

## **LEGAL REGULATION OF CHILDREN'S RIGHTS IN THE FAMILY LAW OF EUROPEAN COUNTRIES**

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### **INTRODUCTION**

In 1959, at the 14th session, the United Nations General Assembly adopted the Declaration of the Rights of the Child, dedicated exclusively to minors. This Declaration provides for the most important rules of principle<sup>1</sup>. The declaration of the rights of the child is not binding; it is recommendatory in nature. The main advantage of this declaration is that it establishes the equality of rights of all children without exception, without distinction or discrimination on the grounds of race, color, sex, language, religion, political and other beliefs, national or social origin, property status, birth or other circumstance relating to the child or his family. It lists the rights of the child as a citizen (in the name, citizenship, compulsory and free education, primary care and protection, especially against all forms of neglect, cruelty and exploitation); as independent, the provisions regarding his right to education in the family are highlighted. Society and public authorities should have a responsibility to take special care of children who do not have a family and children who do not have sufficient means of livelihood. In accordance with Art. 1 of the Convention on the Rights of the Child – a person is recognized as a child under the age of 18<sup>2</sup>. The Convention on the Rights of the Child not only emphasizes the priority of the interests of children over the interests of society, but also specifically emphasizes the need for special state care for socially deprived groups of children: children left without parental care, people with disabilities, refugees, and offenders.

She proclaims the child as an independent subject of law, Emphasizing the high requirements and demand for the fulfillment of the rights proclaimed by the states, he considers it necessary that each state

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<sup>1</sup> Декларация прав ребенка. Международные конвенции и декларации о правах женщин и детей: сборник универсальных и региональных международных документов / Сост. Л. В. Корбут, С. В. Поленина. – М., 1998.

<sup>2</sup> О правах ребенка.: Конвенция ООН // КонсультантПлюс : справочная правовая система / разраб. НПО «Вычисл. математика и информатика» / <http://www.consultant.ru>.

bring its national legislation in accordance with this international act. A special monitoring mechanism is being introduced – the United Nations Committee on the Rights of the Child and gives it high authority. The Convention on the Rights of the Child calls on adult children to build relationships on a different moral basis. Respect for opinions, opinions, and the personality of the child as a whole should be not only the norm of universal culture, but also the rule of law.

In the scientific literature, a minor is considered to be a person who has not reached the age from which the law gives him the opportunity to fully realize his subjective rights and fulfill his duties. In accordance with Art. 1 of the United Nations Convention on the Rights of the Child, a child is recognized as a person under the age of 18.

Until recently, the situation of illegitimate and legitimate children was different in many countries of the European Union. However, the jurisprudence of the European Court of Human Rights has led states to amend national legislation to eliminate discrimination. So, earlier in France, when inheriting by law, illegitimate children could count only on half of the share that would be due to them if they were legitimate children. Moreover, the proportion of a legitimate child increased due to a decrease in the proportion of an illegitimate child. The legal status of illegitimate children changed in 2001 in connection with the entry into force of Law No. 2001-1135 of December 3, 2001, which equalized their rights with legitimate children.

European law recognizes a child as a person from the moment of birth. However, it does not prohibit states from considering a child a human being from the moment of conception, although the protection of an unborn child is not provided for in any international treaty, with the exception of the American Convention on Human Rights (Article 4 (1)).

European law, as already mentioned, provides for the right to respect for private and family life (Article 7 of the Charter of the European Union on Fundamental Rights and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

The European Union places its competence in resolving cross-border disputes arising in the area of family life, including the recognition and enforcement of judgments in member states.

The European Court of Human Rights and the Court of Justice of the European Community, when considering disputes, take into account the interests of children and their rights as provided for in the Charter, Conventions, Bis Brussels II and other normative legal acts establishing

children's rights, including such a right as the right to family life and the right of the child to have an opinion and interests.

European family law recognizes that often the rights of a child can contradict each other (for example, a child's right to respect for his family life may be limited in his interests, for example, if parents do not fulfill their parental responsibilities, etc.). Family law of European countries has developed tools and mechanisms to ensure the best interests of the child and his rights.

### **1. The right of the child to family education and communication with parents**

States have positive obligations to ensure children's effective enjoyment of their rights to respect for family life. When considering any issues related to respect for the child's family life, judicial and administrative authorities should take into account his interests. The child's right to respect for family life is not absolute and is subject to restriction: in accordance with the law; the interests of a democratic society; national and public security; – the economic well-being of the country; prevent rioting or crime; to protect health or morality or to protect the rights and freedoms of third parties. European Union law regulates the procedural issues of the realization of the child's right to family education.

