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## The Recognition of a Foreign Adoption– The Human Rights Principles and Croatian Reality

**ABSTRACT:** *Any person crossing a border wants to have his or her civil status recognised in the host country. Reasons of a personal nature primarily drive such an endeavour. Recognising one's personal status may also play a significant role in exercising many other rights. When a host state refuses to recognise the personal status or family ties already enjoyed in the territory of another state, this may constitute a breach of the individual's right to respect for private and family life and be contrary to the standard on the prohibition of discrimination. The difficulties arising in cross-border status recognition mainly stem from the pluralism of national legal systems. The Republic of Croatia has ratified many international documents whose provisions guarantee the right to personal status and has been bound by the EU's *acquis communautaire*. The national law, dispersed in several acts, has regulated the mere recognition of personal status acquired abroad. This research starts with an overview of the national legal regulation of cross-border recognition of status in the Republic of Croatia, focusing on recognition of the adoption established abroad. The research puts the national legal framework into the context of the human rights principles derived from the international and EU legal framework.*

**KEYWORDS:** *recognition of foreign civil status, right to free movement, respect to respect for private and family life, prohibition of discrimination, cross-border adoption, private international law, case law.*

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## 1. Introduction

There is a general interest of persons crossing a border that their status (e.g., the fact of birth, name, marriage/partnership, parenthood, death, etc.) is recognised in the receiving country.<sup>1</sup> Such an endeavour is primarily driven by reasons of personal nature, of the right of every individual to personal identity, which confirms their affiliation to a specific family or community.<sup>2</sup> The recognition of one's personal status may play a significant role in exercising many other rights, such as the right to reside within the territory of a specific country, the right to freedom of movement, the right to education, the right to healthcare, the right of access to public services and social programs, the right to family reunification, the right to employment, the right of children to parental care, the right to enter into marriage or comparable relations, as well as the right to divorce or dissolution of such ties, the right to acquire property, the right to inherit, among others.<sup>3</sup>

The cross-border effects of adoption also raise questions about exercising the aforementioned rights, stemming from the recognition of parenthood. Social and medical progress has led to a drastic decline in the number of babies available for national adoption. Parallel to this, the mass media has focused on children living in terrible conditions in undeveloped countries. Both have led to an increase in the number of international adoptions.<sup>4</sup> While the number of international couples and families is growing continuously, important differences between Member States of the European Union (EU) vis-à-vis the rules applying to adoption significantly impact adopters' ability and willingness to exercise their rights of free movement. Concerning the recognition of the effects of foreign adoption, particular caution is needed when assessing a child's best interests. In such cases, the child changes the family environment and the country of living. He or she moves to the country where he or she probably has never been or lived. Together with that, acting in such procedures should consider attention given to every individual case while bearing in mind the leading principle derived from the European Convention on Human Rights (ECHR)'s practice on no right to a child/right to adopt, and that adoption means 'providing a child with a family, not a family with a child'.<sup>5</sup>

1 The European Group for Private International Law, 2016.

2 Ronen, 2004.; Župan, 2019.

3 Kunda, 2020, p. 74.; Duić, Drventić, 2021, p. 226.

4 Orejudo Pieta de los Mozos, 2017, p. 15., Also see: Selman, 2022.

5 *Pini and others v. Romania*, App. No. 78028/01 and 78030/01, 22 September 2004.

## 2. Legal Framework for the Recognition of Foreign Status in the Republic of Croatia

The difficulties arising in cross-border status recognition mainly stem from the pluralism of national legal systems. National systems principally regulate personal and family status issues by enacting substantive legislation. Such regulation is usually considered justifiable, as it refers to internal situations whereby personal and family statuses reflect a person's affiliation to a particular culture or state.<sup>6</sup> For this reason, international co-operation is essential in the field of cross-border personal statuses. In private international law, there is a need to harmonise the rules on this matter to not only ensure more uniformity in terms of personal status but also avoid the so-called 'limping' status phenomenon.<sup>7</sup>

### **2.1. International Legal Framework**

The Republic of Croatia has ratified many international documents whose provisions guarantee the right to personal identity. Croatia has committed itself to harmonising its national legislation with the accepted standards in connection to respecting human and children's rights. In this regard, Croatia is the contracting party to several international conventions dealing with matters of and the recognition of personal status.<sup>8</sup>

Based on the notification of succession issued on 8 October 1991, Croatia became party to several conventions. In the context of personal status, the most notable conventions are the Convention and Protocol Relating to the Status of Refugees,<sup>9</sup> the New York Convention Relating to the Status of Stateless Persons,<sup>10</sup> the Convention on the Nationality of Married Women,<sup>11</sup> and the Convention on the Rights of the Child<sup>12</sup>, which have been effective in Croatia since 8 October 1991.

