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## **Content of the child's right to identity within the scope of the Convention on the rights of the child and the Latvian national framework**

### **ABSTRACT**

One can note that the issue of children rights has always been topical and while there is still plenty of complex topics to be studied, the author yet invites to return to the basics of the child's rights, and in particular, to the need to protect the child's identity as a legal value. The purpose of the article, therefore, is to clarify the meaning of the child's right to identity enshrined in the international, and in particular, the 1989 Convention on the Rights of the Child, and according Latvian legislation. With the assistance of a descriptive method in conjunction with a historical method the article marks the historical events of the last quarter of the 20<sup>th</sup> century leading to formation and contemporary understanding of the right to identity. Historical remarks are followed with a smooth transition into the analysis of the international and Latvian legal framework. The used sources among others include a number of international, European and Latvian legal acts, as well as accessible interpretative manuals, monographs, comments, transcripts and other sources for a better understanding of the contents of the legislation. The named analysis has been performed with the use of legal comparative, systemic and analytical research methods.

**Key words:** children rights, right to identity, right to preserve identity, right to name, right to private life, right to know origin, right to individuality

## Introduction

Nowadays understanding of what it means to be aware of your “I” or “you” is described as flexible and fragile. Lack of self-feeling can lead to some limitation of legal capacity. Therefore, the question of the nature and meaning of a person has been proposed and analyzed in several sciences and in different ages in the past. To some extent, human rights also regulate certain aspects related to a person’s expressions, including the personal identity<sup>1</sup>.

The child himself creates and transforms his or her own identity, independently choosing between different visions and values while it is likely to crystallize in the years of maturity. A child’s self-identity is a product of one’s own experience, not adult assumptions about a child’s experiences, desires, and feelings. The child understands what he is, only in the context of family and society throughout his life. Along with care and meeting basic needs, the child also needs a family and social environment that he perceives as his own and helps him to understand his essence and thus makes life meaningful. Ideally, this environment is made up of the family of origin and the community – an environment in which the child naturally creates important links to him, as well as his identity, which evolves over time<sup>2</sup>.

However, external processes independent of the child can not only endanger the existence and harmonious development of his original or true identity, but also irreversibly distort it. The child’s identity can be influenced by an infinite number of situations – artificial conception (all cases when children were taken as a result of surrogacy, or by using donor eggs or sperm), being left in a baby box, if the child is born to a woman from a man other than her husband, if the woman is raising a child alone, if the child legally moves from one country to another with only one parent or if the transfer of the child to another country is unlawful, for example in the case of kidnapping or trafficking, if the child is involved in military conflicts, and if the child is transferred to a relative living abroad, or is removed from the care of parents – emigrants who are in the country only for the profit etc. Namely, the list of such threats is rather long, and it is not exhaustive and can be supplemented with a variety of situations.

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<sup>1</sup> J. Marshall, *Personal freedom throughout Human Rights Law: Autonomy, Identity and Integrity under the European Convention on Human rights. International Studies in Human Rights*, 2009, p. 1.

<sup>2</sup> Y. Ronen, *Redefining the Child’s Right to Identity*, “International Journal of Law and the Family” 2004, Vol. 18, p. 150-151, 154.

Yet one thing remains clear, a legal protection shall therefore be developed to protect the child's identity.

### **Insight into historical development**

The historical development of the concept of the "right to identity" as a legal value can only be analyzed since the twentieth century, as the concept itself is a product of modern times. This is due to the fact that the rapid development of a person's right to identity depends to a large extent on the legal recognition and consolidation of this right in law. Therefore, for a full understanding of the concept, it must be seen in the context of modern times history, successively moving into the evaluation of modern legal framework.

Moreover, the development of the right to identity can be viewed in connection with two aspects – the right to preserve his or her identity and the opportunity to ascertain his or her true identity. Here, the researchers cite different circumstances as a point of reference. On the one hand, this problem began to be addressed as early as the 1950s and 1960s. In addition, psychologists were the first to talk about it, finding severe psychological distress of adopted persons. The emotions and processes experienced by adopted persons were therefore defined as genealogical bewilderment<sup>3</sup>.

The child's right to know his or her origin can also be discussed in the context of the scientific revolution of the 1980s in connection with DNA analysis for paternity, which led to a significant increase of paternity court proceedings in western courts, leading to a necessity to review the international and national paternity legal acts<sup>4</sup>.

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<sup>3</sup> The term „genealogical bewilderment“ refers to identity problems that are usually experienced by adopted or out-of-family care children, as well as children who have been artificially conceived (for example, as a result of surrogacy or the use of donor sperm). The term was first used by psychiatrist E. Wellisch in a letter to “Mental Health” magazine with the following text: “Knowledge of and definite relationship to his genealogy is (...) necessary for a child to build up his complete body image and world picture. It is an inalienable and entitled right of every person. There is an urge, a call, in everybody to follow and fulfill the tradition of his family, race, nation, and the religious community into which he was born. The loss of this tradition is a deprivation which may result in the stunting of emotional development”. The term itself was introduced by H. J. Sants, a colleague of E. Wellisch, in 1964, describing the condition of children, who have very little or no information about their real parents, as disturbing. H. J. Sants claimed that genealogical bewilderment causes significant stress to adopted children – stress that is not experienced by children raised by their real parents. E. Wellisch, *Children Without Genealogy – A Problem of Adoption*, “Mental Health” 1952, Vol. 13, p. 41-42; H. J. Sants, *Genealogical Bewilderment in Children with Substitute Parents*, “British Journal of Medical Psychology” 1964, Vol. 37, p. 133-141.

