]

However, comparing Slovak solutions with international requirements, particularly those of the law of the European Convention on Human Rights, Lilla Garayová notes:

> 'The legal mechanisms for ensuring a child's right to know their origins are critiqued for being insufficiently robust, as evidenced by the limited expression of this right in the Family Act, particularly noted in Article 106(3). This gap highlights a broader challenge within the legal framework to fully actualize the child's right to familial connection and identity preservation.'[736]

The same author even advocates for an explicit obligation for parents to inform the adopted child about the reality of their adoption.[737]

[733]Section 108 Slovak Act on Family: The adoptive parent is registered in the civil registry in place of the adoptive parent upon notification by the court.
[734]Section 105 Slovak Act on Family: The adoptee will have the surname of the adopter. The joint adoptee of the spouses shall have the surname determined by the declaration of the betrothed at the time of the marriage in accordance with Section 6(3) and (4) for the other children. This also applies if the adopter is the husband of the adoptee's mother.
[735]Section 106 (3) Slovak Act on Family: If it is in the interest of the adoptee, the adoptive parents may give the adoptee access to information about his/her parents or provide information in their possession, unless a special regulation provides otherwise.
[736]Garayová, fortcoming.
[737]Ibid.

3.2. Czech Republic

Similarly to the previously analyzed countries, the legal framework of the Czech Republic includes a constitutional basis for the protection of the family and the child. In this context, it is worth mentioning Article 32 of the Czech Charter of Fundamental Rights and Freedoms of 16 December 1992.[738] The Czech Republic is a party to international agreements on children's rights and adoption, such as the Convention on the Rights of the Child.[739]

As Soňa Vávrová and Jitka Vaculíková point out: 'Adoption is the most crucial intervention into a minor's life, mainly regarding his/her future development. In most cases, adoption is an irreversible act which determines the future life path of an individual,'[740] which is highly significant in the context of a child's identity. The Czech Civil Code explicitly states that family relationship is based on consanguinity or adoption.[741] Zdeňka Králíčková notes that the institution of adoption is 'constructed as a status change.'[742] It is the Czech Civil Code, which incorporates family law regulations in Book Two, that serves as the primary legal source for matters concerning adoption. As Denisa Kotroušová specifies:

> 'The provisions regarding adoption are S 794-854 CC. A complementary regulation can be found in the Act on the Social and Legal Protection of Children,[743] which deals primarily with the public law aspects of adoption – e.g. keeping a register of the prospective adoptive parents, mediation of adoption, or immediate help to the child's natural family so that the child can stay with them and doesn't have to be adopted. Another important statute is the Act on Special Civil Proceedings,[744] which regulates the court proceedings that accompany the adoption process. The whole adoption process takes place in multiple shorter court proceedings which follow on from the previous ones. The Civil Code and the Act on Special Civil Proceedings

[738]English translation of the Czech Charter of Fundamental Rights and Freedoms of 16 December 1992, as amended (*Listina základních práv a svobod,* Act No. 2/1993 Coll.), available at the webpage of the Chamber of Deputies, Parliament of the Czech Republichttps://www.psp.cz/en/docs/laws/listina.html [last accessed: 31 January 2025].
Article 32: (1) Parenthood and the family are under protection of the law. Special protection of children and adolescents is guaranteed. (2) During pregnancy women are guaranteed special care, protection in labour relations, and appropriate working conditions. (3) Children born in as well as out of wedlock have equal rights. (4) Care of children and their upbringing are the right of their parents; children are entitled to parental upbringing and care. Parental rights may be limited and minor children may be taken away from their parents against the latter's will only by judicial decision on the basis of law. (5) Parents who are raising children are entitled to assistance from the State. (6) Detailed provisions in this respect shall be set by law.
[739]See, e.g., Gojová et al., 2020; Cilečková, Chrenková and Kornel, 2024.
[740]Vávrová and Vaculíková, 2019, p. 85.
[741]Section 771 Czech Civil Code: Family relationship is a relationship between persons based on consanguinity or adoption.
[742]Králíčková, 2021, p. 94.
See Section 794 Czech Civil Code: Adoption is to be understood as taking a person of another to be one's own.
[743]Act no. 359/1999 Coll., on the Social and Legal Protection of Children, as last amended (*Zákon č. 359/1999 Sb. ze dne 9. prosince 1999 o sociálně-právníochranědětí*).
[744] Act no. 292/2013 Coll., on Special Civil Proceedings, as last amended (*Zákon č. 292/2013 Sb. ze dne 12. září 2013 o zvláštních řízeních soudních*).