6 Van Den Eeckhout, 2005, p. 1.; Duta, 2017.

7 Župan, 2020, p. 125-169 and 141-148.

8 Župan, Drventić, 2022.

9 Convention Relating to the Status of Refugees [1951] UNTS, Vol. 189, p. 137, OG SFRY 7/1960, OG IT 12/1993.; Protocol Relating to the Status of Refugees of 31 January [1967], UNTS Vol. 606, p. 267, OG SFRY 15/1967, OG IT 12/1993.

10 New York Convention Relating to the Status of Stateless Persons [1954] UNTS Vol. 360, p.117, OG FNR 9/1959, OG IT 12/93.

11 The Convention on the Nationality of Married Women [1957] UNTS, Vol. 309, p. 65, OG FNR 115/58, OG IT 12/93.

12 The Convention on the Rights of the Child [1989] UNTS, Vol. 1577, p. 3, OG SFRY 15/1990, OG IT 12/1993. See: Article 8.

In view of foreign status recognition, the Republic of Croatia has been a Contracting State to the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents since 23 April 1993.<sup>13</sup> Since 8 July 1992, Croatia has been a Contracting State to the 1956 Paris Convention on the Issue of Multilingual Extracts from Civil Status Records to be used abroad (hereinafter referred to as the Paris Convention)<sup>14</sup>, adopted within the framework of the International Commission for Civil Status (ICCS), as well as to the 1976 Vienna Convention on the Issue of Multilingual Extracts from Civil Status Records.<sup>15</sup> The 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (hereinafter referred to as the Child Protection Convention) applies to situations of cross-border protection of children, and it has been in force in the Republic of Croatia since 1 January 2010.<sup>16</sup> As to the adoption, the Republic of Croatia has been a contracting party to the 1993 Hague Adoption Convention since 1 April 2014.<sup>17</sup> The European Convention for the Protection of Human Rights and Fundamental Freedoms, one of the most powerful international instruments for human rights protection after the establishment of the European Court of Human Rights (ECtHR), has been in force in the Republic of Croatia since 5 November 1997.<sup>18</sup>

## **2.2. The European Union**

The *acquis communautaire* has been binding on the Republic of Croatia since it acceded to the EU on 1 July 2013. The Public Documents Regulation has been binding on all EU Member States since 16 February 2019.<sup>19</sup> As for the protection of children,

13 HCCH, Convention of 5 April 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents. 12, OG IT 11/2011.

14 ICCS, the Convention (no. 1) on the Issue of Multilingual Extracts from Civil Status Records to be used abroad was signed in Paris on 27 September 1956, OG SFRY 9/1967, OG IT 6/1994.

15 ICCS, the Convention (no. 16) on the Issue of Multilingual Extracts from Civil Status Records was signed in Vienna on 8 September 1976, OG SFRY -8-26/1991, OG IT 6/1994.

16 HCCH, the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, 34, OG IT 5/2009.

17 OG IT 5/2013.

18 The European Convention for the Protection of Human Rights and Fundamental Freedoms [1950] ETS no. 005, OG IT 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10. Other significant conventions applicable to status recognition are the 1968 European Convention on Information on Foreign Law, which has been in force in Croatia as of 7 May 2014 ([1985] ETS No. 062, OG IT 13/2013) and the Framework Convention for the Protection of National Minorities [1995] ETS no.157, OG IT 14/1997.

19 Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012 OJ L 200, 26.7.2016, p. 1-136,

the Brussels II *bis* Regulation has been binding on the Republic of Croatia since 1 July 2013, replaced with its recast, effective since 1 August 2022.<sup>20</sup>

A long-term initiative is to regulate the cross-border effects of adopting in the EU. In 2011, the European Parliament adopted a resolution on International Adoption in the EU.<sup>21</sup> To date, the European Commission has not followed up on the 2011 Resolution with a legislative initiative. A new Resolution was issued in 2017.<sup>22</sup> A legislative initiative on cross-border aspects of adoption did not follow it.