<sup>4</sup> R. J. Blauwhoff, *Foundational facts, relative truths: A comparative law study on children's right to know their genetic origins*, Antwerp 2009, p. 110-111.

On the other hand, in the legal context, this problem can be addressed with the drafting of the 1959 United Nations (hereinafter – the UN) General Assembly Declaration on the Rights of the Child (hereinafter – the Declaration on the Rights of the Child), which provided for the child’s right to a name and registration after birth<sup>5</sup>. The importance of these rights was reiterated in the United Nations International Covenant on Civil and Political Rights<sup>6</sup> (hereinafter – the International Covenant on Civil and Political Rights) and in the 1989 UN General Assembly Convention on the Rights of the Child of the (hereinafter – 1989 Convention on the Rights of the Child).

While drafting the Declaration of the Rights of the Child, the Belgian representatives unsuccessfully proposed the child’s right to a “reasonable” name, which would be in line with the practice in several countries where the child’s name should be chosen only from a list of permitted words. However, this suggestion was rejected. Moreover, although the wording of the international and national legislation allegedly refers to the rights of the child, those rights in fact are enjoyed by the child’s parents, given the child’s obvious incapacity. It follows, however, that although this is the child’s right to a name, the child does not have the right to choose his or her own name<sup>7</sup>.

Both the International Covenant on Civil and Political Rights and the 1989 Convention on the Rights of the Child stipulate that a child must be registered immediately after birth. In both international instruments, the right to a name and registration are deliberately combined in one sentence, as registration is considered to be one of the most effective methods of ensuring the identity of the child<sup>8</sup>. States have an obligation to register a child immediately after birth in order to avoid the violence that took place during the Argentine junta regime in the 1970s and 1980s when children were forcibly deprived of their biological mothers after birth and placed for adoptions as orphans<sup>9</sup>. The Human Rights Committee has found that it is the registration of children that helps to prevent all forms of abduction and trafficking<sup>10</sup>. This is particularly important in the event of a mass exodus of refugees and emigrants, as children can easily

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5 The third principle: „The child shall be entitled from his birth to a name and a nationality”. Declaration of the Rights of the Child: [http://www.un.org/cyb\\_erschoolbus/humanrights/resources/child.asp](http://www.un.org/cyb_erschoolbus/humanrights/resources/child.asp), (25.07.2020).

6 The Article 24: “Every child shall be registered immediately after birth and shall have a name”. International Covenant on Civil and Political Rights: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, (25.07.2020).

7 G. van Bueren, *The International Law on the Rights of the Child*, 1998, p. 117.

8 Ibidem, p. 118.

9 *Implementation Handbook For The Convention On The Rights Of The Child*, United Nations Children’s Fund 2007, p. 123.

10 Working Group on Enforced or Involuntary Disappearances: <http://www.ohchr.org/EN/Issues/Disappearances/Pages/DisappearancesIndex.aspx>, (25.07.2020).

disappear into chaos and panic. In addition, child registration has other useful functions in ensuring the protection of children's rights. The relevant register contains information on the child's birth data, which is of particular importance, for example, in regulating the child's involvement in work, etc. Thus, the forced registration of children also has an indirect benefit, as the state obtains information on the number of children and their age, which is especially important when developing the state socio-economic policy in relation to children<sup>11</sup>. It should be noted that the right to immediate registration is crucial, namely, it allows the child to become a full right holder, thus also serving as a precondition for receiving state support, including ascertaining its origin<sup>12</sup>.

The right of the child to preserve his or her identity was first enshrined in the Convention, based on a proposal from the Argentine delegate and justified by the need to ensure timely state intervention in the event of a violation of the child's right to preserve his or her identity<sup>13</sup>. Argentina's newly elected government wanted to prevent a recurrence of the so-called Beagle conflict in Argentina<sup>14</sup>, which led to the disappearance of between 150 and 170 children from 1975 to 1983. Some children disappeared with their parents, but many were killed and buried in a common grave. Also, 131 children born in closed camps and military hospitals were forcibly deprived of biological mothers. Subsequent evidence showed that most infants were illegally transferred to childless military or police couples raising them as their own. Only 49 children were found and six more were killed (five were killed by troops and one was neglected in hospital)<sup>15</sup>.

Argentina therefore wanted that a mechanism is developed through an international framework to prevent such child abduction and to oblige Member States to provide support and protection in restoring the child's identity as soon as possible<sup>16</sup>. Consequently, the 1989 Convention on the Rights of the Child was the most appropriate platform for establishing those rights of the child. However, although the importance of the problem of missing children was generally acknowledged, many Member States did not consider it necessary to develop a separate framework for the preservation of the child's identity. Other Member States expressed concerns about the possible impact of this right on

<sup>11</sup> G. van Bueren, op. cit., p. 118.

<sup>12</sup> S. Besson, *Enforcing the Child's Right to Know her Origins: Contrasting Approaches under the Convention on the Rights of the Child and the European Convention on Human Rights*, "International Journal of Law, Policy and the Family" (hereinafter - IJoLPatF) 2007, No. 21, pp. 141.

<sup>13</sup> *Implementation Handbook For The Convention On The Rights Of The Child*, United Nations Children's Fund 2007, p. 123.

<sup>14</sup> History of Argentina: [https://en.wikipedia.org/wiki/History\\_of\\_Argentina](https://en.wikipedia.org/wiki/History_of_Argentina), (25.07.2020).

<sup>15</sup> G. van Bueren, op. cit., p. 119.