are very closely linked with regard to adoption. The former lays down the rules for adoption and the latter ensures that these rules are respected and fulfilled'.[745]

In addition to the above, it is also worth mentioning Act No. 301/2000 Coll., on Registers, Name and Surname, which is applicable in the Czech Republic to matters of civil status registration, including the legal consequences of adoption.[746]

In Czech law currently in force, the aim of ensuring the irrevocability of adoption is of significant importance.[747] Similar to the previously discussed countries, joint adoption is available to married couples.[748] The case law of the Constitutional Court of the Czech Republic also supports joint adoption by spouses as the preferred form.[749] The principle of *adoption naturam imitatur* is also supported by the requirement of an age difference between adoptive parents and children,[750] which, according to the Czech Civil Code, is typically set at 16 years.[751]

The Czech Civil Code provides for the protection of a child's right to be heard in adoption proceedings, taking into account the child's evolving capacities, with the age of 12 serving as a significant threshold in this regard.[752]

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[745] Kotroušová, 2023, p. 127.

[746] Act No. 301/2000 Coll., on Registers, Name and Surname (*Zákon č. 301/2000 Sb. ze dne 2. srpna 2000 o matrikách, jménu a příjmení a o změně některých souvisejících zákonů*).

[747] Section 840Czech Civil Code:(1) If justified by important reasons, a court shall, on the application of an adoptive parent or adopted child, cancel the adoption; if the application is filed by only one of them, the other may join the application. (2) Adoption may not be cancelled after three years from the decision on adoption. This does not apply if the adoption is contrary to a statute.

[748] Section 800Czech Civil Code: (1) Both or one of the spouses may become adoptive parents. In exceptional cases, another person may become an adoptive parent; in such a case a court shall also decide that the entry concerning the other parent is deleted from the registry of births, deaths and marriages. (2) When a child is adopted by spouses, the spouses file the application for adoption jointly as joint adoptive parents.

[749] For instance, in its decision No. Pl. ÚS 10/15, dated 19 November 2015, the Constitutional Court stated that it was neither unconstitutional nor in conflict with the CRC for the legal regulations on adoption to exclude joint adoptions by cohabiting partners. The Court reasoned that: 1. marriage is a more stable relationship than cohabitation, and 2. a child's situation would be better if the marriage ended rather than if a cohabitation ended. See, Kotroušová, 2023, p. 131.

[750] Králíčková, 2021, p. 97.

[751] Section 803Czech Civil Code: There must be a reasonable age difference between the adoptive parent and the child being adopted, typically not less than sixteen years; as an exception, the age difference between the adoptive parent and the child being adopted may be less than sixteen years only where a guardian representing the child in the proceedings consents to the adoption and the adoption is in accordance with the child's interests.

[752] See, Section 806Czech Civil Code: (1) If a child being adopted has reached at least the age of twelve, his personal consent is always required, unless it is beyond any doubt that the procedure requiring the personal consent of the child being adopted is fundamentally contrary to the interests of the child or that the child is not able to consider the consequences of his consent.(2) Before a child being adopted makes a statement, a court shall properly advise him on the purpose, content and consequences of the consent to adoption.
Section 807 Czech Civil Code: (1) If a child has not yet reached the age of at least twelve, the consent to adoption is given by his guardian in his name; a court shall typically appoint a body for social and legal protection of children as the guardian. Before the guardian gives his consent, he shall ascertain all the decisive facts that will lead him to the conclusion that the adoption will be in the interests of the child. (2) Where

As adoption results in a status change, one should remember that following a court ruling on adoption, the adoptive parent or parents are officially recorded as the child's parent(s) in the registry of births, deaths, and marriages.[753] In the case of adoption by spouses, section 832(1) of the Czech Civil Code specifies that a child who has been jointly adopted by spouses or by a spouse of one of the parents has the status of a common child of the spouses. Otherwise, the child has the status of the adoptive parent's child.[754] Additionally, according to the section 835 of the Czech Civil Code an adopted child takes the surname of the adoptive parent, while a child jointly adopted by spouses bears the surname designated for their children at the time of marriage.[755] However, if an adopted child entitled to express their opinion on their surname objects to its change, the court shall rule that the adoptive parent's surname be added to the child's existing surname.[756] It is worth noting again that the Czech Civil Code is a relatively recent regulation, dating back to 2012. In this context, Edit Sápi, clarifies, referring to the work of Zdeňka Králíčkova:

> 'As mentioned above, in Czechia, a new Civil Code was adopted in which new rules affect the consequences of adoption. One rule affects the surname of an adopted child. The Czech legal literature emphasizes that the former rigid rule strictly ordered the change in the child's original surname for the adopters' surname, and this rule was modified.'[757]

In the context of the issue of the continuity of upbringing, section 827 of the Czech Civil Code, which regulates the mutual suitability of adoptive parents and children, is of particular importance. The factors taken into account in the assessment include, among others, the personality rights and health condition of the child, the social environment the child comes from, as well as the rights regarding their personal status, and the ethnic, religious, and cultural environment of both the child and the adoptive parent.[758]

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possible, a court shall also hear the child being adopted and take his statement into account with regard to the degree of his mental development.

[753] Section 797 Czech Civil Code: Based on a court decision on adoption, an adoptive parent or adoptive parents are registered in a registry of births, deaths and marriages as a parent or parents of the child.

[754] Section 832 (1) Czech Civil Code: A child who has been jointly adopted by spouses or a spouse of his parent has the status of a common child of the spouses; otherwise, he has the status of an adoptive parent's child.

[755] Section 835 (1) Czech Civil Code: An adopted child has the surname of the adoptive parent; a common adopted child of spouses has the surname which was determined for their children when entering into marriage.

[756] Section 835 (2) Czech Civil Code: If an adopted child who has the right to express his opinion about his surname disagrees with the change of his surname, a court shall decide that the adopted child will add the adoptive parent's surname to his own surname. If an adopted child has a second surname, the adoptive parent's surname may only be added to the first surname of the adopted child; if the adoptive parent has a second surname, only the first surname of the adoptive parent may be added to the surname of the adopted child.

[757] Sápi, 2022, 179.

[758] Section 827 Czech Civil Code: (1) A court shall decide on handing over the child to the care of the adoptive parent before adoption only after it has undertaken an inquiry to determine whether the child and the adoptive parent are mutually suitable, especially with regard to: a) the personality and health condition of the adoptive

In accordance with section 837 the Civil Code, Czech law provides for a judicial mechanism that allows for the concealment of adoption.[759] Specifically, either the adoptive parent or the adopted child may apply to the court for a decision stipulating that the fact of the adoption and the circumstances surrounding it shall remain confidential from the child's family of origin. Moreover, the principle of confidentiality applies, by analogy, to the identity of the biological parent and their consent to the adoption. However, pursuant to section 838 of the Czech Civil Code, once the adopted individual attains legal capacity, they are legally entitled to request and examine the case file pertaining to their adoption, thereby having access to the information on the circumstances of their origin.[760] Zdeňka Králíčková notes in this regard:

> 'The new legislation (...) establishes the option of adoption and its circumstances to be kept secret from the child's original family. The option of secrecy applies for the child's parents and their consent to adoption (...).However, once the child reaches the age of majority and legal capacity, he or she is entitled to know the details of the adoption file. Regardless of this new rule, the traditional regulation on vital registers allows adoptees over 18 years old to inspect the registry books and collections of documents. This is evidence that adoption has never been explicitly based on the principle of anonymity.'[761]

From a perspective of an intra-family relationships, the Czech Civil Code affirms the principle of openness in adoption towards the adopted child. It includes a specific provision requiring adoptive parents to inform the child about their adoptive status as soon as it is reasonably appropriate given the child's level of maturity, and no later than the commencement of compulsory school attendance.[762]

Also, a provision that is a unique feature of Czech law concerns both adoption and surrogate motherhood, albeit indirectly.[763] According to Section 804 of the Czech Civil

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parent and his social environment, in particular housing and household, as well as the adoptive parent's ability to care for the child and his motives for adoption, b) the personality rights and health condition of the child, social environment the child comes from, as well as the rights regarding his personal status, c)ethnic, religious and cultural environment of the child and the adoptive parent, d) the period for which the child was in the care of the adoptive parent. (2) If one of the spouses wishes to adopt a child, a court shall ascertain the reason why the other spouse has not joined the application.