The jurisprudence of the European Court of Human Rights establishes that the state has negative and positive responsibilities for providing children with family education. The right of the child to family education consists of: – the right of children to know their parents and the right to parental care (cohabitation, care from parents)<sup>3</sup>.

They are to some extent interdependent: the right of children to know their parents is often ensured through parental care. However, we are forced to ascertain the existence of situations when these rights are disconnected, for example, at the birth of a child by artificial reproduction or adoption.

The right to know one's parents becomes difficult to realize in case of separation of social and biological aspects of parenthood: in cases of adoption or the birth of a child by artificial reproduction.

On the one hand, the child himself is interested in obtaining information about biological roots: with the aim of forming an identity

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<sup>3</sup> Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No. 5, 1950, Art. 8.

and understanding his personal history, gaining a more complete picture of his health, possible hereditary ailments and genetically caused diseases, and preventing blood marriages.

On the other hand, the child's social parents may be interested either in maintaining the secrecy of the circumstances of his appearance in the family, ensuring stability of relations and protecting the integrity of the family, or in not creating an atmosphere of tension within the family caused by the constant need to hide information.

You can talk about the interests of the biological parents of the child (who may both seek to learn about the fate of their offspring and prefer ignorance by creating a new family), the interests of the biological brothers and sisters of the child and others.

In 2006, the World Medical Association noted: "If a child is born through donation, it is necessary to encourage families to reveal the fact to the child, regardless of whether the domestic law gives the child the right to information about the donor. Keeping secrets within the family is difficult and may harm the child if information about the donor conception is revealed by chance and without proper support<sup>4</sup>".

The law governing relations related to the circulation of information on the origin of the child faces two tasks: firstly, to provide mechanisms and tools to hide to one degree or another the circumstances of the appearance of the child to the family, and secondly, to provide the child, as well as other interested parties, a certain autonomy and the ability to obtain information about the biological roots of the child. The solution to these problems occurs both at the international and national levels.

"A child is registered immediately after birth and from the moment of birth has ... as far as possible, the right to know his parents", proclaims Art. 7 of the United Nations Convention on the Rights of the Child.

The United Nations Committee on the Rights of the Child has repeatedly expressed concern about the lack of mechanisms in States to allow a child to receive information about their biological origin – in relation to situations of adoption<sup>5</sup>, anonymous birth<sup>6</sup>, and birth outside of

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<sup>4</sup> Hodgkin, R., Newell, P. UNICEF Implementation Handbook for the Convention on the Rights of the Child. Geneva, 2007.

<sup>5</sup> Комитет по правам ребенка (КПР) § 52-53. Заключительные замечания: Бельгия: CRC/C/BEL/CO/3-4, 18 July 2010; КПР. Заключительные замечания: Новая Зеландия: CRC/C/NZL/CO/3-4, 11 April 2011; КПР. Заключительные замечания: Российская Федерация: CRC/C/RUS/CO/3, 23 November 2005.

<sup>6</sup> CRC. Concluding observations: Luxembourg: CRC/C/15/Add.250, 31 March 2005; CRC. Concluding observations: Luxembourg: CRC/C/LUX/CO/3-4, 29 October 2013.

marriage<sup>7</sup>. However, already in 1994, the Committee specifically addressed the problem of anonymous gamete donation, noting "a possible contradiction between the provisions of the Convention, which enshrines the right of the child to know their origin, and ... keeping the identity of the sperm donor secret<sup>8</sup>". Of great importance is also Art. 8 of the Convention on the Rights of the Child: "... States parties undertake to respect the right of the child to maintain his or her identity, including citizenship, name and family ties, as provided by law, without unlawful interference." According to experts, "the concept of a child's identity" (children's identity) seeks to focus on the immediate family of the child, but along with this, it is increasingly recognized that children have an amazing ability to maintain multiple relationships.

For this reason, the best interests of the child and a sense of individuality can be protected without necessarily depriving him of information about his origin – for example, after being transferred to state care, "secret" adoption or anonymous donation of eggs or sperm, etc.<sup>9</sup> "

The importance of information on the biological origin of the child becomes one of the pressing issues of Council of Europe law, primarily in light of the development of the practice of the European Court of Human Rights in cases relating to situations of birth outside of marriage<sup>10</sup> or anonymous motherhood<sup>11</sup>. Analysis of existing practice allows us to draw the following conclusions.

The child's right to access information on origin is covered by Art. 8 of the Convention (at least as far as privacy is concerned)<sup>12</sup>.

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<sup>7</sup> КПП. Заключительные замечания: Сейшельские Острова: CRC/C/SYC/CO/2-4, 23 January 2012; CRC. Concluding observations: Israel: CRC/C/ISR/CO/2-4, 4 July 2013; CRC. Concluding observations: Tajikistan: CRC/C/TJK/CO/2, 5 February 2010.