<sup>16</sup> J. S. Cerda, *The Draft Convention on the Rights of the Child: New Rights*, "Human Rights Quarterly" 1990, Vol. 12, pp. 115.

cases of artificial childbearing<sup>17</sup>. However, given the seriousness and importance of the problem, the Argentine representatives rejected all objections through compassionate diplomacy methods. Nevertheless, problems with determining the precise content of the right to preserve identity explain the relatively weak obligation of Member States to ensure children's right to identity<sup>18</sup>.

Wherewith in general it can be noted that the history of the child's right to preserve his or her identity, enshrined in the 1989 Convention on the Rights of the Child, suggests that its original purpose was to ensure the protection of refugee children and children involved in military conflicts. Therefore, the following analysis of the legal framework should clarify how the child's right to identity is assessed from nowadays perspective.

To conclude historical remarks concerning the development of the right to identity, it can be also noted that in the legal context, the fact that in the same year when the Convention on the Rights of the Child was adopted (1989), in Europe, and in particular in Germany, the Constitutional Court first ruled on the child's right to know his or her origin on the basis of the German Basic Law.

### **Child's right to identity within the scope of the international regulation**

The right to identity is precisely mentioned in the following international instruments: Article 8 of the 1989 Convention on the Rights of the Child and Articles 9, 16 and 30 of the 1993 Convention on Intercountry Adoption.

However, before analyzing the relevant legal framework, it should be noted that the term "identity of a person" can be found in a number of international legal acts; however, it has a different meaning, mostly referring only to the identification of a person, namely, identity documents. A further analysis of the concept will show that aspects such as a person's name are undeniably included in the concept of a person's identity, but the person's right to identity within the meaning of this article is explicitly mentioned only in the already mentioned legal framework for the protection of children's rights, European asylum and migration legislation (for example, Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>19</sup>) and the

<sup>17</sup> K. O'Donovan, "Real" mothers for Abandoned Children, "Law and Society Review" 2002, Vol. 36, No. 2, pp. 352.

<sup>18</sup> G. van Bueren, *op. cit.*, p. 119.

<sup>19</sup> For instance, see Article 10 of the Directive. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. OJ L 304, 30.9.2004, p. 12-23.

Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine<sup>20</sup>.

Interestingly, that the European Convention on the Adoption of Children of 24 April 1967<sup>21</sup>, which by its very nature, like the 1993 Convention on Intercountry Adoption, should presumably protect the child's right to identity, does not address this issue by emphasizing only the protection of adoptive children against the child's biological parents. As stated in the interpretative report of the European Convention on the Adoption of Children, the relevant articles of this Convention (e.g., Article 20<sup>22</sup>) aim is to avoid difficulties that may arise if biological parents became aware of the identity of the adopter<sup>23</sup>.

Analyzing the 1989 Convention on the Rights of the Child, it should first be noted that the Convention provides a compendium of the rights of the child and has put an end to long-standing efforts to achieve formal international recognition of children's human rights. By its very nature, the Convention is a unique instrument that offers children a wide range of civil, political, economic, cultural and social protection, including humanitarian rights and the right to identity<sup>24</sup>.

The 1989 Convention on the Rights of the Child is considered to provide for a new human right, in particular the right to know the identity of one's birth, but the wording of the Convention gives an ambiguous impression of the nature and scope of this right<sup>25</sup>. Articles 7 and 8<sup>26</sup> of the 1989 Convention on the Rights

<sup>20</sup> The Article 1: „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”. 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: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cf98>, (26.07.2020).

<sup>21</sup> Eiropas Konvencija par bērnu adopciju. Starptautisks līgums : Latvijas Vēstnesis, 2000. gada 30. marts, Nr. 115/116 (2026/2027).

<sup>22</sup> European Convention on the Adoption of Children (Revised): <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680084823>, (26.07.2020).

<sup>23</sup> *Explanatory Report on European Convention on the Adoption of Children*, Treaty Office of Council of Europe: <http://www.conventions.coe.int/Treaty/en/Reports/Html/058.htm>, (26.07.2020).

<sup>24</sup> C. P. Cohen, *Introductory Note to the United Nations Conventions on the Rights of the Child*, “International Legal Materials” 1989, Vol. 28, pp. 1448, 1451.

<sup>25</sup> N. Heimerle, *International Law and Identity Rights for Adopted Children*, “Adoption Quarterly” 2003, Vol. 7 (2), p. 89.

<sup>26</sup> The Article 7: 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. The Article 8: 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. Convention on the Rights of the Child: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, (25.07.2020).

of the Child specifically address the right to identity. This convention is the first human rights framework that provides for the right to identity not only for adults but also for children<sup>27</sup>.

Particular attention should be drawn to the words “as far as possible” used in the first paragraph of Article 7 of the 1989 Convention on the Rights of the Child. Namely, many lawyers ignore this precondition and thus interpret the said article as a completely justified right to know their parents<sup>28</sup>. However, it should not be forgotten that while drafting this convention, the words “as far as possible” were offered as a compromise between those countries that guarantee children with the absolute right to know their biological parents and those that allow so-called secret adoption. Moreover, in the context of “in accordance with their national law” mentioned in the second paragraph of Article 7, this precondition indicates that it does not establish an absolute right to receive identifying information<sup>29</sup>.

It is also believed that Article 7 creates a new right – the right to know and be in the care of one’s parents. In addition, this right must be considered in a broad sense, with the word “parents” meaning not only social or legal parents but also biological or genetic parents<sup>30</sup>. Interestingly that some legal scholars are of the opinion that the word “know” covers not only the receipt of information about one’s parents, but also the right to get to know one’s parents and keep in touch with them<sup>31</sup>.