Finally, in 2020, the European Commission announced measures to ensure that parenthood established in one Member State would be recognised in all other Member States.<sup>23</sup> Consequently, the Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions, and acceptance of authentic instruments in matters of parenthood, and on the creation of a European Certificate of Parenthood was published at the end of 2022.<sup>24</sup> The Proposal states that its objective is to strengthen the protection of the fundamental and other rights of children in cross-border situations, including their rights to identity, non-discrimination, a private and family life, and succession and maintenance in another Member State, taking the best interests of the child as a primary consideration.<sup>25</sup> The Proposal excludes intercountry adoption from its scope as being governed by another international instrument.<sup>26</sup> Nevertheless, and most significantly, the Proposal introduced the rules for the recognition of domestic adoptions.<sup>27</sup> By providing this legal framework, the EU legislator establishes the legal protection

20 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 OJ L 338, 23.12.2003, p. 1–29; Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) ST/8214/2019/INIT OJ L 178, 2.7.2019, p. 1–115.

21 European Parliament resolution of 19 January 2011 on international adoption in the European Union, P7\_TA (2011)0013, OJ C 136 E/24 of 11 May 2012.

22 European Parliament resolution of 2 February 2017 with recommendations to the Commission on cross border aspects of adoptions (2015/2086(INL)) (2018/C 252/02).; See: Hoško, 2017.

23 The initiative was included in the 2021 EU Strategy on the rights of the child. EU Strategy on the rights of the child, COM (2021) 142 final and also in the EU LGBTIQ Equality Strategy Union of Equality: LGBTIQ Equality Strategy 2020–2025, COM (2020) 698 final.

24 Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood {SEC (2022) 432 final} – {SWD (2022) 390 final} – {SWD (2022) 391 final} – {SWD (2022) 392 final}, Brussels, 7.12.2022 COM (2022) 695 final 2022/0402 (CNS).

25 *Ibid.*, p. 1.

26 *Ibid.*, Art. 3.

27 *Ibid.*, p. 13. It covers the recognition of the parenthood of a child irrespective of how the child was conceived or born, thus including children conceived with assisted reproductive technology, and irrespective of the child's type of family, thus including children with two same-sex parents, children with one single parent, and children adopted domestically in a Member State by one or two parents.

and guarantees that the domestic adoptions lawfully carried out in one EU Member State will be recognised in another. As Hague Convention adoptions are already subject to automatic recognition in EU Member States,<sup>28</sup> once the legal framework becomes effective, domestic adoptions will be also automatically recognised among EU Member States.

### **2.3. National Legal Framework**

Regarding the recognition of public documents and foreign statuses, the applicable national legislation primarily includes the Private International Law Act,<sup>29</sup> together with the Act on Legalisation of Documents in International Legal Transactions,<sup>30</sup> the Civil Registers Act,<sup>31</sup> the Same-sex Life Partnership Act,<sup>32</sup> and the Personal Name Act.<sup>33</sup>

## **3. Cross-border Effects of the Adoption**

Adoption with an international character is an institute of private international family law whereby the adoptive parent(s) acquire(s) parental responsibility for a child who is not their biological child, in which case there is an international component. It can manifest itself in the legal relationship of the adopter or adoptee, one of the parties to the adoption, with a foreign legal order. The connection between the parties to the adoption and the foreign legal system can be their citizenship, residence, or habitual residence.<sup>34</sup> Apart from the connection between the subjects of the adoption and foreign legal order, the international component could also be found in the fact that the adoption decision was made in a foreign country. In such a case, the question arises as to whether or how a foreign decision can acquire legal effects abroad.<sup>35</sup> Such effects are primarily related to the recognition of parenthood, which also entails several other rights, including the rights to education, healthcare, access to public services and social programs, inherit, among others.

28 All EU Member States are Contracting States to the Hague Abduction Convention. See: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=69>.

