

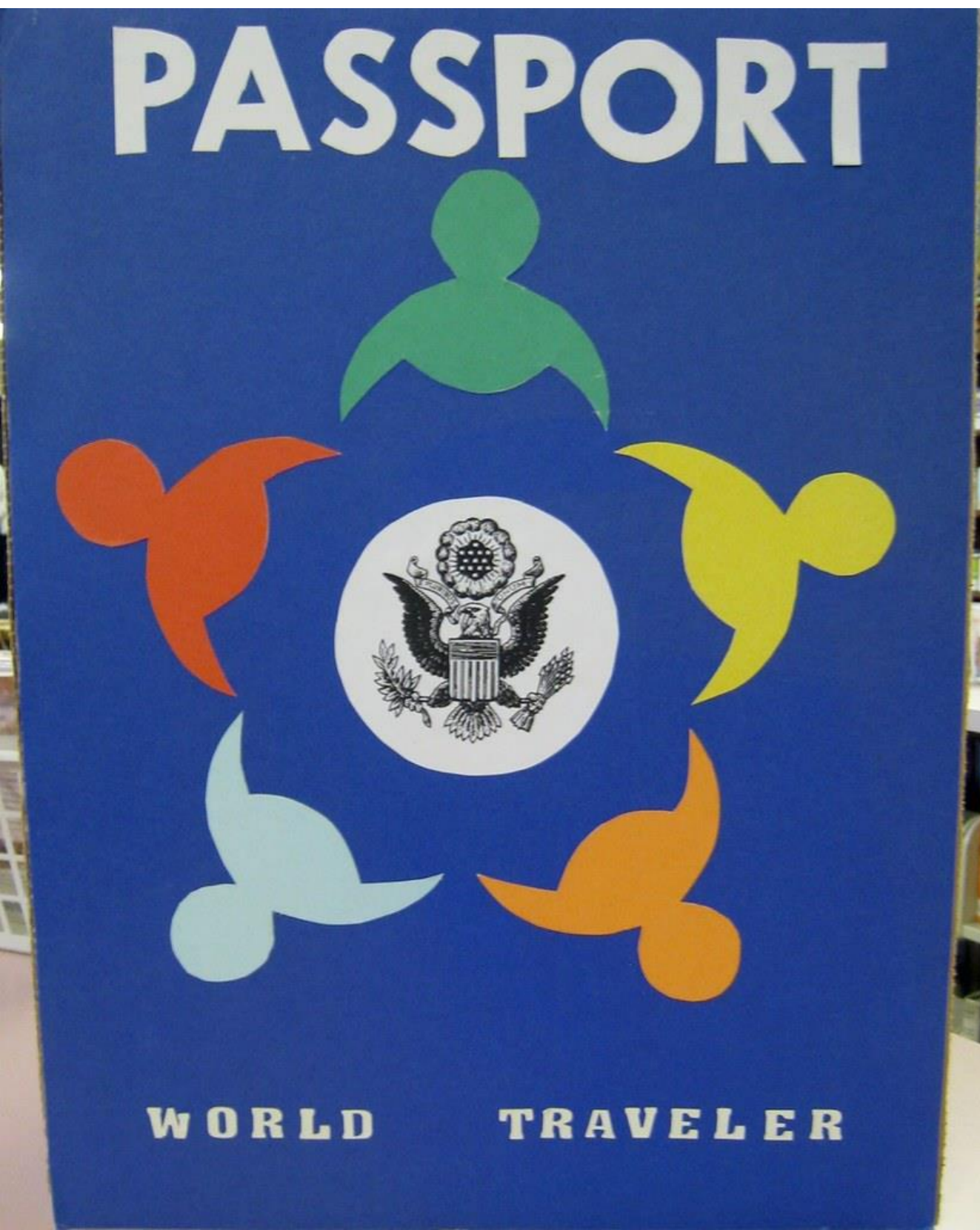
Webinar series

Analysing the EU Parenthood Proposal

Many Questions and Some Tentative Answers

Session 4

Wednesday 24 May 2023



The European Certificate of Parenthood: A Passport for Parents and Children?