<sup>8</sup> CRC. Concluding observations: Norway: CRC/C/15/Add. 23, 25 April 1994.

<sup>9</sup> Jäggi v. Switzerland: Application N 58757/00: Judgment of 13 July 2006. – C. 114.

<sup>10</sup> Mikulić v. Croatia: Application N 53176/99: Judgment of 7 February 2002. Mikulić v. Odièvre v. France: Application N 42326/98: Judgment of 13 February 2003.; Shtukaturv v. Russia: Application N 44009/05: Judgment of 27 March 2008.

<sup>11</sup> Godelli v. Italy: Application N 33783/09: Judgment of 25 September 2012; Parliamentary Assembly of the Council of Europe. International adoption: respecting children's rights: Recommendation 1443 (2000): adopted on 26 January 2000. URL: <http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm>. (29.11.2013).

<sup>12</sup> Godelli v. Italy: Application N 33783/09: Judgment of 25 September 2012; Mikulić v. Croatia: Application N53176/99: Judgment of 7 February 2002.; Odièvre v. France: Application N 42326/98: Judgment of 13 February 2003. Parliamentary Assembly of the Council of Europe. International adoption: respecting children's rights: Recommendation 1443 (2000): adopted on 26 January 2000 / <http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm>. (29.11.2013); Shtukaturv v. Russia: Application N 44009/05: Judgment of 27 March 2008.

The European Court of Human Rights recognizes the possibility of restricting the child's right to access information about his or her origin (and more broadly, the child's right to respect for his private life) insofar as the restriction pursues legitimate goals. For example, in the case of anonymous motherhood, such goals may be to protect the life and health of the mother and child during pregnancy and childbirth, to reduce the risk of leaving the child in dangerous conditions, as well as the risk of clandestine abortions.

To limit the access of a child conceived with the help of donor gametes to information about its origin, justification could serve such purposes as protecting the health of the child (the mental health of a small child who is not yet ready to accept certain information), protecting the rights and freedoms of others ( first of all, the right to respect for the private and family life of the biological and social parents of the child).

The European Court of Human Rights provides the national authorities with the choice of a specific legal mechanism for the child to access information about his or her origin. States have a certain margin of appreciation<sup>13</sup>.

However, the discretion of states is limited by the need to achieve a fair balance of the interests of the entities involved. First of all, we are talking about the private interests of the child (obtaining information about the origin)<sup>14</sup> and his biological parents (maintaining anonymity)<sup>15</sup>. However, the interests of third parties may also be affected – the social parents of the child and their relatives, relatives of biological parents<sup>16</sup>.

The boundaries of the state's discretion depend on the presence or absence of a European consensus on the right of the child to access information about his or her origin. In the *Odièvre France* judgment, the European Court of Human Rights emphasized that the participating

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<sup>13</sup> *Godelli v. Italy*: Application N 33783/09: Judgment of 25 September 2012; Parliamentary Assembly of the Council of Europe. International adoption: respecting children's rights: Recommendation 1443 (2000): adopted on 26 January 2000. URL: <http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm>. (29.11.2013).

<sup>14</sup> *v. France*: Application N 42326/98: Judgment of 13 February 2003; *Shtukurov Russia*: Application N 44009/05: Judgment of 27 March 2008.

<sup>15</sup> *Godelli v. Italy*: Application N 33783/09: Judgment of 25 September 2012.

<sup>16</sup> Parliamentary Assembly of the Council of Europe. International adoption: respecting children's rights: Recommendation 1443 (2000): adopted on 26 January 2000. URL: <http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm>. (29.11.2013).

States adhere to different, sometimes opposite, approaches to anonymous parenthood, and based on this, among other things, ruled that there are no violations of the European Convention in the actions of the French authorities<sup>17</sup>.

Since the Odièvre judgment was issued, there have been major changes in practice and legislation, and at present, the conclusion that there would be no European consensus would not be so clear. Since 2003, laws have been adopted in many countries to increase the access of children conceived using assisted reproductive technologies to information on their origin: this includes European countries (Great Britain, Spain, the Netherlands, Norway, Portugal, Finland, Montenegro, Estonia) and countries outside of this region (Canada, New Zealand, Australian states New South Wales and South Australia)<sup>18</sup>.