29 Private International Law Act, OG 101/17

30 Act on Legalisation of Documents in International Legal Transactions, OG SFRY 06/73, OG 53/91

31 State Civil Registers Act, OG 96/93, 76/13, 98/19

32 Same-sex Life Partnership Act, OG 92/14, 98/19

33 Personal Name Act, OG 118/12, 70/17, 98/19

34 Hoško, 2019, p. 319.

35 *Ibid.*

Adoption can be international or intercountry, depending on the factual structure of the adoption and its international character. Adoption is considered international when the situation has any relevant foreign element, such as the nationality of the adopter(s), the adoptee, or the residence abroad of any of the parties. In intercountry adoption, the child moves from one country to another. To establish adoption, the adoptee moves from the country of his or her habitual residence to the country where the adoptive parents have their habitual residence (receiving country).<sup>36</sup>

The cross-border recognition of adoptions is regulated globally by the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (hereinafter referred to as the Hague Adoption Convention).<sup>37</sup> This Convention provides, among other things, for the automatic recognition of adoption orders<sup>38</sup> and is subject to a limited number of exceptions.<sup>39</sup> The scope of recognition granted by the Convention includes the adoptive parent–child relationship,<sup>40</sup> parental responsibility,<sup>41</sup> and termination of the pre-existing parent–child relationship<sup>42</sup>. Nevertheless, it does not provide rules on applicable laws nor common definitions related to adoption. The enforcement and complaint mechanisms available to citizens are limited to international law instruments that are often lengthy and, among other things, require intermediation by state authorities. More fundamentally, the scope of the Hague Adoption Convention is limited; it only applies to situations where adoptive parents and the adopted child come from two different countries. The Hague Convention also only applies to adoptions that create a permanent parent–child relationship, although this would encompass both ‘full’ and ‘simple’ adoptions. Importantly, it does not cover the ‘kafala’ system or similar arrangements under Islamic law.<sup>43</sup>

The Convention does not apply where the sending or receiving state is not a party to the Convention and will not apply where the child is being adopted from a country in which the Convention is not in force.<sup>44</sup>

Therefore, the adoption of children from these non-contracting states is not automatically recognised and is subject to domestic law or bilateral agreements. Adoption cases in which the adopters and adopted child reside in one state are not covered by

36 Orejudo Pieto de los Mozos, 2017., p. 3.; Fronek, 2012.

37 HCCH, Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, <https://www.hcch.net/en/instruments/conventions/specialised-sections/intercountry-adoption>.

38 Hague Adoption Convention, Art 23.

39 *Ibid.*, Art 24 and 25.

40 *Ibid.*, Art 26(1)a.

41 *Ibid.*, Art 26(2)b.

42 *Ibid.*, Art 26(1)c, but with an exception provided under Article 27.

43 See: Hayes, 2011.

44 There are 105 Contracting States to the Hague Adoption Convention. Status on the day 4 November 2022. <https://www.hcch.net/en/instruments/conventions/status-table/?cid=69>.

the Hague Adoption Convention and are subject to national law. National adoption laws vary significantly. There is no guarantee, neither for the child nor the adopter, that the status of the adoption and the legal consequences will be recognised if the family moves abroad. This situation can cause economic, social, and legal uncertainties for adopters while simultaneously endangering the best interests of the child. The lack of domestic legal recognition of adoptions may harm children's rights, including their rights to family life, non-discrimination, inheritance, and nationality.<sup>45</sup>

## 4. Recognition of a Foreign Adoption in Croatia

### **4.1. Recognition of Intercountry Adoptions: The Hague Adoption Convention**

At the international level, the Hague Adoption Convention is the primary legal instrument applicable to cross-border adoptions. The Hague Adoption Convention sets out that adoptions must be automatically recognised in other Convention countries.<sup>46</sup> The Convention represents an important step towards coordinating and simplifying cross-border adoptions and is generally considered a highly successful international instrument.<sup>47</sup>

The Hague Adoption Convention provides for the automatic recognition of adoption orders by prescribing recognition through the operation of law. This supersedes the existing practice that an adoption already granted in the state of origin is to be made anew in the receiving state only to produce such effects and also prevents a revision of the contents of foreign adoption.

It only requires a certification made by the foreign authorities of the state where the adoption took place, attesting to the fact that the Convention's rules were complied with and that the necessary agreements were given.<sup>48</sup> Each Contracting State has the liberty to determine whether the competent authority will be administrative or judicial.<sup>49</sup> The Convention does not regulate the formal requirement of certification, even though the standardised form will have an advantage.<sup>50</sup> A Contracting State may refuse to recognise an adoption only if it is manifestly contrary to its public policy, considering the best interest of the child.<sup>51</sup> In addition, the Explanatory Report warns that the recognising state does not have the institution of adoption or that a

45 EPRS, 2016, p. 4.

46 Hague Adoption Convention, Art. 23.

47 Bartholet, 2015.

48 Hague Adoption Convention, Art. 23., Parra-Aranguren, 1993, para 402.

49 Parra-Aranguren, 1993, para 405.; Watkins, 2012.

50 *Ibid.*, para 407.