[759] Section 837 Czech Civil Code: (1) An adoptive parent or adopted child may apply to the court for a decision that adoption and its circumstances be kept secret from the original family of the child. This applies, by analogy, to the secrecy of a blood parent and his consent to adoption. (2) Even where adoption and its circumstances or a blood parent and his consent to adoption were kept secret, a court may decide on its disclosure if justified by a very serious situation threatening the life or health of the adopted child.

[760] Section 838 Czech Civil Code: Once an adopted child acquires legal capacity, he becomes entitled to become familiar with the contents of the file on his adoption proceedings.

[761] Králíčková, 2014, p. 89.

[762] Section 836 Czech Civil Code: An adoptive parent is required to inform the adopted child of the adoption as soon as it seems appropriate, but no later than by the start of school attendance.

[763] Section 804 Czech Civil Code: Adoption is excluded among persons related in direct line and between siblings. This does not apply in the case of surrogate motherhood.

Code, adoption is generally prohibited between individuals who are directly related or are siblings. However, an exception is made in cases involving surrogacy. As Denisa Kotroušová explains, the lawmakers were evidently aware of the existence of surrogacy as a practice, yet they either considered it irrelevant to the Czech context or deliberately chose not to provide a comprehensive legal framework for it.[764] This ambivalent stance is reflected in their approach: while refraining from formal regulation, they nevertheless acknowledge surrogacy's existence.[765] The inclusion of surrogacy in Section 804 of the Civil Code points to its factual occurrence—past, present, and likely future—within the Czech Republic.[766] Kotroušová refers to a case involving a young woman who, due to serious health complications, was unable to carry a pregnancy.[767] Her mother volunteered to act as a surrogate and underwent IVF using her daughter's egg.[768] In accordance with the Roman legal principle *mater semper certa est*, the woman who gave birth—i.e., the genetic grandmother—was legally recognized as the child's mother.[769] As a result, the child's genetic mother was legally registered as the child's sister. In the absence of a legal exception to the prohibition of adoption between close relatives or siblings, as contained in Section 804 of the Civil Code, formal recognition of the intended mother's parental status was rendered impossible.[770]

It is also important to note other issues related to adoption that are crucial for the protection of the child's identity, namely anonymous childbirth, mentioned by the law of Slovakia and Czech Republic.

### 3.3. The Issue of Anonymous Childbirth in the Regulations of Slovakia and the Czech Republic

An issue that lies at the intersection of adoption and may ultimately lead to adoption, while being intrinsically related to the child's identity, is anonymous childbirth. This issue in the regulations of Slovakia and the Czech Republic is addressed in both countries' legal frameworks, aiming to protect the identity and rights of women who choose anonymity in relation to childbirth.

[764] Kotroušová, 2023, p. 136.
[765] Ibid.
[766] Ibid.
[767] Ibid.
[768] Ibid.
[769] Ibid.
[770] Ibid.

In Slovak law, the issue is briefly mentioned in Act No. 576/2004 Coll. on Healthcare, Services Related to the Provision of Healthcare.[771] According to its provisions, a woman who has requested in writing to conceal her identity in connection with childbirth is entitled to special protection of her personal data. Additionally, the healthcare professional is obligated to provide counselling to the woman in such a situation. Informed consent must be obtained from the woman who has requested, in writing, to conceal her identity in connection with childbirth. As part of the counselling process, the woman is provided with information regarding the option of placing the child for adoption.

Czech law also addresses the issue of secret birth. However, this issue is described and evaluated in various ways in Czech literature.[772] This practice is regulated by the Act on Health Services, No. 372/2011 Coll.[773] However, this institute has faced strong criticism from scholars, as the concealment of a woman's identity is flawed and contains significant loopholes.[774] Only an unmarried woman, to whom the presumption of paternity does not apply, may request to keep her identity hidden in relation to the delivery and the child she is about to give birth to.[775] Additionally, this applies only to women residing permanently in the Czech Republic.[776] Some commentators consider such solutions to provide insufficient access to concealed birth and fail to adequately consider women's rights. The legal structure is considered inconsistent.[777] The child has no legal mother, yet it receives her surname.[778] Furthermore, the mother's identity may be revealed at a later time, although there are no clear rules regarding the conditions under which this may happen.[779]

In the Czech Republic, as in Poland, non-governmental entities operate .'baby-boxes'.[780] These have also been the subject of criticism by the Committee on the Rights of the Child.[781] It appears that baby boxes are evaluated critically in the Czech Republic,