In ascertaining the presence or absence of a European consensus, the ECHR also takes into account the “soft law” of the Council of Europe<sup>19</sup>. In this regard, of particular importance are, for example, not only the recommendations already formulated in 2000 to ensure the right of adopted children to know about their origin at least from adulthood, and also to exclude from the national laws any conflicting provisions, but also later proposals to take into account the law “duly” “the child’s interest regarding information about his biological origin, as well as ensure the right of children” to receive information about his biological/genetic origin in compliance with m of their best interests<sup>20</sup>. ”Moreover, the child’s right to know one’s origin is already recognized in legally binding acts, such as the 2008 European Convention on the Adoption of Children.

The blanket restriction of the child’s right to access information about his or her origin indicates a violation of Art. 8 of the European Convention, since the rights and interests of one subject – a child are

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<sup>17</sup> Parliamentary Assembly of the Council of Europe. International adoption: respecting children’s rights: Recommendation 1443 (2000): adopted on 26 January 2000. URL: <http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm>. (29.11.2013).

<sup>18</sup> Кириченко К.А. Право ребенка на информацию о его происхождении: эволюция международно-правовых стандартов и перспективы развития российского права // Семейное и жилищное право. 2015. № 4. С. 10–13.

<sup>19</sup> Surrogacy: The Experience of Commissioning Couples / F. MacCallum [et al.] // Human Reproduction, 2003. Vol. 18. N 6. P. 1334-1342.

<sup>20</sup> Report on Principles Concerning the Establishment and Legal Consequences of Parentage – «The White Paper». Strasbourg, 23 October, 2006. URL: [http://www.coe.int/t/e/legal\\_affairs/legal\\_cooperation/family\\_law\\_and\\_children%27s\\_rights/documents/CJ-FA\\_2006\\_4eRevisedWhitePaper.pdf](http://www.coe.int/t/e/legal_affairs/legal_cooperation/family_law_and_children%27s_rights/documents/CJ-FA_2006_4eRevisedWhitePaper.pdf). (05.08.2010).

completely blocked by the rights and interests of another subject – for example, an anonymous mother, on whose will the child’s access to information depends entirely.

In the case of *Odièvre*, the European Court of Human Rights did not find a violation of Art. 8 of the European Convention, noting that the applicant was able to obtain certain information about her origin (a description of the appearance and lifestyle of each of the parents, information about their other children, etc.). However, considering the case of *Godelli v. Italy*, where the applicant was refused any information at all – either identifying or non-identifying – about her biological mother, the European Court of Human Rights acknowledged the violation, specifically emphasizing the difference between the applicant's situation and the situation of Ms *Odièvre*. The European Court of Human Rights concluded that the state was unable to balance the interests of the applicant and her biological mother, having completely blocked the applicant's right<sup>21</sup>.

The issues of legal regulation of the right to communicate with parents are divided into two categories: the exercise of the right to communicate with a child in connection with the divorce of parents and communication in a broader sense. When determining the order of communication, it is necessary to establish a regular mode of communication, the order of direct and indirect contact.

The fundamental international document on children's rights, the 1989 United Nations Convention on the Rights of the Child (Clause 2, Article 10), establishes that a child whose parents live in different states has the right to support on a regular basis, with the exception of special circumstances, personal relationships and direct contacts with both parents.

However, it is well known how often a child is deprived of the opportunity to communicate with a parent living separately due to the fact that parents cannot agree among themselves, and a parent living with a child prevents such communication. It is often not possible to protect the rights of a child by legal methods, in particular, due to the inability to enforce a court decision on the exercise of the right of a separately living parent to communicate with his child, even when it comes to a decision of a Russian court. The problem becomes all the more intractable if the child and one of the parents are separated by state borders.

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<sup>21</sup> *Godelli v. Italy*: Application N 33783/09: Judgment of 25 September 2012.



The past few years have shown that the severity of this problem is only growing, which is confirmed by numerous, sometimes scandalous, cases of parents abducting children from each other and high-profile lawsuits. Many of these situations do not have a legal solution. Unfortunately, most of all in such cases, children who are deprived of the opportunity to maintain contact with a living separately parent suffer, they move away from each other, at the risk of losing each other altogether.

The legal regulation of the child's right to communicate with parents is mainly regulated by: Bis Brussels II; European Convention on the Exercise of Children's Rights of January 25, 1996<sup>22</sup>. The objective of the European Convention on the Exercise of Children's Rights of January 25, 1996 is to ensure that their rights are in the interest of children and facilitate their implementation in family matters related, in particular, to parental responsibility, including questions of the place of residence of children and the right of "access" to the children. The European Convention on the Exercise of Children's Rights was adopted by the Council of Europe on 25 January 1996 and entered into force on 1 July 2000.

