

# **UNIT. 5 Selected issues on personal identity**

Master's programs: Public Law and e-Government

## **COURSE**

**European Standards and Institutional  
Practices of Family and Child's Rights  
Protection**

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- 01 EUROPEAN LEGAL REGULATION AND ELEMENTS OF RIGHT TO BIRTH REGISTRATION AND RIGHT TO A NAME.**
- 02 THE RIGHT TO KNOW ONE'S ORIGINS FALLS WITHIN THE SCOPE OF A CHILD'S PRIVATE LIFE. ESTABLISHING PATERNITY. ESTABLISHING ONE'S ORIGINS (ADOPTION).**
- 03 THE AVOIDANCE OF STATELESSNESS - THE KEY OF THE RIGHT TO A CITIZENSHIP.**
- 04 GENDER IDENTITY OF CHILDREN, ETHNICITY, NATIONALITY, SOCIAL STATUS, RELIGION AND CULTURE IDENTITY - THE COMPONENTS OF THE RIGHT OF PERSONAL IDENTITY OF CHILDREN.**
- 05 FACTORS THAT MAY AFFECT THE VIOLATION OF PERSONAL IDENTITY OF CHILDREN**

# 1. European legal regulation and elements of right to birth registration and right to a name.

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Personal identity deals with philosophical questions that arise about ourselves by virtue of our being people (or as lawyers and philosophers like to say, persons). Outside of philosophy, the term ‘personal identity’ commonly refers to properties to which we feel a special sense of attachment or ownership. My personal identity in this sense consists of those properties I take to “define me as a person” or “make me the person I am”. (The precise meaning of these phrases is hard to pin down.).

United Nation Convention on the Rights of the Child defines in Article 8 that *„States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”* Also, the convention mentions that *„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”*.

# 1. European legal regulation and elements of right to birth registration and right to a name.

Analyzing the norms of the UN CRC, we can identify the following elements of personal identity:

- **Nationality**
- **Name and family relations.**

European legal regulation concerning the right to birth registration and the right to a name involves a multifaceted framework that varies across different jurisdictions within the continent. Unlike certain international agreements explicitly addressing these rights, European legal systems may not uniformly articulate these entitlements in a comprehensive manner.

In the absence of a specific European instrument that explicitly guarantees the right to birth registration and the right to a name immediately after birth, these aspects are typically governed by national laws and regulations of individual European countries. Each member state within the European Union, for instance, maintains its legal framework pertaining to civil registration, including the registration of births and the assignment of names.

# 1. European legal regulation and elements of right to birth registration and right to a name.

In stark contrast to the provisions outlined in various United Nations treaties, such as Article 24(2) „*Every child shall be registered immediately after birth and shall have a name.*” of the International Covenant on Civil and Political Rights, Article 7(1) of the Convention on the Rights of the Child– „*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*”, the human rights instruments within the European context, notably, do not explicitly articulate the fundamental entitlement to birth registration immediately following childbirth or the inherent right to a name from the very moment of birth.

Furthermore, Article 18 of the Convention on the Rights of Persons with Disabilities echoes the sentiment, emphasizing the right to recognition everywhere as a person before the law, including *the right to a name and the right to birth registration.*

# **1. European legal regulation and elements of right to birth registration and right to a name.**

Contrastingly, the pertinent human rights instruments within the European framework lack such explicit provisions, thus rendering the region distinctive in its approach to the recognition of the right to birth registration and the right to a name from birth within the realm of human rights discourse.

The European Convention on Human Rights (ECHR), overseen by the European Court of Human Rights (ECtHR), plays a crucial role in safeguarding fundamental human rights within the European context. While the ECHR does not explicitly address the right to birth registration and the right to a name, it encompasses broader principles, such as the right to respect for private and family life (Article 8), which may indirectly relate to aspects of civil registration.