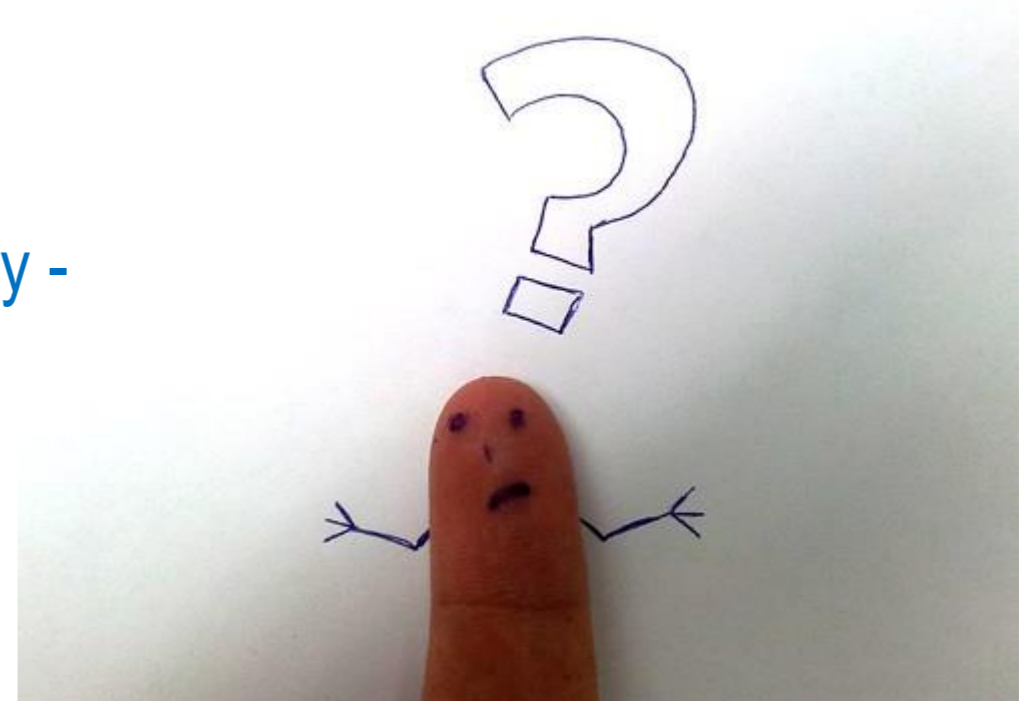
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Fundamental Questions

- 1) Who needs a Certificate attesting to the parent-child relationship?
- 2) *Nomina sunt omina*? Should the ECP become an ECF?
- 3) How will the CJEU interpret the «presumption of status» resulting from the Certificate?
- 4) How do we justify the choice to protect - by means of the Certificate and of European public policy - certain fundamental rights of children, LGBTIQ+ persons and women, but not others?
- 5) How do we improve the efficiency of the Certificate?



Types of parent-child relations relevant for the establishment of *status*

Biological relation: A child is born to a mother (male, female, non-binary)
filiationis

Genetic relation: A child has the genes of two or three ancestors (male or female gametes)

«Institutional» relation: The child's mother (male, female, non-binary) is married (M, F, N-B) or in a relationship with a person acknowledging paternity, co-maternity or parentage

Adoption: Decision by a public authority at the end of a process of "matching" a child with intended parents

Contractual arrangement assisted by a judicial decision:

The child has intended parents on the basis of a **contractual agreement** between them and genetic or biological parents (sometimes intermediated by agencies or clinics) by means of **parental orders** issued by a Court

NB: The relation between a child and a **social parent** is not relevant *per se* for the establishment of *status filiationis* (including in the presence of a judicial decision of kafalah) but may ensure the right of the child to enjoy family life

Nomina sunt omina? The ECP should be an ECF



"Birth Certificate" by unfurl.

