

CHILD IDENTITY PROTECTION
CHILD'S RIGHT TO IDENTITY IN FAMILY RELATIONS
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CHILD'S RIGHT TO IDENTITY IN FAMILY RELATIONS FROM A EUROPEAN PERSPECTIVE

Olga A. Khazova

Former Member of the UNCRC Committee

CHIP Special Advisor

- UNCRC art. 7, 8: The right to know one's parents and the preservation of the child's identity
 - Identity includes nationality, name and family relations
 - Importance of family relations for a child
 - It is not only the right to live in the family and, as far as possible, to know and be cared for by the child's parents
 - It is also about siblings, grandparents, other family members, the whole family history, and as part of that history – the child's origin, understanding where the child comes from
- 'Knowing the origin' is... about knowledge of the identity of one's parents and the circumstances of one's birth, both of which are, in turn, cast as being a matter of 'personal development', and, as part of this, 'the truth concerning important aspects of one's personal identity'.

Sarah Trotter, Truth and Reality in Family Law / Festschrift-style collection "Family Matters – Essays in Honour of John Eekelaar", Intersentia, 2022. P. 1015; Odièvre v. France, ECtHR, 13 February 2003

- ‘Knowing the origin’ is a matter of ‘personal development’
 - In other words, it is also about the child’s right to development (UNCRC art. 6)
 - Therefore, it is also about healthy emotional life and mental stability
 - Not knowing the origin can affect, or even destroy, the whole child's life, and later as an adult

European perspective – very different family-related issues of child's identity

- Birth registration
- Child abandonment
- Adoption
- ART/surrogacy
- Establishment of parental relations
- Disappearance
- Child abduction
- Parental change of gender
- Living in a new family – keeping the identity
- Children on the Move

- **Birth registration**

- Migrants, refugees, Roma children, remote areas, fees
 - CRC Cmttee COBs: Bosnia and Herzegovina (2019), Georgia (2017), Greece (2022), Italy (2019), Malta (2019), Romania (2017), Russia (2014), Serbia (2017), Slovenia (2013)

- **Child abandonment**

- ECtHR: *Odièvre v. France* (2003), *Godelli v. Italy* (2012)
- Baby-boxes
 - CRC Cmttee COBs: Lithuania (2013), Poland (2015), Hungary (2020), Germany (2022)
 - CRC Cmttee COBs: Netherlands (2022) – no newborns in “baby rooms” w/t info about their mother

- **Adoption**

- Secrecy of adoption; knowing the origin
 - CRC Cmttee COBs: North Macedonia (2022), Russia (2014), Switzerland (2021)

- **Assisted reproductive technologies (ART) / Surrogacy**
 - The position of the CRC Cmttee on child's right to know his/her origin is now clear and unambiguous
 - CRC Cmttee COBs: UK (2002), Ireland (2016), Georgia (2017), Spain (2018), Belgium (2019), Luxembourg (2021), Switzerland (2021)
 - CRC Cmttee COBs: Malta (2019) – commended for granting children born through ART access to information about their origins (the Embryo Protection Act 2013, as amended)
 - OPIC: *J.A.B.S. v Costa Rica*, 5/2016 (Inadmissible) – Surrogacy – children's names

CRC/C/74/D/5/2016

- **Assisted reproductive technologies – Gamete donation**
 - Access of persons conceived by gamete donation to information on their origin (Comparative study prepared by Jean-René Binet, CoE, December 2022)
 - A diverse picture in Europe
 - Non-identifying info, genetic / medical info
 - Donor's identity – usually with the donor's consent
 - The trend – to access info on origin
 - Age – usually from 18; maybe 16 (or earlier) – some restrictions/additional requirements
- **Assisted reproductive technologies – Surrogacy**
 - Where surrogacy is regulated (e.g., Armenia, Belarus, Georgia, Russia, Ukraine) – some info about surrogacy is supposed to be kept in the birth registry, but not always – depends on the circumstances of child's birth registration (e.g., as in Russia)
 - However access to info about the fact of surrogacy and surrogate mother personal info – not regulated / not properly regulated

- **Establishment of parental relations**

- ECtHR: *Marckx v. Belgium* (1979) – maternity
- ECtHR: *Rasmussen v Denmark* (1985), *Mizzi v. Malta* (2006), *Shofman v Russia* (2007), *Novotný v Czech Republic* (2018), *Doktorov v Bulgaria* (2018) – paternity (time limits)

- **Disappearance**

- OPIC: ‘Stolen baby case’ / *Fermín Navarro Presentación and Juana Medina Pascual v. Spain*, No 19/2017 – UNCRC art. 35

CRC/C/81/D/19/2017

- **Child abduction**
 - Non-return of a child usually leads to complete separation with the child's left-behind parent and further – to the loss of all ties
- **Parental change of gender**
 - Consequences for the child – not (properly) regulated
- **Living in residential care – keeping the identity**
- **Children on the Move**

Thank you!