The Convention on Civil Law Aspects of International Child Abduction of October 25, 1980, which stipulates the obligation of States parties to take measures to combat the illegal movement and non-return of children from abroad (Article 11). The Convention of October 25, 1980, as follows from its preamble, is aimed at protecting children on an international scale from the harmful effects of their unlawful movement or detention, at establishing procedures to ensure their immediate return to their state of permanent residence, as well as protecting access rights.

European Convention on the Recognition and Enforcement of Decisions in the Field of Custody of Children and the Restoration of Custody of Children of May 20, 1980 (Luxembourg), prepared by the Council of Europe, adopted also prior to the conclusion of the Convention on the Rights of the Child, but proceeding from the same general principles, also regulates relations related to the illegal movement of children across the interstate border.

Directive 2008/52 / EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters (hereinafter referred to as the Mediation Directive).

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<sup>22</sup> Европейская конвенция об осуществлении прав детей (ETS N 160) 25.01.1996) // КонсультантПлюс: справочно правовая система. URL: <http://www.consultant.ru>.

As an example of the realization of the child's right to communicate, the case "Kazim Görgülü v. Germany", which the ECHR considered in 2004, and the German Constitutional Court in 2004 and 2005, should be cited. This case became resonant, since the German Constitutional Court initially refused to comply with the decision of the European Court of Human Rights, believing that the European Court of Human Rights should take into account the national characteristics of Germany. In 1999, the applicant, a German citizen, and a Turk, by nationality, had an illegitimate son, whom his mother refused immediately after childbirth, passing him for adoption. The applicant about the birth of the child found out a few months later demanding the establishment of paternity.

In 2001, the court decided to transfer the child to his father (who had by then entered into Islamic marriage with another woman, a German citizen). However, the second instance court, having examined the complaint of the foster family and the guardianship authority, refused to transfer the child to the father. Moreover, the court even deprived the father of the right to see his son, citing the interests of the child himself (whom, incidentally, was called Christopher). In 2001, Mr. Gergülü filed a complaint with the German Constitutional Court, which refused to examine the merits of the complaint. In 2004, the European Court of Human Rights unanimously resolved the case in favor of the father, pointing out a violation of Art. 8 of the Convention. The European Court of Human Rights considered that the refusal to transfer a child to a father without a sufficient study of what is worse for the child – the immediate stress of separation from a foster family or the potential long-term effect of separation from a real father – violates this article of the Convention. The court also found that depriving a father of the right to see a child violates the same article of the Convention.

The Amtsgericht Wittenberg trial court again decided to transfer the child to the father, giving the father the right to see the child for 2 hours a week, until the court decision comes into force. The Court of Appeal in Naumburg (Oberlandesgericht Naumburg) first revoked the permission to see the child (June 2004), and then the decision to transfer the child (July 2004), concluding that when the decision was made, the lower court took into account only the interests of the father, and in fact, one should pay attention to the interests of the child. Three times the applicant appealed to the German Constitutional Court. In the last of its decisions, the Constitutional Court already rather annoyingly characterizes the actions of the rebellious court in Naumburg as "arbitrary" (willkürlich),

because the court not only did not take into account the decision of the European Court of Human Rights, but also acted directly contrary to the rules established by the European Court of Human Rights standards, and also in violation of the procedural law of Germany.

In January 2005, the case was transferred to another composition of the Court of Appeal in Naumburg. The court allowed the father to meet with the child for a limited time, but rejected the requirement to transfer the child to the father as “currently unjustified” (December 2006). The court found that the boy – who was already seven years old by that time – needed time to establish a closer relationship with his father. Subsequently, Gergul was given the opportunity of constant meetings with the child, and in 2008 he was able to take him to his family.

**2. Child's right to name, the right of the child to express  
his own opinion, property rights of the child under family law,  
the right of the child to protect family rights**

The name is an element of the status of persons that allows you to identify the child. The name of the child is recorded in the birth certificate or in another act of civil status by a person working in the administration. Parents, including unmarried parents, choosing the name of the child, are guided by the principle of freedom of choice.

In the countries of the European Union, special requirements may also be imposed on the name of the child, for example, in Germany, the name of the child must necessarily indicate his gender. Interesting are the legal acts of Belgium. So, this is the only country in which the provisions governing the status of a child “conceived during marriage by one of the spouses by someone other than her spouse” are preserved. Such a child cannot bear the name of his father, even if he recognized him. An illegitimate child must bear the name of his mother, while a legitimate child is the common name of the spouses, or one of them.

The European Court of Human Rights has found: 1è The state must protect the child from an improper, ridiculous or bizarre name. In some states, there are restrictions on the choice of the name of the child. So, since 2011 in New Zealand there is a list of 102 names that should not be given to children; the name also cannot consist of numbers or a single letter. In Italy, it is forbidden to call the boys Venus (in the translation "Friday").