Moreover, European Union law, through its various directives and regulations, may influence the legal landscape concerning the right to birth registration and the right to a name. However, the specifics often depend on the domestic legislation of each member state, as EU law provides a framework that allows for variations in implementation at the national level.

# **1. European legal regulation and elements of right to birth registration and right to a name.**

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The ECtHR has found that the name as “a means of identifying persons within their families and the community” falls within the scope of the right to respect for private and family life as enshrined in Article 8 of the ECHR. The parents’ choice of their child’s first name and family name is part of their private life. The Court has held that the refusal of state authorities to register a chosen forename based on the likely harm or prejudice that the name might cause the child does not violate Article 8 of the ECHR. However, refusal to register a first name that is not unsuitable for a child and that has already gained acceptance may be in breach of Article 8 of the ECHR.

In summary, the right to birth registration and the right to a name in Europe are primarily regulated at the national level, with variations across jurisdictions. While the European legal framework, including the ECHR and EU law, may indirectly impact these rights, a comprehensive, uniform European instrument explicitly addressing these aspects is currently absent.

## **2. The right to know one's origins falls within the scope of a child's private life. Establishing paternity. Establishing one's origins (adoption).**

The right to know one's origins falls within the scope of a child's private life. Article 8 of the Convention on the Rights of the Child (CRC) affords a comprehensive and detailed level of safeguarding for the right to uphold a child's identity. It shields against unauthorized interference in preserving identity, encompassing nationality, name, and family relations as recognized by law. Additionally, it ensures the provision of "appropriate assistance and protection" in cases where a child is unlawfully deprived of certain or all aspects of their identity, with the objective of promptly reinstating that identity.

Under the law of the Council of Europe (CoE), particularly as interpreted by the European Court of Human Rights (ECtHR), Article 8 of the European Convention on Human Rights (ECHR) encompasses the right to identity and personal development. Article 8 of the ECHR specifically addresses the right to respect for private and family life, home, and correspondence.

## **2. The right to know one's origins falls within the scope of a child's private life. Establishing paternity. Establishing one's origins (adoption).**

The ECtHR has recognized that the right to respect for private life under Article 8 extends beyond mere physical existence and can encompass aspects of personal identity and development. This includes an individual's right to establish and maintain relationships with others, as well as the right to develop one's own identity.

The concept of personal development within the context of Article 8 implies that individuals have the right to shape their own identity, make choices about their personal lives, and pursue personal growth. The ECtHR has considered matters such as personal autonomy, self-determination, and the ability to make choices that are fundamental to one's identity as falling within the scope of Article 8 protections.

It's important to note that interpretations of human rights law can evolve through the decisions of the ECtHR, and the application of these principles may vary depending on the specific facts and circumstances of each case

## **2. The right to know one's origins falls within the scope of a child's private life. Establishing paternity. Establishing one's origins (adoption).**

**Establishing paternity.** The European Court of Human Rights (ECtHR) affirmed that establishing the legal relationship between a child and an alleged natural father falls within the realm of private life, as outlined in Article 8 of the European Convention on Human Rights (ECHR). The court recognized that one's parentage is a fundamental aspect of personal identity. However, the interest of a child in establishing paternity must be carefully balanced with the rights and interests of the presumed father, as well as the broader societal interest.

While a child's interest in legal certainty regarding paternal affiliation is crucial, it does not automatically override a father's legitimate interest in challenging the legal presumption of paternity. The court underscored the need for a nuanced and balanced approach to safeguard the rights of all parties involved.

## **2. The right to know one's origins falls within the scope of a child's private life. Establishing paternity. Establishing one's origins (adoption).**

Analyzing ECtHR practice (*Mennesson v. France*, *Mikulić v. Croatia*, *Canonne v. France*, *Mandet v. France*, etc.) we can mention that ECtHR takes into consideration the best interests of the child, especially in cases involving paternity disputes. Decisions that impact the legal relationship between a child and a putative father are scrutinized in light of the child's well-being. The court has dealt with cases where individuals seek access to information regarding their biological parentage. Denial of access to such information may be challenged under the right to private and family life.

