

UNIVERSITY OF MISKOLC
FACULTY OF LAW AND POLITICAL SCIENCES
DEÁK FERENC DOCTORAL SCHOOL IN LAW AND
POLITICAL SCIENCES

MARIA MASŁOWIEC

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

Head of the Doctoral School: Jámborné Prof. Dr. Róth Erika

Programme: Further Development of the Hungarian State and Legal System and Legal
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Supervisors: Dr. Heinerné Prof. Dr. Barzó Tímea and Dr. Katarzyna Zombory

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I. The Subject and Aim of the Dissertation

Adoption is a well-established legal practice. Its purpose is to provide the child with care from adoptive parents as a substitute for biological parents. As a general rule, adoption is intended to facilitate the child's full integration into a new family environment. This objective comprises three interrelated components: the legal and personal position of the parents of origin; the situation of adoptive parents, prospective adoptive parents and those wishing to take custody of the child through adoption; and the child's status.

It is worth noting, however, that according to contemporary legal acts, the child's perspective and the role of their best interest in adoption are crucial. Addressing the issue from the child's perspective and from the international law angle, the United Nations Convention on the Rights of the Child requires mentioning. According to them, adoption is one of the possible means of special protection and assistance a state provides to a child deprived of a family environment. The state is consequently a vital actor in adoption procedures, having numerous obligations. One should remember other international law sources relevant to the matter of adoption next to the CRC. They are, in the scope of their application, the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the European Convention on the Adoption of Children with its revised version. The first provides for safeguards for the particularly challenging situation of adoption resulting in a change of the country of residence of a child. The second is of regional, European character, the context of which is essential for the present thesis. The Convention was prepared under the auspices of the Council of Europe. The four conventions mentioned express the main principles of adoption. These are, for instance,

the subsidiarity of adoption to care in the family of origin and the subsidiarity of international adoption to care in the child's country of origin. In the first instance, however, it is worth mentioning again the subordination of adoption to the best interests of the child principle, which state authorities should consider at every stage of the proceedings, with a due regard to child's right to express their opinions. The focus of the present research is, however, on the child's identity protection.

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

Protection of various elements of identity is articulated in various international human rights instruments: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, International Convention on the Elimination of All Forms of Racial Discrimination or - importantly – in the Convention on the Rights of the Child.

Additionally, the European Convention on Human Rights constitutes a fundamental legal framework in individual protection in the European region, including identity protection and child protection. The European Court of Human Rights hears the individual applications and clarifies the meaning of the provisions of the European Convention and individual protection standards. One of the areas

concerned is one's private and family life under Article 8 of the European Convention on Human Rights. The private life consists undoubtedly of one's identity and personal history, whereas the family life includes the relationship between children and their parents (parent and child).

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

The issue of access to information about one's origins requires particular emphasis within the broader context of adoption and the protection of individual identity. In recent years, this matter has been widely analyzed in relation to children conceived through assisted reproduction (such as anonymous gamete donation) or surrogacy, but it remains far from settled in the context of adoption as well. Potential tensions may arise between the child's right to know their origins, the privacy of the biological parents, and, at times, the intentions of the adoptive parents. This question is of particular significance from the perspective of psychological sciences, as well as family studies and child welfare systems, yet it simultaneously poses substantial challenges for the legal framework.

Reflections on these matters reveal the interaction of several branches of law, such as international public law (including human rights law and children's rights law), international private law (primarily addressing cross-border challenges related to child protection) and substantive family law. This dissertation pays particular attention to the perspective of public international law, with an emphasis on the guarantees of human rights and children's rights, as well as the regulation of adoption within domestic family law systems. States adopt diverse approaches to the legal regulation of adoption, which results in significant variation regarding the protection of a child's identity and access to information about one's origins. The comparative analysis of these approaches allows for the identification of both common principles derived from international human rights standards and divergences stemming from national legal traditions and policy choices.

The aim of this dissertation is to analyze the provisions contained in international legal instruments concerning the protection of a child's identity, with particular emphasis on adoption. Subsequently, the relevant domestic legal regulations in this area will be examined. The dissertation focuses on Central European states, with particular attention to selected jurisdictions - namely, the Visegrád Group countries (Poland, Hungary, Slovakia, and the Czech Republic), as well as Slovenia and Croatia. The choice of these jurisdictions is justified not only by their shared historical and socio-political background, but also by the fact that their legal systems, while rooted in the continental European legal tradition, reveal diverse approaches to adoption, the protection of the child's identity, and access to information regarding one's origins. This comparative perspective makes it possible to identify both common challenges and jurisdiction-

specific solutions, thereby enriching the broader understanding of the interaction between family law and human rights standards in the region.