“If you ~~are~~ **have** a parent in one country, ~~you~~ **have** are a parent in every country”



ECHR-KS

Key Theme - Article 8 Filiation

KEY THEME¹

Article 8 Filiation

(Last updated: 01/04/2022)

Introduction

The notion of filiation, for current purposes, refers to the legal recognition of the relationship between a parent and a child, including the family name of a child. It thus concerns several types of applications: those lodged by a natural or legal parent or by a child (born in or out of wedlock). It does not cover specific situations such as adoption or gestational surrogacy, or other related-matters such as custody, access or contact rights.

The establishment and disavowing of such legal recognition may raise issues under various Articles of the Convention (especially Article 8 but also Article 6 and 14). In reviewing the decisions taken by the domestic authorities in the exercise of their power of appreciation, the Court will seek a fair balance between all the interests involved: those of the applicant, those of the child, the legal parent(s), family and the general interest in ensuring legal certainty and security of family relationships (*Lavanchy v. Switzerland*, 2021, § 32).

EUROPEAN CERTIFICATE OF

~~PARENTHOOD~~

FILIATION

The European Certificate

Chapter VI of the Proposal

- Articles 46 to 57
- Same rules as the European Certificate of Succession (Regulation 650/2012) with few adaptations (e.g. *bona fide* effect)
- Optional use, principle of the «state of origin» (competence, rectification, modification or withdrawal, redress procedures, suspension), legal certainty derived from the uniform rules on applicable law, absence of a public policy exception
- Different meaning of the word «presumption» in the two instruments
- Need to evaluate the introduction of safeguards (e.g. a clause on «improper gains») also in light of the introduction, in the Bruxelles II ter Regulation, of art. 56(6) nuancing the imperative of mutual trust

The problematic use of the word «presumption of status» in matters of filiation

Article 53

Effects of the Certificate

1. The Certificate shall produce its effects in all Member States without any special procedure being required.
2. The Certificate shall be presumed to demonstrate accurately elements which have been established under the law applicable to the establishment of parenthood. The person mentioned in the Certificate as the child of a particular parent or parents shall be presumed to have the status mentioned in the Certificate.
3. The Certificate shall constitute a valid document for the recording of parenthood in the relevant register of a Member State, without prejudice to point (i) of Article 3(2).

REGULATION (EU) No 650/2012

Article 69

Effects of the Certificate

2. The Certificate shall be presumed to accurately demonstrate elements which have been established under the law applicable to the succession or under any other law applicable to specific elements. The person mentioned in the Certificate as the heir, legatee, executor of the will or administrator of the estate shall be presumed to have the status mentioned in the Certificate and/or to hold the rights or the powers stated in the Certificate, with no conditions and/or restrictions being attached to those rights or powers other than those stated in the Certificate.

Possible meanings of «presumption of status»

Explanatory Memorandum:

“The uniform rules in the proposal on the law applicable to the establishment of parenthood in cross-border situations are intended to facilitate the acceptance of authentic instruments with no binding legal effect but with **evidentiary effects in the Member State** of origin of either the **parenthood previously established** in that Member State (for example, **a birth certificate**) or of **facts** other than the establishment of parenthood (for example, **an acknowledgment of paternity or the giving of consent to the establishment of parenthood**)”

Recital 22

“To achieve its aims, it is necessary and appropriate for this Regulation to bring together [...] rules on the creation of a European Certificate of Parenthood in **a Union legal instrument which is binding and directly applicable.**”

Art. 3(2)(i)

This Regulation shall not apply to [...] **the legal requirements for the recording of parenthood in a register of a Member State, and the effects of recording or failing to record parenthood in a register of a Member State.**

Possible avenues to enhance protection of children's rights



Friday, March 11 - Ukraine Under Attack by [manhhai](#)

- A clause on «improper financial and other gains» (Arts. 8 and 32 of the 1993 Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption) ?
- A rule modeled on Art. 56(6) Reg. 1111/2019 nuancing the principle of the State of origin?
- A new role for CA?

