



The Right of the Adopted Child to Establish and Preserve his Identity

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Abstract: Issues concerning personal identity have not been discussed at European Union level given the limited competence of the Union in this area. Our paper provides an overview of the issue of fundamental rights related to identity. Some of these rights, such as the right to a name, were mainly claimed as parental rights, however the approach could be easily transposed to children as well, given the implications for their own rights. Our research aims to identify some essential aspects regarding the right to a personal identity, the right to know the origins falls within the scope of the child's right to private life, establishing paternity requires the careful establishment of the balance between the child's interest in knowing the identity and interest of the father presumed or claimed, as well as with the general interest. Also an adopted child has the right of access to information about his or her origin, and biological parents may be granted the legal right not to disclose their identity, but this does not amount to an absolute right of veto.

Keywords: personal identity; biological parents; adopted child; fundamental rights

1. Introduction

This article is designed to highlight an extremely important issue, namely the child's right to identity. The subject of personal identity is an extremely sensitive one, especially where the adopted child is concerned. The preservation of personal identity is a constitutional right which primarily confers legal capacity.

An important first step in understanding the phenomenon is to know where the world currently stands on unregistered children.

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Therefore, the first part of this article is intended to present the current state of play in terms of the number of unregistered children or children without documents proving their identity, the regions most affected and the reasons why children are not registered. The second part focuses on the importance of the adopted child's identity and the emotional implications that can arise.

2. The Current Situation of Unregistered Children in the World

UNICEF's report "*Birth Registration for Every Child by 2030: Are we on track?*", which aims to assess progress towards universal birth registration by 2030, highlights the following (Figure 1):

- Globally, the births of some 166 million children under the age of 5 have never been registered;
- Half of them are from India, Nigeria, Ethiopia, Pakistan and the Democratic Republic of Congo;
- So, one in four children are not officially born.

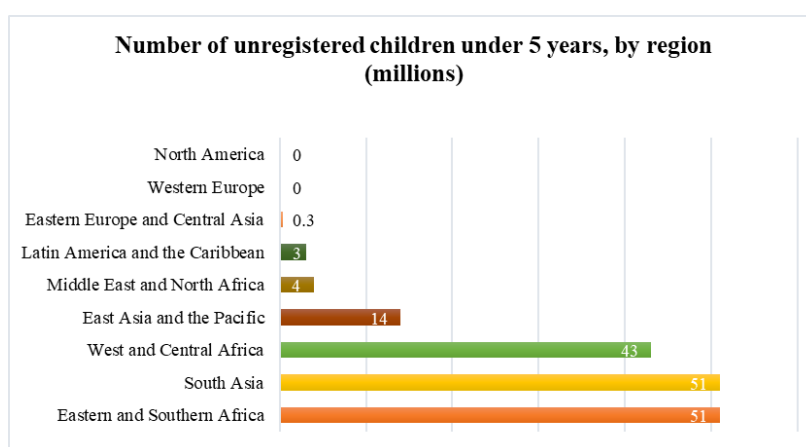


Figure 1. Number of unregistered children under 5 years, by region (millions)

Source: Prepared by the author based on data from UNICEF report

However, there are also cases where, even if the child is registered, he or she does not have a birth certificate (around 237 million children under the age of 5). This is most often due to the following reasons:

- The location of the registration centers (they are very far from the location of the families);

- The fee charged (prices are very high, affection disadvantaged families);
- Poor education of parents (they are not informed about the importance of the process for their future well-being);
- Family traditions.

Other extremely important reasons why children do not have documents to prove their identity are armed conflicts (both internal and international) and natural disasters (closely linked to climate change). These force people to leave their homes, often losing their documents. Families are being torn apart against their will, and lack of documentation prevents them from finding relatives.

Figure 2 shows the number of children, by region of origin, who do not have birth certificates for the various reasons outlined above. This indicates that South Asia and Africa have the highest number of cases where children do not have a birth certificate. Compared to these areas, Europe's position is very good, with very few children.

