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THE RIGHT TO IDENTITY FROM AN INTERNATIONAL HUMAN RIGHTS PERSPECTIVE



IDENTITY



MENU



1. Legal basis



2. Article 8 ECHR



3. What *not* to forget today?

PROTECTION OF IDENTITY: A BROAD LEGAL BASIS

International human rights instruments

European human rights instruments

EU human rights instruments

CONVENTION ON THE RIGHTS OF THE CHILD (1989)

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.

EU-
DECLARATION
OF FUNDAMENTAL
RIGHTS (1989)

Article 6 (Privacy)

1. Everyone shall have the right to respect and protection for their identity

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

ARTICLE 8 ECHR

“.. concerns rights of central importance to the individual’s identity.”

(e.g. *A-M.V. v. Finland* (2017))

..embraces a **right to identity**

IDENTITY
is protected,
but:
what exactly is protected?



RIGHT TO IDENTITY EX ART. 8 ECHR

Search terms
database in
HUDOC, no filter

right to identity

right to an
identity

droit à l'identité

droit à une
identité

Result: 48 cases

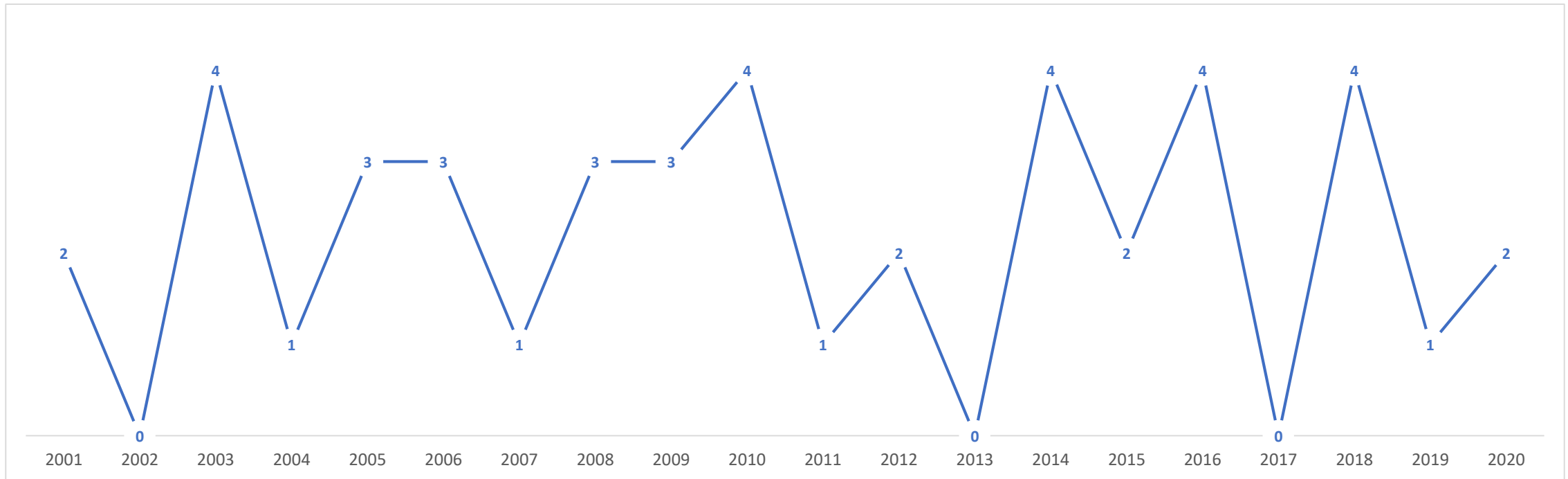
REPORT OF THE COMMISSION, BUGRHARTZ V. SWITZERLAND (1992)

“The Commission considers that the right to respect for private life as enshrined in Article 8 para. 1 (Art. 8-1) of the Convention ensures a sphere within which everyone can freely pursue the development and fulfilment of the personality. The right to develop and fulfil one's personality necessarily comprises **the right to identity** ((..)).”

EUROPEAN COURT, BENSAID V. UNITED KINGDOM (2001)

“Private life” is a broad term not susceptible to exhaustive definition. ((..)). **Article 8 protects a right to identity ((..))** (see, for example, Burghartz, cited above, opinion of the Commission, p. 37, § 47 ((..)).”

RIGHT TO IDENTITY EX ART. 8 ECHR IN CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS



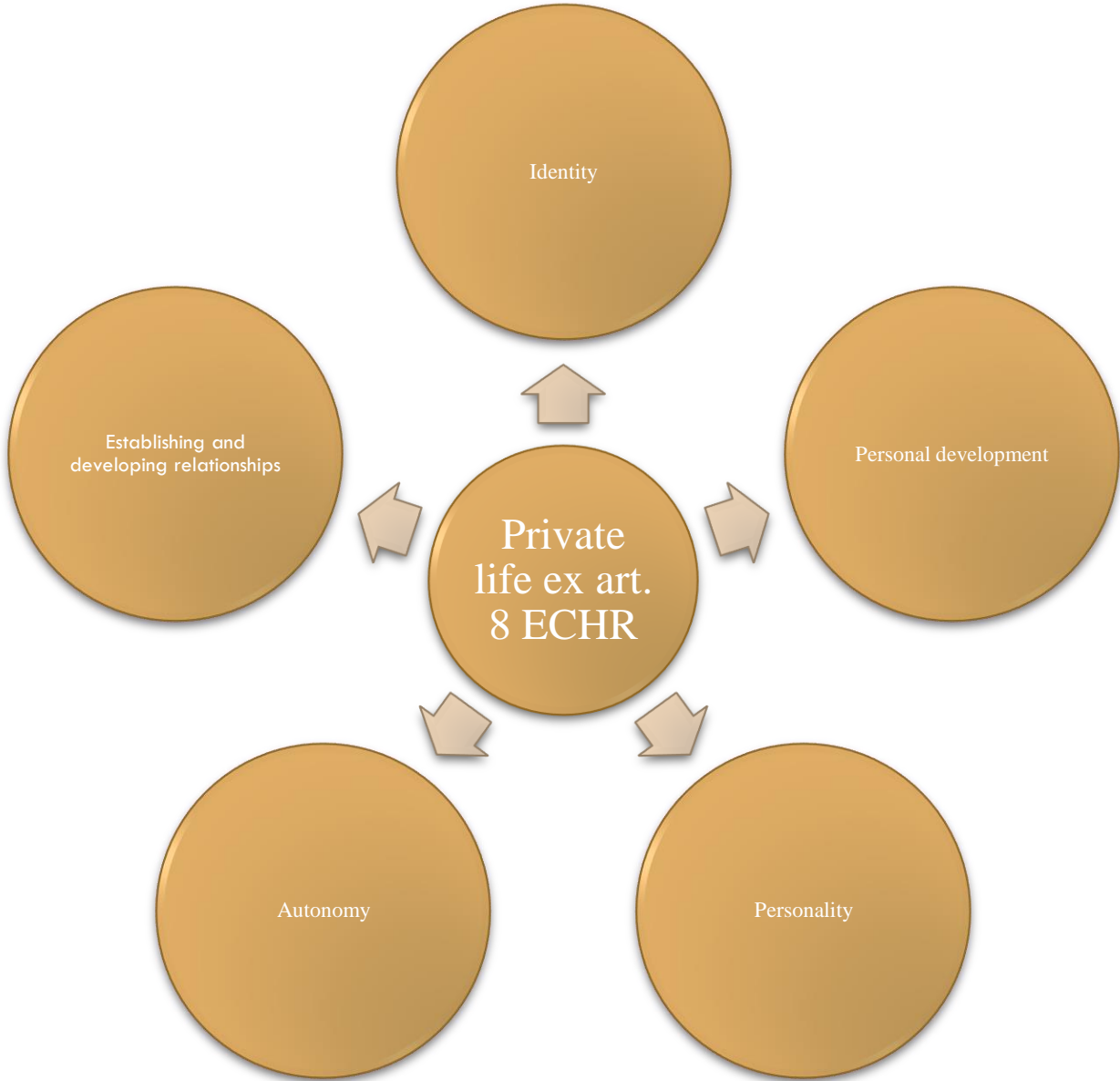
RIGHT TO IDENTITY EX ART. 8 ECHR IN CASE LAW

Always in context of **art. 8 ECHR**;
always in context of **private life**

Often referred to by the Court,
rarely by parties

Little (visibly) applied in cases,
often included in standard
consideration on private life

RIGHT TO IDENTITY EX ART. 8 ECHR



MULTIPLE ASPECTS OF IDENTITY

“The right to develop and fulfil one's personality necessarily comprises the right to identity and, therefore, to a name.” (Report of the Commission, Burghartz v. Switzerland 1992)

“((..)) the right to an identity, which includes the right to know one's parentage, is an integral part of the notion of private life.” (Jäggi v. Switzerland 2006)

“ ((..)) an essential aspect of the identity of individuals is at stake where the legal parent-child relationship is concerned.” (Mennesson v. France 2014)

NON-LIMITATIVE LIST OF ASPECTS OF IDENTITY

Name (family/forename)	Gender identity	Sex	Nationality	Ethnic identity	Sexual orientation
Sexual life	Biological / genetic ties	Legal parent-child relationship	Emotional bonds between children and adults in non-traditional families	Religion	Reputation
Image (photograph/picture)	Raising your child as parent	Marital status	Academic degree	Social ties between settled migrants and community in which they are living	Certain activities

**RIGHT TO IDENTITY
CONCERNS DIFFERENT
'CATEGORIES OF IDENTITY'**

Personal identity

Physical identity

Social identity



IDENTITY RIGHTS FALLING UNDER THE SCOPE OF THE RIGHT TO IDENTITY

Right to a name

Right to gender identity

Right to cultural identity

Right to know and establish biological / genetic ties

IDENTITY RIGHTS FALLING UNDER THE SCOPE OF THE RIGHT TO IDENTITY

Right to identity ex article 8 ECHR

The right to establish details of identity as individual human beings

Other
(specific)
rights

Obtaining information related to
'important aspects' of (personal)
identity

Establishing the legal parent-child
relationship

?

Identity of
parents

Early life

?

Biological/
genetic ties

Intended parent if
partner genetic
parent in case of
surrogacy

?

PROTECTION? POINTS OF INTEREST



Smaller margin of appreciation



Do not leave in limbo for too long on issues of identity



Pay attention to possible (future) negative impacts on identity

WHAT *NOT* TO FORGET **AFTER** TODAY?

Identity rights are rooted in multiple human rights instruments

Identity is an open concept

Article 8 ECHR contains a right to identity

The development is underway

And..

WHAT *NOT* TO FORGET
TODAY?