The state has the right to maintain the national practice of naming if it is in the public interest. A situation may arise in which two interests

collide: private – the interest of the child, non-infliction of harm on the child by a ridiculous or bizarre name – and public – preservation of the linguistic and cultural identity of the state. For example, in the *Johansson v. Finland* case (complaint No. 10163/02), in 1999 the applicants had a son, whom they intended to give the name “Axl Mik”, but this was opposed by the registration authority, who considered this name to be inconsistent with Finnish tradition. They unsuccessfully appealed the denial, citing the fact that the name Axl is common in Denmark and Norway, and is also used in Australia and the United States. It is pronounced according to the rules of the Finnish language and does not correspond to the Finnish tradition any more than the name Alf. In the Finnish population information system, at least three citizens with that name appear, and in addition, it is possible that the applicants may go abroad<sup>23</sup>.

The Finnish Administrative Court of First Instance referred to the Law on Names, according to which a name that does not correspond to the practice of naming in a country can be allowed if a person has a relationship with a foreign state due to national, family relations or other special circumstances and the proposed name is consistent with the practice of naming existing in that state. The name may also be considered admissible for other valid reasons, however, the applicant's arguments are insufficient. The Supreme Administrative Court upheld the decision<sup>24</sup>.

The European Court of Human Rights indicated that the name given by the parents to the child, whose registration was refused by the local civil registration authority due to the mismatch of its spelling in Finnish practice, has been used in the family since the birth of the child and did not cause any problems, and it's not very different from other names used in Finland, so the court has no reason to believe that the name invented by the parents could harm the child. The court also argued its position by the fact that the chosen name is easily pronounced, it is used in other countries (the name Axl given to the child by the child is common in Denmark, Norway, Australia, USA), by registering children before and after the dispute arises under the same name.

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<sup>23</sup> Матвеева, М. В. Право на имя с позиций и практики Европейского суда по правам человека // Семейное и жилищное право. 2015. № 5. С. 10–12.

<sup>24</sup> Решении ЕСПЧ от 07.11.2006 по делу «Йохансон (Johansson) против Финляндии» (жалоба № 10163/02) // КонсультантПлюс: справочно-правовая система. URL: <http://www.consultant.ru>.

The European Court of Human Rights says that even if the name differs from the commonly used in the national language and is not in the dictionaries, then its different pronunciation and spelling cannot affect the rule of law or any public interest, unless otherwise proved, and the general ban on registration names not represented in the dictionary are hardly compatible with Art. 8 of the Convention, as well as with the reality of a wide variety of linguistic origin of names.

According to the position of the European Court of Human Rights, even if such a name, which can be interpreted as ridiculous or bizarre, was registered more than once and did not harm the name holders, the prohibition of such a name would violate Art. 8 of the Convention. If the name of the child does not affect the preservation of the cultural and linguistic identity of the country, then this name cannot be considered unsuitable for the child.

Family law of European countries proceeds from the fact that the opinion of the child, based on his age and maturity, has legal significance. This does not mean that the European Court of Human Rights and national courts are obliged to always make the decision requested by the child, the main thing is that the national courts and administrative authorities should provide the child with the opportunity to express it. If the functionals consider that the child's opinion does not reflect his interests, then the child's opinion will not be taken into account. For example, in one of the cases, a 14-year-old girl ran away from home in order to live with her friend. Authorities returned her to her parents. Considering the complaint, the European Commission explained: As a general provision, provided that there are no special circumstances, the obligation of children to live with their parents or otherwise be subject to social control is necessary to protect the health and morality of children, although from the point of view of each child, this may constitute an interference with his personal life ... the Commission considers that the interference with the aim of forcing her to return to her parents ... was aimed at ensuring respect for the life of her family, and it was also necessary to protect the health and morality of the girl within the meaning of paragraph 2 of the Convention<sup>25</sup>.

For example, in the case of *Sahin v. Germany*, the applicant, the father of a child born out of wedlock, admitted his paternity in 1988 and

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<sup>25</sup> Певцова, И. Е. Защита семейной жизни Европейским судом по правам человека // Юридический мир. 2014. № 8. С. 48–52.

visited the child until October 1990. After that, the mother of the child banned the applicant from any contact with him. After several interviews with the applicant, the child and the child's mother, the expert psychologist concluded that the father's access to the child did not meet the interests of the child himself. The expert psychologist additionally indicated that it would be undesirable for a child who was then about five years old to be asked to testify in court. The European Court of Human Rights has pointed out that it cannot be argued that the courts are always obliged to hear the child's testimony in court on the issue of dating the parent. The decision on this issue depends on the specific circumstances of the case, taking into account the age and level of maturity of the child. At the time of the consideration of the case, the child was about five years old – taking into account the methods used by the expert psychologist and her cautious approach to analyzing the child's attitude to the situation – we can assume that the court did not go beyond permissible discretion when he substantiated his decision with conclusions expertise. There was no reason to doubt the professional competence of the expert psychologist or the forms of conducting interviews with the child and parents<sup>26</sup>.