Authorities may have a positive obligation to intervene in proceedings to establish paternity in the best interests of the child if the legal representative (in this case the mother) of the child is unable to properly represent the child.

Concerning the specific issue of acknowledging the relationship between intended parents and children born through surrogacy (ex. *Mennesson v. France*, *Valdís Fjölnisdóttir and Others v. Iceland*, etc.), the Court has acknowledged the broad discretion that states possess, given the absence of a European consensus on permitting or acknowledging affiliation in surrogacy arrangements. However, the recognition that affiliation constitutes a fundamental aspect of a child's identity diminishes this margin of appreciation.

## **2. The right to know one's origins falls within the scope of a child's private life. Establishing paternity. Establishing one's origins (adoption).**

**Establishing one's origins (adoption).** The importance of a child's right to be aware of their origins has become increasingly prominent, especially in the context of adoption. On the international level, the Hague Convention on Intercountry Adoption allows the possibility for an adopted child to access information about their parents' identity "under appropriate guidance," leaving the decision to each State Party.

In accordance with Council of Europe (CoE) law, Article 22(3) of the European Convention on the Adoption of Children (revised) grants an adopted child the right to access information held by authorities regarding the child's origins. It also permits States Parties to confer upon the biological parents a legal right to withhold their identity, provided it doesn't constitute an absolute veto. The competent authority is responsible for determining whether to override the biological parents' right and disclose identifying information, considering the circumstances and respective rights involved. In cases of full adoption, the adopted child must, at a minimum, be able to obtain a document confirming the date and place of their birth.

### **3. The avoidance of statelessness - the key of the right to a citizenship.**

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Article 9 of the Treaty on European Union (TEU) and Article 20 of the Treaty on the Functioning of the European Union (TFEU) confer Union citizenship upon individuals holding the nationality of a Member State. The Court of Justice of the European Union (CJEU) has addressed the efficacy of the right of residence for children with EU citizenship but without the nationality of the EU Member State where they reside. The case involved denying residence rights within the EU to a parent serving as the primary caregiver for a child with EU citizenship. The CJEU determined that refusing residence rights to a parent in such a caregiving role renders the child's right of residence devoid of any meaningful effect.

Thus, the primary caregiver parent possesses the right to reside with the child in the host state. The status of EU citizenship involves specific rights, which are further delineated in secondary legislation, notably the EU Free Movement Directive. This directive is instrumental in enforcing fundamental rights pertaining to the free movement of EU citizens and their families. It also safeguards the rights of secondary beneficiaries, including dependent minor children, and upholds the right to family reunification.

### **3. The avoidance of statelessness - the key of the right to a citizenship.**

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According to Council of Europe (CoE) law, the European Convention on Human Rights (ECHR) does not explicitly ensure the right to citizenship. Nevertheless, an arbitrary denial of citizenship could potentially fall under the purview of Article 8 of the ECHR. This is due to the significant impact such a refusal may have on an individual's private life, encompassing aspects of a child's social identity.

A crucial consideration in treaty provisions addressing the right to acquire citizenship is the prevention of statelessness. The European Convention on Nationality outlines detailed provisions regarding the legal acquisition of nationality by children and imposes restrictions on the circumstances under which children can lose their citizenship. The Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession includes an obligation (Article 10) to prevent statelessness at birth and establishes the right to nationality in the successor state in cases of statelessness (Article 2).

### **3. The avoidance of statelessness - the key of the right to a citizenship.**

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Furthermore, Article 12 of the revised European Convention on Adoption reflects the concern for preventing statelessness. States are obligated to facilitate the acquisition of their nationality by a child adopted by one of their nationals, and the loss of nationality resulting from adoption is contingent upon the possession or acquisition of another nationality.