A detailed legal analysis will be conducted with respect to Polish and Hungarian legislation. In addition, the discussion will be broadened by an exploration of the key legal issues concerning the protection of a child's identity in the context of adoption under the legal frameworks of Slovakia and the Czech Republic, Slovenia and Croatia.

The central hypothesis of this dissertation is that the legal provisions governing the protection of a child's identity in the context of adoption vary significantly among selected Central European countries. This variation manifests itself both in the regulatory approaches concerning the placement of provisions on the protection of the child's identity within the broader body of rules governing adoption, and in the specific legal solutions adopted within national legal systems. Within the framework of this dissertation, three principal research questions are posed:

1. To what extent is the protection of a child's identity an integral element of adoption regulation in the domestic legal systems of selected Central European countries?
2. Do national laws provide a legal mechanism that ensures adopted children access to information about their origins, and under what conditions can this access be exercised?
3. In establishing these conditions, do the respective legal systems attempt to balance the child's interest - particularly their right to know their identity - with the rights and interests of biological parents, such as the right to privacy or family life?

II. Structure of the Dissertation

The dissertation is divided into three main chapters.

The first chapter outlines the theoretical framework underpinning the subject of the study. Its purpose is to examine the relationship between the protection of a child's identity and the legal institution of adoption. This examination necessitates, to the extent possible, a definition of the term identity, as well as an analysis of the legal purposes and functions of adoption. The chapter will aim to identify and critically assess the normative and practical intersections between these two constructs. The notion of identity will be considered within a multidimensional framework, incorporating both philosophical foundations and psychological insights, insofar as they inform and influence legal reasoning and child protection policy. A historical perspective will be presented, originally linking the right to identity with the prevention of enforced disappearances, and, in the case of children, with protection against forced (illegal) adoptions. Furthermore, the chapter will address contemporary contexts in which the protection of a child's identity is closely linked to birth registration and the recognition of the child's legal subjectivity. It is also necessary to provide a conceptualisation of the institution of adoption. Historically, adoption primarily served to secure the property interests of the family. In modern legal systems, however, its central function is to ensure that a child receives the necessary care and upbringing, particularly in circumstances where the biological family is facing significant hardship. At the same time, adoptive families possess a distinct legal and social character. A central principle in the regulation of adoption is the best interests of the child, which will be specifically highlighted and discussed in the course of the chapter.

The second chapter examines the foundations of international human rights law relevant to the issue, taking into account both universal and European instruments. Particular attention is devoted to the Convention on the Rights of the Child and the European Convention on Human Rights, including an analysis of the relevant case law and the role of the balancing exercise in reconciling competing interests. Also another regional instrument will be presented, namely the European Adoption Convention and its revised version. Although the work focuses on domestic adoption, certain cross-border elements will also be addressed. The presentation of the European Union's legal framework will complement the discussion on the child's identity within the European system. Additionally, the 1993 Hague Convention on Intercountry Adoption will be presented.

The third chapter then turns to the domestic legal frameworks of six selected jurisdictions, providing a comparative analysis of how identity-related issues in the context of adoption are regulated at the national level. This study analyzes in details the civil law provisions of Poland and Hungary. The aim is to present identity protection within the broader context of the overall adoption regulatory framework, including their historical development. Additionally, it examines the legal provisions of the Czech Republic, Slovakia, Slovenia and Croatia, though only selected issues directly related to a child's identity in adoption. Comparing Polish and Hungarian legal solutions within their national family law systems provides a basis for evaluating whether identity regulation forms an integral part of adoption law. Incorporating the legal framework of the Czech Republic,

Slovakia, Slovenia and Croatia offers a more comprehensive perspective on identity protection in adoption across Central Europe.

III. Sources and Methods

The primary sources for this dissertation consist of international documents of both universal and regional character, as well as national legal acts, mainly civil law and family and guardianship law. In the context of international analysis, the point of departure is the notion of identity as enshrined in universal and regional instruments, including those specifically devoted to the rights of the child and to adoption. By contrast, the examination of challenges within private law must begin with national legal frameworks governing the protection of the child and the family, together with the domestic regulation of adoption.