With regard to Article 8 of the 1989 Convention on the Rights of the Child, it should be noted that the wording “(...) *identity, including nationality, name and family relations* (...)” indicates that aspects such as “nationality”, “name” and “family relations” are included in the concept of “identity”, but they are not exhaustive, the content of identity is much broader<sup>32</sup>. In general, it seems that identity is an open concept. For example, the aspects listed in the following articles are also considered as elements of the child’s identity, *inter alia*, Article 2 of the 1989 Convention on the Rights of the Child (*non-discrimination*), Article 16 (*protection against arbitrary interference with privacy, family life*), Article 20 (*obligation to respect child’s ethnic, religious, cultural and linguistic background*), Article 29 (*development of the child’s personality, talents and mental and physical*

<sup>27</sup> S. Besson, op. cit., p. 143.

<sup>28</sup> J. Marshall, *Concealed Births, Adoption and Human Rights: Being Wary of Seeking to Open Windows into People’s Soul*, “Cambridge Law Journal” 2012, Vol. 71 (2), p. 345.

<sup>29</sup> D. M. B. Blair, *The Impact of Family Paradigms, Domestic Constitutions, and International Conventions on Disclosure of an Adopted Person’s Identities and Heritage: A Comparative Examination*, “Michigan Journal of International Law” 2001, Vol. 22, p. 646-647.

<sup>30</sup> S. Besson, op. cit., p. 143.

<sup>31</sup> K. O’Donovan, op. cit., p. 355.

<sup>32</sup> D. Hodgson, *The International Legal Protection of the Child’s Right to a Legal Identity and the Problems of Statelessness*, “International Journal of Law, Policy and the Family” 1993, Vol. 7 (2), p. 255, 265.

abilities to their fullest potential) and Article 30 (right to culture, religion and language)<sup>33</sup>.

It follows that the 1989 Convention on the Rights of the Child does not provide a comprehensive explanation of the concept of identity. Nevertheless, the experts who had proposed Article 8 of the 1989 Convention on the Rights of the Child consider that this article recognizes a new human right to know one's birth identity<sup>34</sup> and that the article was specifically designed to address atypical situations such as biological parents of children against adopters and other similar situations<sup>35</sup>. However, the fact that the States Parties to the Convention provide different (narrower or broader) interpretations of those rights in accordance with national law<sup>36</sup> indicates that there is no uniform and general understanding of those rights.

Although there are differing understandings of the content of the child's right to identity, a systematic analysis of Article 7 of the 1989 Convention on the Rights of the Child in the context of Article 8 shows that the first already protects the child's right to a name, thus Article 8 of the 1989 Convention on the Rights of the Child protects independent rights<sup>37</sup>, namely the child's right to identity as such.

As regards to the child's right to preserve his identity, it should be noted that the wording of the first paragraph of that article "*States Parties undertake to respect (...)*" indicates a relatively flexible and weak obligation on the part of Member States. By contrast, the second paragraph of that article requires Member States to "*provide the appropriate assistance and protection*" so that children, who have been "*illegally deprived*" of their identity, have it "*re-established speedily*", wherewith, the international obligation imposes an obligation on Member States to protect the child's right to identity<sup>38</sup>.

Although the 1989 Convention on the Rights of the Child recognizes the child's right to identity, Geraldine Van Bueren, a professor of international human rights law, who specializes in children's rights and has contributed to the 1989 Convention on the Rights of the Child, points out that Article 8 is particularly important to ensure the protection of refugee children and children involved in military conflicts, i.e., children whose identities have been unlawfully taken

33 *Implementation Handbook For The Convention On The Rights Of The Child*, United Nations Children's Fund 2007, p. 123.

34 J. S. Cerda, op. cit., p. 115.

35 G. A. Stewart, *Interpreting the Child's Right to Identity in the U.N. Convention on the Rights of the Child*, "Family Law Quarterly" 1992-1993, Vol.26, p. 221.

36 K. O'Donovan, op. cit., p. 353.

37 C.P. Cohen, *Elasticity of Obligation and the Drafting of the Convention on the Rights of the Child*, "Connecticut Journal of International Law" 1987, No. 71, p. 78-80.

38 T. McCombs, J. S. Gonzalez, *Right to Identity*, International Human Rights Law Clinic, University of California, Berkeley School of Law 2007: <http://scm.oas.org/pdfs/2007/CP19277.PDF>, (26.07.2020).

away. Another question that is also relevant is, for example, whether the child's right to identity extends to adopted children, namely, whether the interpretation of a child's right to identity includes the right of adopted children to know their biological parents<sup>39</sup>.

An analysis of the relevant international framework in the context of the 1989 Convention on the Rights of the Child leads to the general conclusion that the child's right to identity also applies to adopted children. This follows from a systematic analysis of Article 8 of the 1989 Convention on the Rights of the Child in conjunction with the second paragraph of Article 19 of the International Covenant on Civil and Political Rights (*right to seek and receive information*<sup>40</sup>) and equivalent provisions in the 1989 Convention on the Rights of the Child which are incorporated in the first paragraph of Article 13<sup>41</sup>. Consequently, the child has the right to seek and receive information about his or her identity, including his or her personal history since birth.