In the realm of international law, Article 7 of the Convention on the Rights of the Child (CRC) guarantees the right to acquire a nationality, a right also affirmed by Article 24(3) of the International Covenant on Civil and Political Rights.

## **4. Gender identity of children, ethnicity, nationality, social status, religion and culture identity - the components of the right of personal identity of children.**

United Nation Convention on the Rights of the Child defines in Article 29 that „*States Parties agree that the education of the child shall be directed to 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.*”

In various cases before the ECtHR, the right to identity and personal development under Article 8 has been invoked in contexts such as privacy issues, reproductive rights, and matters related to sexual orientation. The court has consistently emphasized the need to balance individual rights with the broader interests of society, but it recognizes the importance of safeguarding an individual's right to shape their own identity within the bounds of the Convention.

The EU Charter of Fundamental Rights guarantees the right to human dignity and prohibits discrimination on various grounds, including sex and sexual orientation (Article 21). While the charter does not explicitly mention gender identity, its provisions on non-discrimination are generally interpreted to include gender, cultural, social or another identity.

## **4. Gender identity of children, ethnicity, nationality, social status, religion and culture identity - the components of the right of personal identity of children.**

Under EU law, the right to personal identity of children encompasses several components, including:

**Gender Identity:** The recognition and protection of the gender identity of children are essential aspects of their personal identity. EU law emphasizes the importance of respecting and safeguarding individuals' gender identity.

EU directives addressing discrimination, such as Directive 2006/54/EC on equal opportunities and equal treatment of men and women in matters of employment and occupation, indirectly impact children by setting standards for equal treatment based on gender.

The EU is committed to upholding the rights of the child, as enshrined in the Charter of Fundamental Rights and international instruments like the United Nations Convention on the Rights of the Child (CRC). While the CRC doesn't explicitly mention gender identity, it emphasizes the best interests of the child and protection from discrimination.

Education policies within EU member states may include measures to promote inclusivity and prevent discrimination based on gender identity. However, the specifics can vary across jurisdictions.

## **4. Gender identity of children, ethnicity, nationality, social status, religion and culture identity - the components of the right of personal identity of children.**

**Ethnicity:** The right to personal identity includes the protection of a child's ethnicity. EU law aims to prevent discrimination based on ethnic background and promotes the equal treatment of all individuals, regardless of their ethnicity.

EU directives, such as Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, establish a framework for combating discrimination on grounds of racial or ethnic origin. These directives indirectly contribute to protecting children from discrimination based on ethnicity.

The EU upholds the principles outlined in the United Nations Convention on the Rights of the Child (CRC). While the CRC itself does not explicitly mention ethnicity, it emphasizes the rights of every child to non-discrimination and protection of their identity.

## **4. Gender identity of children, ethnicity, nationality, social status, religion and culture identity - the components of the right of personal identity of children.**

The General Data Protection Regulation (GDPR) includes provisions related to the processing of personal data, including sensitive data such as ethnic origin. These provisions are relevant when considering the collection and processing of information related to children's ethnicity. CoE member states often adhere to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108). This convention outlines principles related to the processing of personal data, including sensitive information such as racial or ethnic origin.

The ECHR, which is under the auspices of the CoE, prohibits discrimination on various grounds, including race and ethnic origin. While the convention itself does not specifically address children, its provisions on non-discrimination apply to all individuals, including minors.

While there isn't a specific CoE convention dedicated solely to children's ethnicity, other CoE instruments address the rights of children in general. For example, the European Social Charter includes provisions related to children's rights and well-being.

## **4. Gender identity of children, ethnicity, nationality, social status, religion and culture identity - the components of the right of personal identity of children.**

**Nationality:** The right to nationality is a fundamental aspect of personal identity. EU law acknowledges the significance of nationality in determining an individual's legal status and rights within the member states.

Council of Europe (CoE) Law:

The European Convention on Nationality (ECN), adopted by the Council of Europe, provides a framework for the protection of individual nationality rights. While it doesn't specifically focus on children, its provisions impact nationality matters for all individuals.