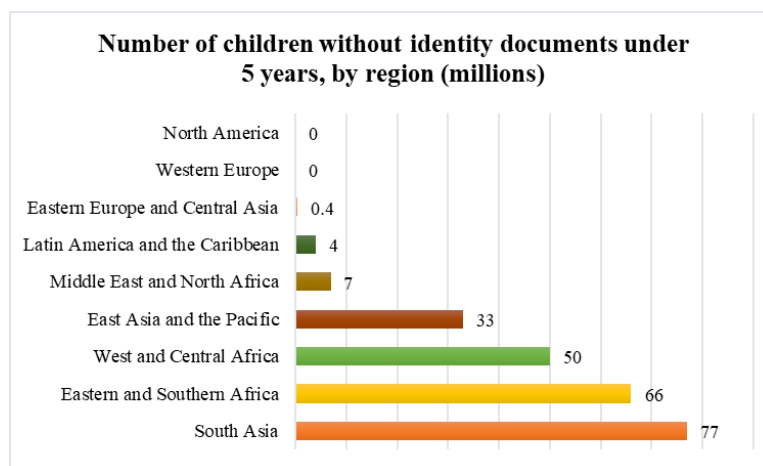


Figure 2. Number of children without identity documents under 5 years, by region (millions)

Source: Prepared by the author based on data from UNICEF report

3. The Importance of Personal Identity

In the Convention on the Rights of the Child, “Every child has the right to be registered immediately after birth and to have a name and a nationality. Children have the right to know and be cared for by their family”.

Identity is composed of the following attributes: surname, first name, date of birth, gender, and nationality (allows to establish an individual’s affiliation to a nation). “Nationality can be obtained in two different ways: by blood (the child will have the same nationality as his parents) or by birth (the child will have the nationality of the territory in which it was born, even if its parents have a different nationality)”¹. When the birth certificate is issued, the child’s nationality is confirmed.

Since the child is granted citizenship, it is considered that the child also acquires legal capacity. From this point onwards, he or she is recognized as a member of society and has the same rights and obligations as everyone else.

This will include access to healthcare, education and legal protection through both parents and the state. He will be able to benefit from the country’s child protection program, which has as its main objective the protection of the child against many forms of abuse and exploitation.

In addition, if the child will be delinquent, he/she will be able to benefit from the juvenile punishment program (special program adapted to age, maturity, and awareness).

By registering a child, he or she will be able to establish filiation, i.e. kinship ties linking him or her to his or her parents.

Identity, for a child, plays an extremely important role. Without it, children become ideal targets for prostitution, slavery, exploitation, military conscription, thus completely violating fundamental rights.

¹ Humanium, Right to nationality, Location: <https://www.humanium.org/en/identity/>

4. The Adopted Child's Right to Know and Preserve Identity

Through birth we are given the right to life, but life cannot continue if each of us does not have a name, a personal identity that defines us as individuals in society.

“Children are rights holders, not just objects of protection. They are entitled to all human rights and at the same time they are subject to special regulations, given their specific characteristics. A large part of European case law derives from litigation initiated by parents or other legal representatives of children, given the limited legal capacity of the latter. In addition to illustrating how the law adapts to the specific interests and needs of children, this handbook also highlights the importance of the role played by parents/guardians or other legal representatives and refers, where appropriate, to situations where the rights and responsibilities are most heavily on those caring for children. In such cases, the (UN) Convention on the Rights of the Child (CRC) approach should be adopted, according to which parental responsibilities should be exercised with the best interests of the child as a primary consideration and in a manner appropriate to the child's evolving capacities.”¹

Each person who adopts a child has a human obligation to give him/her the emotional support for the development of the future adult. The preservation of personal identity is a constitutional right that gives the child the ability to develop plans for emotional attachment within the family and society.

Adaptability is another aspect through which the child can secure both emotionally and physically in everyday interactions. Affective bonds with people in the intimate environment can foster elements of psychological functionality designed to build trust and respect for a harmonious life. No one and nothing has the right to disrupt this balance born from interactions with people devoted through love and attachment. The consequences of this imbalance can be catalogued in different experiences that include events that have a direct impact on the child, an impact that can cause long-term trauma.

“Better safe than sorry” is a saying that we have all heard or have been guided by at some point in our lives. To protect children by ensuring them the right to a home, to a safe life, than to treat dysfunctions and traumatic experiences that can have irreversible consequences. Sexual, physical, or psychological abuse and domestic violence have a direct impact on children's lives.