An interesting case was *Sommerfeld v. Germany* (*Sommerfeld v. Germany*). The applicant, the father of a child born out of wedlock, acknowledged paternity in 1981 and lived with the mother of the child until 1986, when they separated. After that, the mother forbade the applicant any contact with her daughter. In June 1991, the court heard evidence from her daughter, who informed the court that she did not want to have contact with the applicant. In April 1992, the court ordered a psychological examination of the case and received its results. The expert psychologist's opinion was not in favor of the father's and his daughter's meetings, and after the hearings in June 1992, at which the child repeated his objections to his father's visits, the applicant withdrew his claim. However, the European Court of Human Rights indicated that the national court did not pay attention to the problem of pressure exerted on a child who opposed communication with his father, although psychological research showed that he sought communication<sup>27</sup>.

The rights of the child, including property rights, are governed by the national legislation of each member state of the European Union.

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<sup>26</sup> Постановление ЕСПЧ от 08.07.2003 по жалобе № 30943/96. URL: [http://www.espch.ru/component/option,com\\_frontpage/Itemid,1](http://www.espch.ru/component/option,com_frontpage/Itemid,1).

<sup>27</sup> Постановление ЕСПЧ от 08.07.2003 по жалобе N 31871/96. URL: [http://www.espch.ru/component/option,com\\_frontpage/Itemid,1](http://www.espch.ru/component/option,com_frontpage/Itemid,1).

So, for example, it was in France in 1792 that the document “Proclamation of the rights of the child” was prepared. There are special rules on parental authority over the property of a minor. According to Art. 382 of the French Civil Code, father and mother can manage and use the property of their child. Legal administration is jointly exercised by the father and mother if they jointly exercise parental authority, and in other cases, under the supervision of a judge, either by the father or mother on the basis of the provisions of the previous chapter. Legal use is associated with legal management: it is carried out either by the father and mother together, or by the father or mother, each of whom is entrusted with the management.

The right to use terminates: upon reaching the child 16 years of age or earlier, when he marries; for reasons that terminate parental authority, or for reasons that terminate legal control; for reasons that entail the repayment of any usufruct.

In accordance with Article 385-387 French Civil Code, this use entrusts the following duties: 1) the duties that lie on the usufructuary; 2) feeding, keeping and raising a child in accordance with his condition; 3) payment of debts burdening the inheritance received by the child.

As in the German Civil Code, France provides for the institution of civil property liability to minors. The issues of managing the property of a minor, including securities, are regulated in detail with a view to the most efficient use and enhancement of it.

An important institution of inheritance law aimed at protecting the property rights of minors is the institution of a mandatory share in the inheritance. It is provided for by French law. The essence of this institution is that, regardless of the contents of the will, certain categories of heirs, called necessary, reserve a certain share in the inheritance. FGK establishes the inability for a person under the age of 16 to dispose of property through a will (Art. 903 of the French Civil Code).

The European Convention on the Exercise of Children's Rights of 25 January 1996 is devoted to the protection of children's rights in this area, in particular in cases involving parental responsibility, including the right to communicate with parents. Its scope is the procedural rights of children under 18 years of age. It aims to ensure the rights of children in the interests of children and facilitate their implementation in family matters related, in particular, to parental responsibility, including questions of the place of residence of children and the right of “access” to children.

Procedural measures to ensure the realization of the rights of children consist of, according to the Convention, of: measures to ensure the rights of the child (the right to be informed if domestic law considers him to have a sufficient level of understanding, the right to apply for the appointment of a special representative if his interests in the course of the proceedings clash with the interests of carriers parental responsibility, and some other rights); regulating the role of courts in cases affecting the interests of the child (the courts must ensure, taking into account domestic law, that the child expresses his opinion, must act immediately, take his own initiative, etc.); determining the role of the representative of the child; Contributing to the provision and implementation of children's rights through national bodies that carry out the functions of developing legislation, preparing opinions, providing information, etc.

It also provides for the promotion of pre-trial methods for the settlement of disputes (Article 13) and the provision of legal assistance (Article 14). It is envisaged the creation of a standing committee that addresses issues related to the application of the Convention, its composition and functions.