CoE Convention on the Avoidance of Statelessness in Relation to State Succession contains obligations related to avoiding statelessness, and it may have implications for children's nationality rights, particularly in cases of state succession.

The CoE has conventions related to adoption that may indirectly impact children's nationality. For example, the Revised European Convention on the Adoption of Children contains provisions concerning nationality and the effects of adoption on nationality.

## **4. Gender identity of children, ethnicity, nationality, social status, religion and culture identity - the components of the right of personal identity of children.**

European Union (EU) Law:

The EU Charter of Fundamental Rights prohibits discrimination on various grounds, including nationality. While the charter does not specifically address children's nationality, its principles on non-discrimination apply to all individuals, including minors.

EU citizenship, conferred by the Treaties, is held by every person having the nationality of an EU Member State. This includes children who are nationals of EU Member States.

EU law, particularly the principle of free movement of persons, impacts the rights of individuals, including children, in terms of residence and nationality. The rights of EU citizens and their family members are protected in this context.

EU law on family reunification, Directive 2003/86/EC, may have implications for children's nationality when family members from third countries are involved.

## **4. Gender identity of children, ethnicity, nationality, social status, religion and culture identity - the components of the right of personal identity of children.**

While EU law does not comprehensively regulate nationality matters, there are specific directives addressing certain aspects. For instance, Directive 2014/38/EU on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

Both CoE and EU legal frameworks recognize the importance of nationality and its implications for individuals, including children. National laws of member states, however, play a significant role in the practical implementation of these principles. Always consult the latest legal sources for the most up-to-date information.

## **4. Gender identity of children, ethnicity, nationality, social status, religion and culture identity - the components of the right of personal identity of children.**

**Social Status:** The social status of children, including factors such as socioeconomic background and family situation, is considered a component of personal identity. EU law emphasizes the need for social inclusion and equal opportunities for all children.

Council of Europe (CoE) Law:

The European Social Charter (ESC) contains provisions related to social and economic rights, which indirectly impact the social status of individuals, including children. It addresses issues such as the right to social security, the right to housing, and the right to protection against poverty and social exclusion.

While not exclusively focused on social status, European Convention on the Exercise of Children's Rights emphasizes the protection and promotion of children's rights, including those related to education, health, and social services.

## **4. Gender identity of children, ethnicity, nationality, social status, religion and culture identity - the components of the right of personal identity of children.**

European Union (EU) Law:

The EU Charter of Fundamental Rights includes principles related to social rights and social inclusion. While it does not specifically mention children's social status, it encompasses broader principles that impact social conditions.

The EU has a Strategy on the rights of the child, which covers various aspects of children's well-being, including social conditions, access to education, and protection against poverty and discrimination.

It's important to note that while these legal frameworks and policies address various aspects of social rights and inclusion, specific provisions regarding children's social status may vary across member states. National legislation and policies play a crucial role in implementing and interpreting these broader principles in the context of children's social well-being

## **4. Gender identity of children, ethnicity, nationality, social status, religion and culture identity - the components of the right of personal identity of children.**

**Religion:** Respect for a child's religious identity is part of the right to personal identity. EU law recognizes the importance of freedom of religion and belief, ensuring that children can practice their religion without discrimination.

Both the Council of Europe (CoE) and the European Union (EU) have legal instruments and principles that address issues related to children's religious rights.

Council of Europe (CoE) Law:

The ECHR, under the auspices of the CoE, protects the right to freedom of thought, conscience, and religion (Article 9). This right applies to all individuals, including children, and includes the right to manifest one's religion.

While not specific to children, Framework Convention for the Protection of National Minorities addresses the protection of national minorities, including their right to express, preserve, and develop their religion or belief.