¹ UN General Assembly (UNGA), *Convention of the Rights of the Child*, 20 November 1989, p. 17.

More seriously, such cases are not isolated, they represent a cumulative effect of psycho-emotional development over a long period of time. Children from social and ethnic minority backgrounds must also be considered. If an adult can manage marginalization and misunderstanding, a child who cannot understand the discriminatory hatred directed against him will be affected and traumatized, leading to self-isolation, anxiety, fear.

Direct consequences with long-term impact, the longer the duration of exposure. Studies show that both children and adolescents who have suffered such experiences tend to manifest multiple somatic problems in adulthood, even leading to premature death.

Adoption is the most effective form of protection that exists since ancient times, being the most viable alternative to orphanage, the family can be an emotional and material support with beneficial impact on the life and harmonious development of the child. The offspring of the adopted child is also very important. Biological lineage and background. They cannot be overlooked or annihilated when integrating into a family of another culture or ethnicity.

The family adopting a child of another nationality must find the best communication tools for the development of the whole family structure, including the religious component. Let's not forget that in the emotional baggage of the child is stored the previous life experience of adoption, especially in the case of older children. Every child has the right to think freely in expressing his/her religious affiliation, guided by the adults to whom he/she is entrusted. The State will ensure that all forms of development and family support programs are respected and applied to the child's development and safety.

Another vital component in a child's education and development is his or her cultural identity and values in relation to the country in which he or she lives and to the other ethnic groups with which he or she comes into contact. The child must be encouraged to think freely, to express his or her creative thinking through participation in cultural and creative activities. The state and the family must provide the child with all the financial support to enable him/her to develop creatively for a harmonious intellectual development. We are all part of this machinery called society and we must ensure its proper functioning for the future, and this future is children, mine, yours, and our entire nation.

We need to stop joining the crowd, shouting, and thinking the same outdated doctrines about children in orphanages. They are neither stupid, nor mentally

deficient, nor pariahs of society. They are just children who have not been given a chance. Let us all demolish these myths, let us each think with our own conscience, let us be fair and help these children who look at us from the windows of our homes, their beautiful eyes carrying crystalline tears of longing and wiped smiles.

We can fight with our souls through actions, by adopting a child we give hope. We give ourselves a purpose and then learn together what a family full of wide smiles and love means. These needs we each have, and through our giving we can evolve, we can pass more easily through difficulties, and the consequences of our actions can become standards that we can reach through the trust we give to our children. This is not just a style of attachment, it is a whole mechanism that will lead to a behavior that the child will be aware of as part of a normal lifestyle, a lifestyle that can also be taught in school.

Through acceptance and education, the emotional bonds of friendship with peers will be beneficial, both for the child's mental stability and for the peace of mind of the soul troubled by mistrust.

If we as individuals are guided by sound principles and can speak freely about adoption, then the child will have confidence in himself as a person and in us as a family. From the very first day of birth, we must understand that the little man who comes into the world alone needs protection, needs to feel welcoming arms around him, needs strong and indestructible soul ties. Even older children need these variables. For them, being welcomed into a loving family can mean another birthday. A new beginning in a life unfamiliar to them in their lives and belonging, needing stability, tolerance and understanding of their own needs.

Even the psychotherapist cannot get to the root causes of the traumatic events that the child may have gone through at some point in time as a family involved with giving can. Every change is hard and sometimes painful. But through tenacity, understanding and love on the part of family, school and society, self-esteem and trust can be built up and the pain hidden in the child's innocent soul can disappear until it is completely forgotten. Replaced by new experiences and new experiences imagined every day, through closeness and a normality integrated into everyday life. We have our own thinking and resources to help these children.

Besides material help, the most precious treasure we can give is love. It costs nothing and each of us has it. Let's give it without holding back. Only for the purpose for which it was given to us. After all, every soul on this earth came into the world from this gift.