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

IV. Summary of the Research Results and its Application

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

The research issues a call for heightened legislative attention to the question of the child's identity, particularly in jurisdictions where this dimension appears to have been afforded insufficient consideration, such as in Poland. It further advocates for an interdisciplinary inquiry into the notion of the child's identity within the context of adoption, with the aim of securing coherence between well-crafted legal frameworks and the flexible modalities of their practical implementation, thereby reinforcing familial support in accordance with the priority of the child's best interests.

The concept of identity is broad and arises in various contexts. Likewise, it appears in different contexts within international legal instruments. The first two chapters have served to present these issues and to identify those that are of particular relevance for the protection of the child's identity in the context of adoption. Identity is linked to human dignity, subjectivity, and individual characteristics, but also to one's belonging to a group, particularly the family.

Adoption thus presents a challenge for the protection of the child's identity. Particularly important are issues relating to the registration of the child's civil status and the continuity of upbringing. However, perhaps the most contested aspect concerns the extent of the adopted child's access to information about their original origins.

International law, and in the context of child adoption particularly the CRC, addresses the issue of identity fairly broadly. The understanding of its provisions in this regard has been further developed by the ECtHR. Unfortunately, the Court has not examined cases concerning the identity of children in adoption originating from the six Central European states under analysis. In relation to the right to know one's origins, however, the Court emphasises the need to balance the interests of biological parents in preserving their privacy with the child's right to access information about their background, thereby rejecting the notion of adoption as being absolutely and irrevocably confidential.

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

The comparison of Polish and Hungarian legal solutions reveals already significant differences in the current legal frameworks of both countries. This

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

The protection of the right to know one's origins is addressed differently in Polish law. In the author's opinion, this issue is insufficiently addressed.

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

Regarding access to the child's original data, both Slovak and Czech law address this matter briefly, and access is limited to civil status records rather than adoption agency documents. Similarly, at least at the level of primary legal acts, Slovak and Czech law do not address the issue of identifying and non-identifying data of biological parents or the scope of their privacy protection.

However, the Czech regulation provides for the rule on the mandatory disclosure of adoption. Consequently, in Czech law, there is no secrecy of adoption in internal family relations, which is still discussed in Polish legal doctrine.

Similarly, Croatian law provides for the mandatory disclosure of information to the child. In both countries, however, it is difficult to determine the extent to which such provisions are effectively implemented in practice, as they depend on the internal dynamics of the family. The Czech Republic and Croatia are nevertheless states where adoption regulations pay attention to post-adoption support for the adoptive family. At the same time, Croatian law appears to give precedence to the child's access to information about their origins over the privacy of the biological parents, without providing balancing mechanisms.

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

As to the Poland, in recent decades, it could be considered a state that was almost homogeneous in terms of nationality, religion or language. This has made the issue of respecting the original identity of children in alternative care less pressing and less frequently subject to specific attention. However, future developments may necessitate changes in this regard. Perhaps, in the context of other four countries as well, more attention should be given to this issue by the legislator.

In the context of the child's name, it is commendable that in Central European countries, changing the surname while retaining the given name is considered the rule. This supports the integrity of the new family while respecting the continuity of the child's life under a single name. On the other hand, one can imagine a factual situation in which retaining the child's original surname would be desirable. Regarding given names, in the author's opinion, their change should be an exception, justified by special circumstances.

Especially the case of 'baby boxes' in Poland and the Czech Republic highlights the inconsistency in both practice and its assessment. Relinquishing a child in a designated place may later trigger adoption procedures. The example of legal solutions regarding anonymous childbirth reveals the complex dynamics between various persons and the interests related to the child's origin. This issue is particularly addressed by Czech scholars. In the author's view, if anonymous childbirth or the anonymous relinquishment of children were to be permitted, it should be regulated in conjunction with adoption law, taking into account the issue of the child's identity. Exceptional circumstances on the part of the parents may justify their anonymity; however, the child's identity should never be entirely disregarded.

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

The first research question concerned whether identity-related issues form an integral part of adoption law. In Hungarian law this aspect is clearly embedded within the adoption legal framework. Similarly, in the Czech Republic, Slovakia, Slovenia, and Croatia, many issues concerning identity are addressed in the legal

instruments regulating adoption. In contrast, Polish law lacks a structured approach.