[771]Act No. 576/2004 Coll. on Healthcare, Services Related to the Provision of Healthcare (*Zákon č.576/2004 Z. z. z 21. októbra 2004 o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov),* see sections 6a; 6b and 11(11).
[772] Králíčková, 2021, p. 95; Lemrová et al. 2021; Cirbus, 2011.
[773]Act on Health Services, No. 372/2011 Coll. (*Zákon č. 372/2011 Sb. ze dne 6. listopadu 2011 o zdravotních službách a podmínkách jejich poskytování*).
[774] Lemrová et al., 2021
[775] Ibid., 36.
[776] Ibid.
[777] Ibid.
[778] Ibid.
[779] Ibid., p. 36.
[780] Králíčková, 2021, p. 95
[781]Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Czech Republic, 4 August 2011, CRC/C/CZE/3-4.

with some scholars even advocating for the nearly absolute nature of the child's right to identity in such cases.[782]

## 4. Partial Conclusion

The comparative analysis of adoption laws in Poland, Hungary, Slovakia and the Czech Republic reveals significant divergences in the recognition and protection of the adopted child's identity. Although all four legal systems aim to ensure the child's integration into a new family, they vary in how effectively they address the child's identity protection, particularly the access to origin-related information. These differences primarily concern the position of the child's identity protection rules within the principles governing adoption in the family law system.

The Hungarian solutions are exceptional compared to the regulations in all four countries, providing the most structured approach. However, the Czech regulation on the mandatory disclosure of adoption to children is unique compared to other countries.

A critical dimension of identity is the treatment of names and surnames. In all four jurisdictions, the child's surname is typically changed to that of the adoptive parents, reflecting legal and social integration. Although given names are generally retained, laws allow for their modification.

The issue of continuity in upbringing is addressed in a very cursory manner by national law.

[782]Cirbus, 2011.

## Conclusion

At the international level, instruments such as the CRC emphasize the importance of preserving a child's identity, including their name or family relations. Additionally, while a systematic body of case law from the ECtHR regarding child's identity issues in adoption has not yet emerged from Central Europe, ECHR remains a powerful interpretive tool in assessing and enforcing these rights.

As no national regulations, the comparison of Polish and Hungarian legal solutions reveals already significant differences in the current legal frameworks of both countries. These differences primarily concern the position of the child's identity protection rules within the principles governing adoption in the family law system.

This specifically pertains to the issue of an adopted child's access to information about their biological family. In Hungary, under the Family Law Book of the Civil Code, the provisions governing this matter constitute an integral part of the regulation of adoption. Additionally, Hungarian law distinguishes between access to non-identifying medical data and identifying information. For the latter, a procedure is in place that requires the consent of the parent(s) and siblings, if any, for the disclosure of information. The absence of such consent effectively prevents the adopted person from obtaining information about their origins beyond non-identifying data. The distinction between non-identifying and identifying data should be assessed positively. It ensures a minimum level of protection for the adopted person, as access to non-identifying data is not subject to additional requirements. The existence of further safeguards protecting the privacy of the biological family is also a positive aspect. This demonstrates the legislator's attempt to strike a balance between the right to know one's origins—which is not an absolute right—and the rights of other individuals, particularly the privacy of the biological family, with the mother at the forefront. However, this is certainly not an ideal solution, as it appears that the privacy of the biological family is given priority. Nevertheless, it is difficult to envision a perfect resolution to this issue. It is worth noting positively, however, that the authority responsible for providing the access to information is the guardianship authority. Consequently, the disclosure procedure aligns with the overall adoption process, in which this authority plays a significant role. The Hungarian solutions are exceptional compared to the regulations in all four countries.

The protection of the right to know one's origins is addressed differently in Polish law. In the author's opinion, this issue is insufficiently addressed. The child's need for access to information about their origins is not explicitly listed among the principles of adoption.

Polish law also does not provide the necessary distinction between identifying and non-identifying data. The issue of knowing one's origins is neither regulated by the Family and Guardianship Code nor discussed in the legal doctrine among the general rules on adoption. On the one hand, the 'right to know one's origins' can be realized without restriction if it is understood as an adult's access to their original birth certificate. This approach provides no protection for the privacy of the biological family against the disclosure of their information. From a different perspective, in the context of adoption principles, the issue of access to information about one's origins does not receive sufficient attention. In the Author's view, the Polish legal framework primarily prioritizes the interests of adoptive parents and the integration of the child into the new family, which is undoubtedly a crucial objective of adoption. However, there are concerns regarding whether the child's best interests, including their right to know their origins to the extent necessary in each specific case, are sufficiently protected. One may conclude that Polish law could better balance the child's right to know their origins with the right to privacy of the biological family. Similarly, as to the interest of adoptive parents in family stability and protection of the identity of a child with a unique history.