The countries of the world approach the issue of adoption from a legal and constitutional point of view. The focus is on programs promoting the right to life and development. Each state provides children with means of promotion and legal instruments aimed at guaranteeing the right to free expression in the process of learning about the problems they face. If an adult has the power to defend himself or herself, a child must be helped and supported, but first and foremost must be listened to. "Children do not lie", there is no greater truth. Another characteristic trait of a child's clean mind is the inability to attempt manipulation.

If a child is traumatized in his soul, no force in the world will be able to make him open to communication. And yet an infallible method of communication is trust. If the child will trust the people around him, if he will see commitment from them, he alone will take the step towards closeness for his own safety and stability. There can be real inner battles in the souls and thoughts of children, especially adopted children.

- Struggles over the multiple questions in limiting answers that may never come, but who can provide those answers?
- The government through its laws?
- The persons empowered by their offices?
- The psychologist?
- The teacher?

Or the family through the power of unconditional love, or perhaps all of them together?

It is possible. Talking in a concrete way by working together with all parties involved, each one bringing their competence and experience, can help the child to understand himself and to find those answers that can bring him peace of mind.

A child's trauma cannot be healed by laws, high-level meetings, or directives. They will help the child physically, protecting him even from the family who must give him stability in all forms, but for the inner traumas time, love and understanding must be given.

An important and often marginalized reference refers to the adoption of children by same-sex couples. Studies show that the sexual orientation of children with same-sex parents does not have a higher incidence. On the contrary. These couples encourage the child to experiment with their own sexuality by voluntary choice.

Without the ingratiation and pressure that a child from a heterosexual family face. It has also been found that same-sex parents are more involved in the child's life, both with their friends and with educational institutions. Where there was often greater victimization and aggression towards these children, the facts resulted from the dislike of some families for understanding and tolerance.

Because of the indoctrination of a past locked in fixist traditions, changing attitudes towards social progress can play an important role in the integration of children adopted by same-sex parents, in equalizing their integration in the school and social environment, without the stigma of marginalization.

An important categorization as harmful to the child is the deprivation of the child and the deprivation of the respect factor through certain suffering caused by the deprivation of the right to play and study time. Even if statistics show that this is prevalent in families with a low level of education, it is not the rule, as children are treated as adults and face abuse and oppression.

Some individuals under the false impression that an adopted child is a family helper are given tasks beyond their level of strength. The authority exercised by these individuals without a hint of compassion can be a trigger for anxious behavior and concern about the child's place in the family.

Given such marked traumas, it is useful to consider our human attitude, not only the legal one, which is of major importance in saving the child. We cannot evade it by ignorance and carelessness by hiding behind words. "It's not my business, I'm not interested" Through such an attitude we can literally "kill" the soul of the abused child. The result is a combination of traumatic experiences, not a future individual with a mind of his own and a desire for personal development.

5. Conclusions

The couple who wants to become a family by adopting a child must be able to offer stability available: emotional and material, as well as a good understanding with the extended family and the community of which it is part. Giving the child the basis of a solid identity and a stable home, building together roots and a future.

The State, through legal means, provides the family with the necessary assistance to understand the adoption, but it is the family that guarantees a secure future for the child in the story that can be built together. Only through trust can the child acquire its own identity without forgetting its own origins and belonging. In this

way, trust and feelings will have value and will be the hallmark of a promising future and a well-structured identity of the individual.

If we as adults are guided by healthy principles and can speak freely about adoption, then the child will have confidence in him as a person and in us as a united family.

Neither the psychotherapist, through years of experience and study, can get to the root causes of the traumatic events that the child has gone through at some point, as a family involved in giving can. Any change is hard and painful, but through new experiences and feelings stored day by day through closeness and understanding can be an integral part of the daily normal.

Stability given through love can be a treasure, which without restraint can heal souls, because no one in this world has the right to vitiate the mind and soul of a child with their own thoughts.

We need to stop joining the crowd by following the same outdated doctrines about children in orphanages. They are not stupid or mentally deficient. They're just kids who haven't been given a chance. We can all dispel these myths. Let's each think for ourselves. Let's be fair and help them by giving them smiles, hope and dignity.

The best interests of the child must be paramount in all adoption decisions.

The cooperation of all parties involved, each contributing their competence and experience, can support the child by laying the foundations for his or her own thinking and desire for personal development as an individual in modern society.

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