The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement of Cooperation with respect to Parental Responsibility and Measures for the Protection of Children of October 19, 1996 establishes a delimitation of the jurisdiction of institutions of member countries with regard to the adoption of measures aimed at protecting the identity and property of a child, determining the law applicable such institutions, in the exercise of their authority, determine the law applicable to parental responsibility, ensure recognition and enforcement of child protection measures adopted in one of the countries party to the Convention, in other countries parties.

As follows from the preamble, the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation with respect to Parental Responsibility and Measures for the Protection of Children of October 19, 1996, it proceeds from the need to improve: the protection of children in international situations; overcoming contradictions between different legal systems regarding jurisdiction; applicable law; recognition and enforcement of child protection measures. The subject of regulation includes measures to protect children, applicable to the occurrence, implementation, termination or restriction of parental responsibility, as well as its transfer, to guardianship rights, including rights related to caring for a child's personality (the right to determine the child's place of



residence, the right of access, including the right to take a child for a limited period of time to a place different from his permanent place of residence, etc.), to guardianship (curatorship) and similar institutions, to the appointment and functions of any person or body bearing a response responsibility for the child, placement of the child in a foster family and similar institutions, control by authorized state bodies for the proper care of the child by persons responsible for him, to manage, preserve, manage the property of the child.

The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation with respect to Parental Responsibility and Measures for the Protection of Children of October 19, 1996 is wider than other conventions aimed at protecting the rights and interests of the child; it does not extend to the establishment and contestation of paternity, to decisions on adoption, determination of the name and surname of the child, alimony obligations, inheritance relations, social security, decisions regarding the right of asylum and immigration.

## **CONCLUSIONS**

The basic rule is to determine jurisdiction based on the child's place of residence. However, along with the basic rule, other jurisdictions are allowed as an exception (based on the child's citizenship, location of his property, place of consideration of the case on divorce of the parents or other close relationship of the child with this state), if the competent authority, according to the Convention, considers that the authority of such another state in a particular case would better resolve the case in the interests of the child (Art. 8). In urgent cases, the necessary protective measures are taken by the authorities of the state in whose territory the child or his property is located (Article 11). Flexibility in resolving issues of jurisdiction is obviously consistent with current trends.

The issue of the law to be applied is resolved in the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation with respect to Parental Responsibility and Measures for the Protection of Children of October 19, 1996 in the same detail: firstly, the rules on the law to be applied when the exercise by the authorities of their jurisdiction in accordance with Chapter II of the Convention (Article 15), and secondly, the conflict of laws rules determining the law applicable in the establishment and termination of parental responsibility (Article 16) and in the exercise of parental responsibility tweenness (v. 17). The child's place of residence is used as the main criterion for determining the

applicable law. The reference to the conflict of law rule of another state provided for by the Convention shall also apply when that other state is not a party to the Convention (Article 20).

Recognition has been established in the participating countries of “measures taken by bodies of the Contracting State” (paragraph 1 of Article 23). As you can see, this refers to decisions not only of the courts, but also of administrative authorities. Refusal of recognition is allowed only in cases established by the Convention (clause 2 of article 23) if: 1) the decision was made by an incompetent (according to the Convention) body; 2) the child was deprived of the opportunity to be heard; 3) if it was not possible to be heard by a person whose “parental responsibility” was violated; 4) if the recognition is clearly contrary to the public policy of the requested state, taking into account the best interests of the child; 5) the decision is incompatible with the last measure adopted in the state of permanent residence of the child, subject to recognition in the requested state; 6) the procedure established by the Convention for cases of placement of a child, in particular in a foster family, has not been followed. The procedure for enforcing a decision is determined by the law of the requested state (paragraph 1 of article 26). In principle, the decision is not reviewed in essence (Article 27).

When considering issues related to the protection of the family rights of the child, the following principles must be observed: the principle of ensuring the best interests of the child; The principle of taking into account the views of the child.

## **SUMMARY**

European norms and standards are based on the idea of the best safeguarding of the rights of the child: his survival, the ability to develop normally, be protected and have the opportunity (legal) to participate in society.

The concept of "minor" is defined legally, based on the psycho-physical and social qualities of the children of a particular nation, country and state. At present, both the national legislation of all countries and the norms of treaties, conventions and customs formally and legally quite fully record the totality of the rights, freedoms and legitimate interests of minors. However, the national and international practice of their implementation is full of violations of varying severity.

Existing national and international institutions and institutions for the protection of human rights in general, and the child in particular, are

capable of protecting a person, however, a number of extra-legal circumstances of a political, military, economic, environmental, geopolitical nature often interfere with this (they do not allow to deploy procedures for protecting human rights, especially minors).

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