As for the second research question - whether national law ensures adopted children access to information about their origins - again, Hungary and Slovenia offers the most structured model. It guarantees free access to non-identifying information and introduces a consent-based procedure for accessing identifying data. In Poland, Slovakia and Czech Republic, there is a lack of a structured procedure at the level of adoption regulation. Legal provisions do not comprehensively define the mechanisms through which adopted individuals may access information about their origins, nor do they clearly distinguish between identifying and non-identifying data. Czech law, while not regulating access to origins in detail, supports transparency through the obligation to inform children of their adoption. The Croatian system stands out most prominently, as the adoption is, at least in principle, fully transparent. Consequently, the research question posed at the outset would need to be reformulated. In Hungary, Slovenia, and Croatia, the guardianship authority or social centre serves as the competent body for matters concerning access to information about the child's origins. Thus, this is a procedure separate from access to the original birth certificate. This should be assessed positively, as adoption inherently involves a separation regarding the child's biological origins and civil status.

The third research question concerned whether national legal systems attempt to balance the interests of the adopted child and the biological family. Here, again Croatian provides for an absolute priority of the right to know one's origins. Hungarian and Slovenian law differentiate between types of data and requiring consent for identifying disclosures, although this framework

arguably prioritizes privacy over disclosure. The remaining countries do not address this issue, at least not at the level of adoption-specific legislation.

It is difficult to argue for the need to harmonize domestic law regarding the child's identity in the context of adoption, as each state follows its own rationale and traditions. However, in the author's view, accession - even with reservations to controversial provisions - to the Council of Europe Conventions on Adoption would provide an opportunity to initiate discussion on these important issues, which appear to have been somewhat neglected, at least in the case of Poland.

In all of the countries examined, there is a pressing need for empirical research into the practices of adoption agencies, family courts, and post-adoption support systems. As the author emphasizes, such research is essential for understanding how identity protection is implemented in practice and what systemic solutions would be most advantageous from the perspective of the best interests of the child. However, it remains challenging due to the highly sensitive nature of adoption.

Moreover, the principle of the best interests of the child invariably requires tailoring the solution to the circumstances of the individual child, which in turn necessitates a degree of flexibility, even within the framework of the most carefully crafted regulations. From the perspective of the best interests of the child, the most beneficial solutions would be those that ensure a genuine balance between the child's right to identity, the protection of family life, and the need for stability in care arrangements. This includes, *inter alia*, safeguarding access to information on the child's origins, providing adequate procedural guarantees before any separation from biological parents. According to the author, the integration

of the child into the new family should not be set against the protection of their identity; rather, solutions should be sought that respect both of these important values. Achieving this, however, requires considerable sensitivity on the part of the adoptive parents.

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

V. Related Publications of the Author

Masłowiec, M. (2022) 'Achievements of the International Commission on Civil Status as a missed opportunity for the European Union' *Studia Iurisperdentiae Doctorandorum Miskolciensium* 2022 vol.1, pp. 233-249.

Masłowiec, M., Kowalski, M. (2023) 'Ambiguity Affirmed: Commentary on the Judgment of the European Court of Human Rights in the Case of Valdís Fjölnisdóttir and others v. Iceland of 18 May 2021;' *Law, Identity and Values*, Vol. 3, No. 1, pp. 131 – 144.

Kowalski, M., Masłowiec, M. (2024) 'Adoption and the European Convention on Human Rights Law –Mapping Problems and Challenges' *Forum Prawnicze* nr 4 (84)/2024, pp. 16-34, [https://doi.org/10.32082/fp.4\(84\).2024.1290](https://doi.org/10.32082/fp.4(84).2024.1290).

Masłowiec, M. (2024) 'International Legal Framework to Adoption of Children' *Acta Universitatis Sapientiae Legal Studies*, vol. 13 no. 2, pp. 131-152, DOI: [10.47745/AUSLEG.2024.13.2.07](https://doi.org/10.47745/AUSLEG.2024.13.2.07).

Masłowiec, M. (2025) 'Child's Identity Protection in the Context of Adoption in Domestic Law of Hungary and Poland' *Doctoral Working Papers*, Széchenyi István University of Győr (forthcoming)