51 Hague Adoption Convention, Art. 24.



particular form of adoption cannot be used as grounds to deny the recognition of foreign adoption.<sup>52</sup> Any Contracting State may declare that it will not be bound under the Convention to recognise adoptions made by an agreement concluded between the Contracting States under Article 39. This provision represents the compromise between the supporters and opponents of the possibility of future contracts among Contracting States on matters regulated by the Convention.<sup>53</sup>

As previously mentioned, the scope of the Hague Adoption Convention is rather limited, as it applies, among other things, only to adoptions made under the Convention. The Convention has been applicable in Croatia for more than eight years. However, data available for 2020 pointed towards the absence of intercountry adoptions in Croatia. The answers delivered to the HCCH showed the total number of zero Hague intercountry adoptions between 2015 and 2020.<sup>54</sup>

#### **4.2. Jurisprudence of the ECtHR and CJEU**

Together with the relevant legal sources elaborated above, the ECtHR and Court of Justice of the European Union (CJEU) court practice is equally relevant. The ECtHR addressed the recognition of adoption orders across national borders in *Wagner and JMWL v Luxembourg*.<sup>55</sup> The case involved a single woman from Luxembourg who adopted a child in Peru at an institute of full adoption ordered by the Peruvian court. The woman's attempt towards recognition for a full adoption in Luxembourg failed, as only a simple adoption was available to a single parent under national law. This meant that the child would retain a legal connection with her family of origin under Luxembourg law, even if Peruvian law did not similarly recognise that connection. The ECtHR found that the child had been subject to discrimination, contrary to Article 14 of the ECHR in conjunction with Article 8, on the right to respect for private and family life. The Court held that the Peruvian judgement resulted in a complete break from the family of origin. However, because of the decision of the Luxembourg authorities, no alternative legal link had been forged with the adoptive mother, leaving the child in a legal vacuum.<sup>56</sup> The ECtHR warned of many disadvantages for the child for not having acquired Luxembourg nationality, such as troubles with occupational apprenticeship and work permits. For more than ten years, the minor child has had

52 Parra-Aranguren, 1993, para. 428.

53 *Ibid.*, para 429.

54 Questionnaire on the Practical Operation of the 1993 Adoption Convention, Prel. Doc. 3 of February 2020 for the Special Commission meeting in 2021, <https://assets.hcch.net/docs/a6d8f3bf-7018-44ed-9dd3-fac2d602cb3e.pdf>, p. 19.

55 *Wagner and J.M.W.L. v Luxembourg*, App no 76240/01, 28 June 2007.

56 *Wagner and J.M.W.L. v Luxembourg*, para 115.; Fenton-Glynn, 2016, p. 327.

to be regularly given leave to remain in Luxembourg and has had to obtain a visa to visit certain countries.<sup>57</sup>

The CJEU did not have an opportunity to provide its opinions on cross-border adoption cases. Still, the existing jurisprudence indicates its stand regarding recognising foreign decisions on 'new family forms'. The *Coman*<sup>58</sup> case concerned a third country national of the same sex as a Union citizen whose marriage to that citizen was concluded in a Member State by the law. In its reasoning, the CJEU had used the method of autonomous interpretation of the term 'spouse'. It asserted that the term 'spouse' was gender-neutral and must be understood as encompassing same-sex spouses, but only in the context of the Free Movement Directive.<sup>59</sup> It was clear that the qualification *lege communae* prevailed over *lege fori*. *Coman* requires even Member States with a constitutional ban on same-sex marriages to recognise the effects of same-sex marriages in situations that fall within the scope of EU law.<sup>60</sup> The CJEU ruling in the case of *SM*<sup>61</sup> overcame the discrepancies between Member States in the relationships they recognised under private international law for the purpose of family reunification, namely, the *kafala*.<sup>62</sup> Finally, in the most recent *V.M.A.* case,<sup>63</sup> while ruling on the free movement of a child of a same-sex couple, the CJEU clearly warned that status and family law regarding its cross-border effects could no longer be seen as separate from the impact of the EU law.<sup>64</sup> It is clear that with its judgments in the *Coman*, *SM*, and *V.M.A.* cases, the CJEU has embarked on a progressive path, with openness to diversity and new family forms, for the benefit of mobile Union citizens.