Article 8 of the 1989 Convention on the Rights of the Child states that one of the basic elements of identity is the "*family relationship*", so that genetic and biological identity as such cannot be excluded<sup>42</sup>. Moreover, it is to be noted that the original version of Article 8 of that convention provided for "*the inalienable right [of the child] to preserve his or her true and genuine personal, legal and family identity*"<sup>43</sup>. Thus, the term "family identity" was originally intended to be used. However, due to protests from some countries that the term would not have a meaning in the legislation, it was replaced by the term "family relations". It should be noted that the authors of the 1989 Convention on the Rights of the Child intended to include a decisive aspect, namely that the notion of "identity of the child" means more than just the right to know who his or her parents are. It was recognized that siblings, grandparents and other relatives may be equally important in identifying a child's identity than his or her parents<sup>44</sup>.

Although it does not contain a specific reference to identity issues, Article 5<sup>45</sup> of the 1989 Convention on the Rights of the Child, is also important as it

<sup>39</sup> G. van Bueren, op. cit., p. 120.

<sup>40</sup> The second paragraph of the Article 19: „Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". International Covenant on Civil and Political Rights: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, (25.07.2020).

<sup>41</sup> The first paragraph of the Article 13: „The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice". Convention on the Rights of the Child: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, (25.07.2020).

<sup>42</sup> G. van Bueren, op. cit., p. 123.

<sup>43</sup> *Implementation Handbook For The Convention On The Rights Of The Child*, United Nations Children's Fund 2007, p. 125.

<sup>44</sup> *Ibidem*.

notes main aspects of the interpretation of the Convention, including the notion of identity of the child. The mentioned article constitutes a broad general condition, namely a new rationale for the relationship between the child, the family and the state, which supports the child's right to identity, that is, the primary duty of the state towards the child is to respect the role of the nuclear and extended families, as well as the society, in the life of the child, and not to interfere in order to ensure the protection of the child from them<sup>46</sup>.

As earlier having already been mentioned, the notion of the child's right to identity is also to be viewed in the context of Articles 9, 16 and 30<sup>47</sup> of the 1993 Convention on Intercountry Adoption, which shall be analyzed in conjunction. These articles regulate two basic issues, firstly, the possibility to obtain and exchange information on the planned adoption project, and secondly, the possibility to access this information after the adoption of the child has already taken place. With regard to the first issue, it should be noted that information on the adoption project should be as detailed as possible, wherewith while drafting of this convention, many aspects that are necessary to ensure a life in the best interests of the child, were taken into consideration.

As to the second issue, the interpretative report of that convention states that the child's right to be informed of his or her origin is not negotiable, since that right is already recognized in Article 7 of the 1989 Convention on the Rights of the Child. However, unlike that article of the Convention, the question of limited access to this information arises because, on the one hand, it may contain sensitive data about persons who do not want their identities revealed, such as the child's biological parents, etc., on the other hand, the information can also

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<sup>45</sup> The Article 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”. Convention on the Rights of the Child: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, (25.07.2020).

<sup>46</sup> Y. Ronen, op cit., pp. 161.

<sup>47</sup> The Article 9: „Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular, [inter alia], to collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption (...)”. The Article 16: If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall, [inter alia], 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 (...). The Article 30: „The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved. They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State”. Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>, (25.07.2020).

have a significant impact on the child's own psychological well-being. Thus, in order to avoid situations that could harm the child emotionally or otherwise, Article 30 of the 1993 Convention on Intercountry Adoption provides that access to such information is subject to "appropriate supervision"<sup>48</sup>.

This leads to the conclusion that, although the 1993 Convention on Intercountry Adoption refers to the child's right to know his or her origin, this right is not absolute and could be restricted in some cases. This Convention to some extent also recognizes the objectives of the 1989 Convention on the Rights of the Child, which relates to the child's right to identity. In addition, the rights of the child set out in the 1993 Convention on Intercountry Adoption are based on the principles of the 1989 Convention on the Rights of the Child.

All things considered, it can be concluded that the international human rights regulation recognizes the child's right to preserve his or her identity, but the question of who and how determines the structure of this identity remains open<sup>49</sup>.

To analyze legal norms that foresee indirect person's right to identity, it is necessary to focus on those legal norms that relate to a person's right to privacy. It should therefore be mentioned about Article 12 of the UN Universal Declaration of Human Rights<sup>50</sup> (*no one shall be subjected to arbitrary interference with his privacy (...)*), Article 7 of the Charter of Fundamental Rights of the European Union<sup>51</sup> (*everyone has the right to respect for his private and family life, his home and his communications*), Article 8 of the above-mentioned European Convention on Human Rights, as well as Article 17 of the International Covenant on Civil and Political Rights (Every child must be registered and given a name immediately after birth).

Admittedly, the right to privacy is a general concept and has not yet been fully defined in case law<sup>52</sup>, but since 1989 the ECHR has derived the right to know his or her origin from the Article 8 of the European Convention on Human Rights, recognizing it as an essential element of privacy. However, the ECHR has not clarified the content of this right, stating only that it includes the right to know the identity of one's parents, as well as the circumstances of birth<sup>53</sup>.

<sup>48</sup> G. Parra-Aranguren, *Explanatory Report on the 1993 Hague Intercountry Adoption Convention*: <https://www.hcch.net/en/publications-and-studies/details4/?pid=2279>, (25.07.2020).

<sup>49</sup> A. Scolnicov, *The Child's Right to Religious Freedom and Formation of Identity*, "International Journal of Children's Rights" 2007, Vol. 15, p. 266.

<sup>50</sup> The Universal Declaration of Human Rights: [https://www.ohchr.org/EN/UDHR/D ocuments/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/D ocuments/UDHR_Translations/eng.pdf), (25.07.2020).