1989 New York Convention on the Rights of the Child



["two sisters"](#) by [talourcera](#)

Article 7 (1)

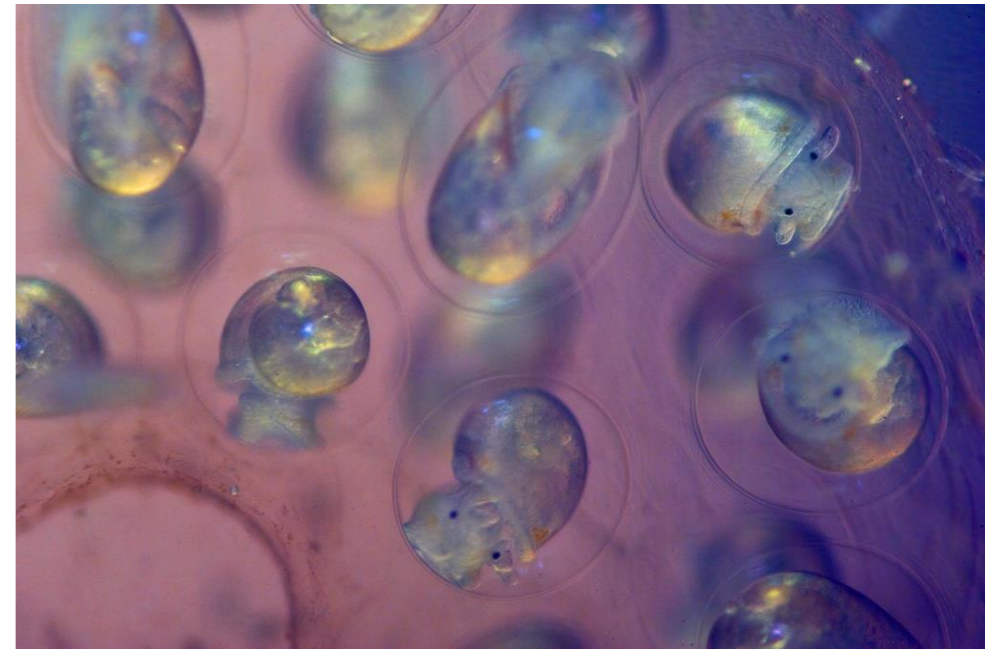
The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents

Article 8 (1)

States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

Council of Europe's Recommendation 2156 (2019)

- Gamete donation must remain a voluntary and altruistic act,
- Waiver of anonymity;
- Prohibition of use of anonymously donated sperm and oocytes;
- Prohibition on donors contacting their genetic offspring;
- Right of the person conceived through donation to contact the parent and any siblings, under certain conditions;
- Requirement for Council of Europe Member States that authorize sperm and egg donation to "set up and run a national donor and donor-conceived person register with a view to facilitating the sharing of information, to enforcing an upper limit on the number of possible donations by the same donor, ensuring that close relations cannot marry and tracing donors if the medical need should arise";
- Obligation for clinics and service providers to keep adequate records and make them available to national registries;
- Introduction of a "mechanism to ensure the cross-border exchange of information between national registries"



Implementing the motto «United in Diversity» (*in varietate concordia*) in future research



- 1) Function of EU private international law:
 - universal rights of children, LGB persons and women
 - Problem of the sale of children and violence against women

- 2) Law and Language:
 - European Certificate of Filiation
 - Gender-fair characterisation of

mothers, fathers and their possible declination for TIQA+ parents

3) Comparative Law: the consequences of the rules on «presumption of status» for children conceived with donated gametes. Different scenarios.

4) EU procedural law: instruments available to protect the rights of children to know their origins, to the same extent as the rights recognised by Arts. 7 and 8 CRC



Thank you

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["Through the eyes of a child"](#)

[by robynejay](#)