Research on national practice has pointed towards one case with a factual situation comparable to the abovementioned ones. The case concerned the simple adoption between the adoptive parent and adoptee before the municipality in Bosnia and Herzegovina. The foreign adoption decision established the child's new surname, which was entered into the birth registry, while the rights and duties between the parents were established without affecting the rights and responsibilities of the adoptee, her biological parents, and other relatives, in addition to the possibility of dissolving the

57 *Wagner and J.M.W.L. v Luxembourg*, para 156.

58 Case C-673/16, *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*, 2018, ECLI:EU:C:2018:385.

59 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), OJ L 158, 30.4.2004, p. 77-123.

60 Tryfonidou, 2016, Tryfonidou, 2016b.; Werner, 2019.

61 Case C-129/18, *M v Entry Clearance Officer*, UK Visa Section, 2019, ECLI:EU:C:2019:248.

62 Kroeze, 2020; Milios, 2020.

63 Case C-490/20, *V.M.A. v. Stolichna Obsthina, Rayon Pancharevo*, 2020, ECLI:EU:C:2021:1008.

64 Tryfonidou, 2021; Tryfonidou, 2022.

adoptive relation *ex offio* or by the adoptee.<sup>65</sup> When the issue of recognition of that adoption decision occurred before the court of first instance in Croatia, it refused to recognise it, explaining that the decision was made by an administrative body and not a judicial body. The appellate court upheld the refusal for different reasons. It considered that the case was related to the status matter of a Croatian citizen, and that, according to the Act in force at the time,<sup>66</sup> Croatian law should have been applied. According to that Act, if domestic law should have been applied on the status matter of a Croatian citizen, but it was not, the refusal of recognition would not have occurred unless the foreign decision substantially differed from the applicable law of the Republic of Croatia to such a question. Because family law stipulated only full adoption,<sup>67</sup> the refusal of recognition was well grounded. However, such an arrangement opened up the issue of potential contradiction to the right to family life, which was interpreted in the jurisprudence of the ECHR in Wagner. The current Act on Private International Law introduced the provision regarding the possible conversion of simple into full adoption,<sup>68</sup> which should change the outcome of such situations if they arose again. For now, there are no examples of how it works in practice.

#### **4.3. Recognition of International and Domestic Adoptions: Act on Private International Law**

The national law will apply to the recognition of a foreign adoption when there is a decision that cannot be recognised under the rules of the Hague Adoption Convention or bilateral agreements.<sup>69</sup>

The Act on Private International Law stipulates that the interested party initiates the recognition procedure by submitting a request for the recognition and confirmation of the legality of the foreign decision to the competent court in the Republic of Croatia.<sup>70</sup> Recognition will not occur if any of the negative assumptions are met. First, recognition will be refused upon the objection of the party against whom the recognition is sought if the proceedings in the country of the decision violated his or her right to be heard.<sup>71</sup> In adoption cases, this assumption could be fulfilled in relation to persons who normally consent to adoption, such as the adoptee's biological parents

65 Family Act of Federation of Bosnia and Herzegovina, OG 35/05.

66 Act Concerning the Resoluton of Conflicts of Laws with the Provisions of Other Countries in Certain Matters, OG SFRY 43/82, 72/82, OG 53/91, Arts 12 and 44.

67 Family Act, Art. 197.

68 Act on Private International Law, Art 43(5); Hoško, 2019.

69 For the complete list of bilateral agreements, see: Hoško, 2016, p. 18. – 21.

70 Župan, 2018, p. 10.; Župan, 2019b; Hoško, 2019a; Kunda, 2020; Kunda, 2022; Act on Private International Law, Art. 69.