<sup>51</sup> The Charter of Fundamental Rights of the European Union. *Official Journal of the European Union*, C 83/289, 30.3.2010, p. 5.

<sup>52</sup> *Theory and Practice of the European Convention on Human Rights*, ed. P. van Dijk, F. van Hoof, A. van Rijn, L. Zwaak and others, Antwerpen 2006, p. 664.

<sup>53</sup> S. Besson, *op. cit.*, p. 142.

However, as the case-law has developed, the ECHR in *Pretty v. The United Kingdom* has summarized and stated that: “As the Court has had previous occasion to remark, the concept of “private life” is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person (...). It can sometimes embrace aspects of an individual’s physical and social identity (...). Elements such as, for example, gender identification, name and sexual orientation and sexual life fall within the personal sphere protected by Article 8 (...). Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world (...). Although no previous case has established as such any right to self-determination as being contained in Article 8 of the Convention, the Court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees<sup>54</sup>”.

In addition, it is noted that the right to privacy in the narrower sense also includes such aspects as personal identity, which refers to the choice of name, choice of dress style and hairstyle, choice of sexual identity, as well as the image of the person, etc<sup>55</sup>. Consequently, in order to clarify the content of the right to identity and its constituent elements, it is necessary to analyze the relevant case-law on the individual’s right to privacy.

### **Analysis of the Latvian legal framework**

The term “identity” can be found in a number of Latvian legal acts, but within the meaning of the article, the one should speak about the Law on the Protection of the Rights of the Child, the Civil Law of the Republic of Latvia (hereinafter – the Civil Law), Biometric Data Processing System Law and at some point, the introduction to the Constitution of the Republic of Latvia (*Satversme*). In this way, it should also be emphasized that the analysis of national legal norms should be performed also because Latvia is a party to the 1989 Convention on the Rights of the Child, therefore, in order to assess the problematic of the child’s right to identity, it is necessary to assess whether and how the principles of protection of the rights of the child are enshrined and have been incorporated into Latvian legislation.

In the author’s opinion, the Latvian legislator has deliberately used the term “right to the individuality” in the official translation of the 1989 Convention on the Rights of the Child, thus expressing the national attitude and assessment of the mentioned rights. Such a conclusion can be reached by analyzing the

<sup>54</sup> Judgement of ECHR of 29 April 2002 (Application No. 2346/02) in the case of *Pretty v. United Kingdom*, para. 61.

<sup>55</sup> A. Kovaļevska, *Personas tiesības uz savu attēlu*, Valsts Cilvēktiesību birojs, 2005: [http://providus.lv/article\\_files/1583/original/attel\\_tiesib.pdf?1332251075](http://providus.lv/article_files/1583/original/attel_tiesib.pdf?1332251075), (25.07.2020).

national legislation related to the 1989 Convention on the Rights of the Child, namely, the Law on the Protection of the Rights of the Child<sup>56</sup>. The title of Article 8 of the said law is “Child’s Right to Individuality” and in the context with the first part, which provides for the child’s right to name, surname, citizenship and registration, as well as the second part, which determines the child’s right to preserve his or her identity, indicates that the Latvian legislator understands that the child’s right to identity is as part of the child’s right to individuality. Namely, the concept of “right to individuality” is broader concept than “right to identity”.

Furthermore, the second part of Section 24 of the Law on the Protection of the Rights of the Child provides for the obligation of parents to prepare a child for independent life, respecting his or her individuality<sup>57</sup>. Whereas, the second, third and fourth parts of Section 177 of the Civil Law determine the rights and obligations of parents, including the provision of care for a child, taking into account, as far as possible, his or her individuality, abilities and interests<sup>58</sup>. Thus, examining the title of Section 8 of the Law on the Protection of the Rights of the Child systematically with the second part of Section 24 of the Law on the Protection of the Rights of the Child and the second, third and fourth paragraphs of Article 177 of the Civil Law, first of all it can be again concluded that the concept of “right to individuality” is a broader concept than “right to identity”. In the legislation which regulates the rights of the child, the Latvian legislator in fact uses the term “individuality of the child” as a determining factor in promoting the development of the child. Secondly, although the child’s right to individuality is a fundamental right of the child, the execution of that right to some extent depends and is connected to the rights and responsibilities of the child’s parents.

Having grammatically analysed Article 8 of the Law on the Protection of the Rights of the Child, it can be established that the first part of it separately determines the child’s right to name, surname, citizenship and registration

<sup>56</sup> Bērnu tiesību aizsardzības likums: LR likums. Latvijas Vēstnesis, 1998. 19. jūlijs, Nr.199/200. English translation: Law on the Protection of the Children’s Rights: <https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights>, (26.07.2020).

<sup>57</sup> The second paragraph of the Article 24: “*It is the duty of the parents of a child to prepare him or her for an independent life in society, as far as possible respecting the individuality of the child and observing the abilities and wishes of the child*”.

<sup>58</sup> The second, third and fourth paragraph of the Article 177: “Custody is the rights and duties of parents to care for the child and his or her property and to represent the child in his or her personal and property relations. Care for a child means his or her care, supervision and the right to determine his or her place of residence. Care of the child shall mean his or her maintenance, i.e., ensuring food, clothes, dwelling and health care, tending of the child and his or her education and rearing (ensuring mental and physical development, as far as possible taking into account his or her individuality, abilities and interests and preparing the child for socially useful work)”. English translation: The Civil law of the Republic of Latvia: <https://likumi.lv/ta/id/90223-civillikums-pirma-dala-gimenes-tiesibas>, (26.07.2020).

from the moment of birth. By contrast, the second paragraph of that article provides that the child has the right to preserve his or her identity. Such wording shows, firstly, that the concept of "child's identity" is broader than his name, nationality or registration. Whereas the child's identity is only a part of the child's individuality. It can also be concluded that the child's right to individuality, as well as the child's right to identity, are separate, i.e., autonomous, rights.