## **4. Gender identity of children, ethnicity, nationality, social status, religion and culture identity - the components of the right of personal identity of children.**

While not exclusively focused on religion, European Convention on the Exercise of Children's Rights emphasizes the protection and promotion of children's rights, including those related to their freedom of thought, conscience, and religion.

European Union (EU) Law:

The EU Charter of Fundamental Rights guarantees the right to freedom of thought, conscience, and religion (Article 10). This right applies to everyone, including children.

The EU Equality Directive (2000/78/EC) prohibits discrimination on various grounds, including religion or belief, in employment and occupation. While this directive primarily focuses on the workplace, it indirectly impacts individuals, including children, by promoting the principles of non-discrimination.

## **4. Gender identity of children, ethnicity, nationality, social status, religion and culture identity - the components of the right of personal identity of children.**

The EU has issued guidelines (EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief) that emphasize the importance of promoting and protecting freedom of religion or belief globally. While these guidelines are not specific to children, they reflect the EU's commitment to these principles.

Both CoE and EU legal frameworks recognize and protect the freedom of thought, conscience, and religion for individuals, including children. It's important to consider that the practical implementation of these rights may vary across member states, and national legislation plays a crucial role in shaping the protection of these rights.

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## **4. Gender identity of children, ethnicity, nationality, social status, religion and culture identity - the components of the right of personal identity of children.**

**Cultural Identity:** The preservation of cultural identity is a crucial element of the right to personal identity. EU law promotes diversity and encourages the protection of cultural rights to ensure that children can maintain their cultural heritage.

These components collectively contribute to the comprehensive understanding and protection of the right to personal identity of children under EU law. The emphasis is on creating an inclusive and diverse environment that respects and upholds the individuality of each child.

## 5. Factors that may affect the violation of personal identity of children.

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Several factors may contribute to the violation of the personal identity of children under European legislation, as observed through analyses of cases by the European Court of Human Rights (ECtHR). These factors often involve a delicate balance between the rights of the child and other legitimate interests. Here are some key considerations:

**Family Separation and Placement:** Instances where children are separated from their families or placed in alternative care may impact their personal identity. European legislation, including the European Convention on Human Rights (ECHR), emphasizes the importance of family life. Decisions affecting custody, adoption, or placement in care institutions must carefully consider the child's identity and well-being.

## 5. Factors that may affect the violation of personal identity of children.

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**Biometric Data and Surveillance:** Advances in technology have raised concerns about the collection and use of biometric data, especially in the context of children. European legislation, such as the General Data Protection Regulation (GDPR), sets out rules for the processing of personal data. Unlawful or excessive use of biometric data may intrude upon a child's right to control their own identity.

**Name Changes and Identity Documentation:** Cases involving changes to a child's name or official documentation may impact their personal identity. European legislation recognizes the right to a name and legal identity. Any restrictions or changes imposed must be in accordance with the law and respect the child's best interests.

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**Education and Cultural Identity:** Educational decisions that interfere with a child's cultural or religious identity may raise human rights concerns. European legislation promotes respect for cultural and religious diversity. Cases involving restrictions on language use or educational practices that impact a child's identity are subject to scrutiny.

**Migration and Asylum:** Children seeking asylum or involved in migration face particular challenges. European legislation, including the ECHR, prohibits arbitrary interference with the right to respect for private and family life. Detention, deportation, or separation of migrant families may impact a child's sense of identity and well-being.

## **5. Factors that may affect the violation of personal identity of children.**

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**Analyzing ECtHR cases provides insights into how these factors are adjudicated. The court often emphasizes the principle of the child's best interests, considering the child's views and the need for proportionate measures. Cases highlight the importance of thorough assessments, procedural safeguards, and adherence to relevant legal standards to prevent undue interference with a child's personal identity.**

**In summary, the violation of personal identity of children in the European context involves a nuanced consideration of various factors, and European legislation, along with ECtHR case law, plays a crucial role in defining and safeguarding the rights of children in these situations.**