Regarding access to the child's original data, both Slovak and Czech law address this matter briefly, and access is limited to civil status records rather than adoption agency documents. Similarly, at least at the level of primary legal acts, Slovak and Czech law do not address the issue of identifying and non-identifying data of biological parents or the scope of their privacy protection. However, the Czech regulation on the mandatory disclosure of adoption to children is unique compared to other countries. Consequently, in Czech law, there is no secrecy of adoption in internal family relations, which is still discussed in Polish legal doctrine.

In the context of continuity in upbringing with respect for cultural, religious, and linguistic identity, the Hungarian Civil Code reiterates the requirements of the CRC, transferring them into the realm of family law provisions. It is difficult to assess whether such a provision, by itself, ensures the protection of the child's original identity. However, once again, the Hungarian legislator, at the level of the Code, signals the existence of this issue. The same applies to the Czech Civil Code, referring to the mutual suitability of future children and adoptive parents.

As to the Poland, in recent decades, it could be considered a state that was almost homogeneous in terms of nationality, religion or language. This has made the issue of respecting the original identity of children in alternative care less pressing and less frequently

subject to specific attention. However, future developments may necessitate changes in this regard. Perhaps, in the Slovak context as well, more attention should be given to this issue by the legislator.

In the context of the child's name, it is commendable that in Central European countries, changing the surname while retaining the given name is considered the rule. This supports the integrity of the new family while respecting the continuity of the child's life under a single name. On the other hand, one can imagine a factual situation in which retaining the child's original surname would be desirable. Under Polish law, such an option is never available, and only a hyphenated surname may be granted. Similarly, the hyphenated surname has been introduced into the Czech Civil Code. In Hungarian law, however, the possibility of retaining the child's original surname exists in exceptional cases. Slovak law regulates in detail the possibility of changing a child's given name. Regarding given names, in the Author's opinion, their change should be an exception, justified by special circumstances.

Especially the case of 'baby boxes' in Poland and the Czech Republic highlights the inconsistency in both practice and its assessment. Relinquishing a child in a designated place may later trigger adoption procedures. The example of legal solutions regarding anonymous childbirth reveals the complex dynamics between various persons and the interests related to the child's origin. This issue is particularly addressed by Czech scholars.

Consequently, the legal provisions governing the protection of a child's identity in the context of adoption vary significantly among selected Central European countries.

The first research question concerned whether identity-related issues form an integral part of adoption law. In Hungarian law, this aspect is clearly embedded within the adoption legal framework. In contrast, Polish law lacks a similarly structured approach. Similarly, Slovak and Czech laws provide only limited provisions in this area. Additionally, the issue of anonymous birth, which is particularly significant from the perspective of identity protection, is not coherently addressed by any of the national regulations.

As for the second research question—whether national law ensures adopted children access to information about their origins—again, Hungary offers the most developed model. It guarantees free access to non-identifying information and introduces a consent-based procedure for accessing identifying data. In the remaining countries, there is a lack of a structured procedure at the level of adoption regulation. Legal provisions do not comprehensively define the mechanisms through which adopted individuals may access information about their origins, nor do they clearly distinguish between identifying and non-

identifying data. Czech law, while not regulating access to origins in detail, supports transparency through the obligation to inform children of their adoption.

The third research question concerned whether national legal systems attempt to balance the interests of the adopted child and the biological family. Here, Hungarian law stands out once again by differentiating between types of data and requiring consent for identifying disclosures, although this framework arguably prioritizes privacy over disclosure. The remaining countries do not address this issue, at least not at the level of adoption-specific legislation.

In all of the countries examined, there is a pressing need for empirical research into the practices of adoption agencies, family courts, and post-adoption support systems. As the Author emphasizes, such research is essential for understanding how identity protection is implemented in practice; however, it remains challenging due to the highly sensitive nature of adoption.

Moreover, the complex nature of adoptive identity—encompassing legal, psychological, and cultural dimensions—demands that adoptive families receive continuous, structured support. This support should be grounded in contemporary psychological research and tailored to the evolving needs of both children and adoptive parents throughout the adoption journey.

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