Continuing the discussion on the author's thesis that the Latvian legislator deliberately used the term "right to individuality" in the official translation of the 1989 Convention on the Rights of the Child, thus expressing its national attitude, it should be noted that the Latvian legislator has not only blindly rewritten the child's right to identity from the 1989 Convention on the Rights of the Child, but has assessed them in accordance with the situation in Latvia. Such a conclusion can be reached by looking at the current wording of Section 8 of the Law on the Protection of the Rights of the Child in conjunction with the amendments to the said Section, which has been made only once so far – in 2000<sup>59</sup>.

Namely, the second part of the mentioned law originally provided for the child's right to preserve the national identity. Maybe, being aware that such wording had been narrowing the concept enshrined in the 1989 Convention on the Rights of the Child, relevant amendments have been made accordingly, further protecting not only the child's right to preserve his or her national identity, but also to preserve his or her identity as such. In the author's opinion, the mentioned can be related to the fact that the drafting of the Law on the Protection of the Rights of the Child was started relatively quickly after the restoration of the independence of the Republic of Latvia, when national values were of special importance in politically deciding on further legislation.

The Law on the Protection of the Rights of the Child entered into force on 22 July 1998, and it can be said that the first and substantial amendments were made quite quickly - less than two years later, i.e., on 11 April 2000. Analyzing the documents of elaboration of the mentioned amendments, it can be stated that the proposal to amend the second part of Section 8 of the Law on the Protection of the Rights of the Child was submitted and supported already in the first reading<sup>60</sup>. In addition, it can be concluded from the transcripts of the Latvian Parliament (*Saeima*) sittings of the Republic of Latvia that the mentioned

<sup>59</sup> Grozījumi Bērnu tiesību aizsardzības likumā : LR likums. Latvijas Vēstnesis, 2000. 28. marts, Nr. 11/112. English translation: Amendments to the Law on the Protection of the Children's Rights.

<sup>60</sup> Saeimas Cilvēktiesību un sabiedrisko lietu komisijas 1999.gada 30. novembra projekts 2. lasījumam "Priekšlikumi likumprojektam "Grozījumi Bērnu tiesību aizsardzības likumā": [http://helios-web.saeima.lv/bin/lasa?LP0381\\_2](http://helios-web.saeima.lv/bin/lasa?LP0381_2), (26.07.2020). English translation: Draft of the Human Rights and Public Affairs Commission of the Parliament of November 30, 1999 for the Second Review «Proposals for the draft law „Amendments to the Law on the Protection of the Rights of the Child”».

amendments were only the initial stage for arranging legal acts in the field of protection of children's rights, and they cover more than a hundred proposals submitted by public organizations, ministries, local governments and many other institutions. The proposals were carefully evaluated and their purpose was to specify the general norms of the said law and to regulate the cooperation of specialists involved in the protection of children's rights, as well as to provide for the liability of the relevant institutions for non-fulfillment of their duties<sup>61</sup>.

Thus, in general, it follows from the content of these amendments that since 2000 the legislator has clarified its position regarding the individuality of the child, emphasizing that it covers not only the national identity of the child, but the identity of the child as a whole, i.e., the identity of the child, while the child's individuality is a broader concept than the child's identity. In the author's opinion, such a reassessment of the right to child's identity or individuality confirms the Latvian legislator's understanding of the importance of these rights.

In the following, special attention should be paid to the definition of identity given in point 3 of Article 1 of the Biometric Data Processing System Act, namely, within the meaning of that Act, that the identity is a set of personal data, physical characteristics and characteristics persons<sup>62</sup>. Taking into account the above, as well as the findings of anthropologists on the identity of a person, it can be concluded that the legislator accepts the relevant anthropological findings.

Referring to the legal norms, which mention a person's right to identity at the national level indirectly, Article 96 of the Constitution of the Republic of Latvia must be noted (*everyone has the right to inviolability of his or her private life*)<sup>63</sup>.

<sup>61</sup> Likuma "Grozījumi Bērnu tiesību aizsardzības likumā" 1. lasījums. Latvijas Republikas 7. Saeimas rudens sesijas vienpadsmitā sēde. Saeimas arhīvs: <http://www.saeima.lv/steno/1999/st2810.html> (26.07.2020); Likuma "Grozījumi Bērnu tiesību aizsardzības likumā" 2. lasījums. Latvijas Republikas 7. Saeimas rudens sesijas deviņpadsmitā sēde. Saeimas arhīvs: <http://www.saeima.lv/steno/1999/st1612.html>, (26.07.2020); Likuma "Grozījumi Bērnu tiesību aizsardzības likumā" 3. lasījums. Latvijas Republikas 7. Saeimas ziemas sesijas vienpadsmitā sēde. Saeimas arhīvs: <http://www.saeima.lv/steno/2000/st0903.html>, (26.07.2020). English translation: The first of review of the law „Amendments to the Law on the Protection of the Children's Rights”. Eleventh sitting of the autumn session of the 7th Parliament of the Republic of Latvia; the second of review of the law „Amendments to the Law on the Protection of the Children's Rights”. Nineteenth sitting of the autumn session of the 7th Saeima of the Republic of Latvia; the third of review of the law „Amendments to the Law on the Protection of the Children's Rights”. Eleventh Session of the 7th Saeima of the Republic of Latvia.

<sup>62</sup> Biometrijas datu apstrādes sistēmas likums : LR likums. Latvijas Vēstnesis, 2009. 10. jūnijs, Nr. 90/4076. English translation: Biometric Data Processing System Law: <https://likumi.lv/ta/en/en/id/193111-biometric-data-processing-system-law>, (26.07.2020).

<sup>63</sup> Latvijas Republikas Satversme : LR likums. Latvijas Vēstnesis, 1993. 1.jūlijs, Nr. 43. English translation: The Constitution of the Republic of Latvia: <https://likumi.lv/ta/en/en/id/57980-the-constitution-of-the-republic-of-latvia>, (26.07.2020).

According to the unprecedented study of constitutional law in the history of Latvian legal sciences, namely, in the commentaries of the Constitution of the Republic of Latvia on fundamental human rights, the construction of Article 96 of the Constitution of the Republic of Latvia indicates the private life as one of the protected aspects of personal life, i.e., which is the central concept of that article and which includes other aspects and elements of privacy<sup>64</sup>. The authors of commentaries point out that aspects of privacy are better understood when they are typified and considered separately. Therefore, aspects such as the image of a person and information about a person in the media, a person's name, sexual behaviour, as well as other aspects of private autonomy are noted as elements of private life<sup>65</sup>.

In the author's opinion, the most important conclusion of the commentaries is that the scope of Article 96 of the Constitution of the Republic of Latvia includes a person's independence and autonomy, as well as the fact that although the analysis of private life traditionally covers the content of more well-known elements, it must also be borne in mind that privacy can be shaped by aspects that have not yet been identified<sup>66</sup>.

In summarizing the above, it is considered that the commentaries correctly formulate the elements of private life. However, there is a lack of link between these examples and private life. A person's name, image, gender are only a part of a person's identity, at some point only its smallest part. Whereas person's identity as such is considered to be an element of private life. Thus, in the author's opinion, if the publication of a revised edition of the mentioned study (commentaries) is considered, it is necessary to clarify the concept of "private life", mentioning personal identity among its constituent elements and only then referring to personal identity (currently, private life) components.

## Conclusions

1. A person's identity in law is a process that transfers a person from a biological creature into a social being and a subject of law.

2. The international human rights regulation recognizes the right of the child to the preservation of identity, but the question remains open; what is the structure of the identity. This in turn leads to the conclusion that, although the rights of the child to identity, enshrined in a number of conventions, are truly autonomous and independent, this right is not absolute, as international

<sup>64</sup> E. Danovskis, M. Ruķers, I. Libiņa-Egner, 96. *Ikvienam ir tiesības uz privātās dzīves, mājokļa un korespondences neaizskaramību*, [in:]: *Latvijas Republikas Satversmes komentāri: VIII nodaļa Cilvēka pamattiesības*, ed. R. Balodis, A. Endziņš, T. Jundzis, and others, Rīga Latvijas Vēstnesis 2011, pp. 237-238.

<sup>65</sup> *Ibidem*, p. 248, 259, 255 and 262.

<sup>66</sup> *Ibidem*, p. 245.

legal instruments have been developed to respect the differences in national regulation of member states.

3. A person's right to identity is linked to the right to private life, that is, the person's right to identity constitutes the content of the right to private life; it can exist independently and may at the same time derive from the individual's right to private life. Thus, in order to ascertain the content of the right to identity and the constituent elements of it, the relevant case-law on the individual's right to private life shall be analyzed.

4. From the analysis of Latvia's legal framework, it can be concluded that Latvia would be ranked among the highest places among European countries in the issue of children's rights to identity. This follows from the fact that the child's right to identity is clearly defined both in the national regulation and in the international regulation binding on Latvia. However, opinion on general legal situation can be generated only when the analysis is completed on evaluation of the legal acts in conjunction with the relevant case-law.

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## SUMMARY

### **Content of the child's right to identity within the scope of the international and the Latvian national framework**

Identity or sense of belonging provides a person with the sense of stability and hence the opportunity to develop and improve. However, it must not be forgotten that the development of one's identity begins to form in childhood. It is only starting with the second half of 20<sup>th</sup> century the one can note that the findings of psychologists, as well as particular judicial historical preconditions have promoted the development of the child's right to identity as such and that is yet to be filled with content. Being aware that originally this right was developed to protect the identity of the refugee children and children involved in military conflict, the article analyzes whether and how the right to identity can be interpreted to meet nowadays needs to protect the child's identity. In general, it can be concluded that the international regulation acknowledges the right to identity and its applicability to other children protection issues. Moreover, on specific occasions the right to identity can be regarded as an autonomous right, yet the problem is that not always it can be applied as an absolute right. The analysis of the relevant international legislation is followed with the analysis of the Latvian legal framework and in that sense can be regarded as an example of national legislation that protects the child's right to identity. In fact, in the Latvian situation it can be noted that the right to identity enshrined in the 1989 Convention on the Rights of the Child has been reassessed providing rather for the right to individuality. This on the other hand, shows how the general right to identity can be reshaped to meet the national legislative needs. All things considered it is now clear that the right of the child to preserve his or her identity is recognized by the international human rights, yet the issue on the structure of the identity remains open as the Member States of the 1989 Convention on the Rights of the Child may affect the national content and meaning of the right through the national legal acts.