71 Act on Private International Law, Art 68.

or his guardian, the adopter's spouse, and the adoptee.<sup>72</sup> Second, the recognition of a foreign decision will be refused if there is a final judgement of a Croatian court in the same matter and between the same parties, or a decision of a foreign court that has previously become final and is recognised or eligible for recognition in Croatia.<sup>73</sup> Recognition will also be refused if it will clearly be against the public order of the Republic of Croatia.<sup>74</sup> Finally, recognition can be rejected if Croatian courts have exclusive jurisdiction.<sup>75</sup> This rule is irrelevant for the adoptions because no exclusive jurisdiction is predicted for them. However, if the jurisdiction of a foreign court is exorbitant, a foreign judgement may be recognised.<sup>76</sup>

The case, which raised great public attention and provoked discussion at the end of 2022, at the same time, questions the existing legal framework which regulates intercountry adoptions with states that are non-parties of the Hague Adoption Convention.

The case concerned eight Croatian citizens (four couples) who had adopted children in the DR Congo. The adoption procedure was conducted in the DR Congo, and each decision was recognised in Croatia before the courts under the Act on Private International Law.

During their travel back to Croatia, together with the children, the eight Croatian citizens were arrested by the Zambian authorities on suspicion of child trafficking. They were brought into custody, and the children were placed in the Zambian child protection institution.

The couples were held in custody for months.<sup>77</sup> The procedure before the Zambian authorities ended at the beginning of July 2023, when they were able to return to Croatia together with their adopted children.<sup>78</sup>

The case raised the question of the adequacy and sufficiency of the existing provision of the general recognition provisions in the Act on Private International Law that were applied in the case. The major concern was the authenticity of adoption

72 Hoško, 2019b, p. 338.

73 Act on Private International Law, Art. 70.

74 *Ibid.*, Art. 71.

75 *Ibid.*, Art. 69.

76 Hoško, 2019b, p. 338.; Sikirić, 2019, p. 132.

77 Case facts at the moment are known only through the media. HRT Vijesti, Suđenje Hrvatima moglo bi potrajati nekoliko mjeseci, <https://vijesti.hrt.hr/hrvatska/hrt-iz-zambije-hrvati-se-nalaze-u-kuci-na-nepoznatoj-lokaciji-10572718>; Nacional, U Zambiji uhićena četiri hrvatska para koja su pokušala posvojiti djecu, <https://www.nacional.hr/u-zambiji-uhicena-cetiri-hrvatska-para-koja-su-pokusala-posvojiti-djecu/>; N1, Hrvati uhićeni u Zambiji još uvijek nisu optuženi ni za što, <https://n1info.hr/vijesti/hrvati-uhiceni-u-zambiji-jos-uvijek-nisu-optuzeni-ni-za-sto/>.

78 HRT Vijesti, Hrvati u Zambiji oslobođeni; očekuje se njihov povratak s djecom u RH, <https://vijesti.hrt.hr/svijet/sud-odlucuje-o-sudbini-hrvata-u-zambiji-10809844>.

decisions, such as those in the case concerned.<sup>79</sup> This concern resulted in lightning changes to the Act on Private International Law. The Act was amended with a new provision providing additional presumptions for recognising a foreign adoption decision coming from a non-party state of the Hague Child Adoption Convention. The new provision provides that such a decision can be recognised only when the court establishes the authenticity of such a decision in a diplomatic way and only if the applicant provides proof of the legalisation of such a decision according to the act which governs the legislation of public documents in international traffic.<sup>80</sup> In addition, the court would have to check whether the adoptive parents are entered into Croatia's register of prospective adoptive parents,<sup>81</sup> and the court is obliged to deliver a final decision on the recognition of foreign adoption decisions to the ministry competent for social welfare to enter the adoption into the adoption registry and to monitor the child's adaptation to the adoptive family.<sup>82</sup> The first paragraph of this new provision is not necessarily needed because the existing legal framework, the Act on Legalisation of Documents in International Legal Transactions, already provides for it.<sup>83</sup>

## 5. Conclusion

The evolution of adoption is directly related to the functions it has accomplished throughout history. Despite the motive of adoption, which may differ from humanitarian reasons (e.g., caring for abandoned and orphaned children) to self-fulfilment reasons (adoption as a recourse for infertile couples), it is considered a child-protection-based institution. Therefore, the emphasis of the institute of adoption should be placed on its protective role, which follows the best interests of a child as a paramount principle.

When deciding on the recognition of foreign adoption, the competent authorities of the state of recognition are saddled with the difficult task of finding the right balance between the child's fundamental rights, on the one hand, and national identity and public policy, on the other. Guidance for this kind of action can be found in the ECtHR and CJEU jurisprudences. The ECtHR advocates for the proportionality

79 Vrhovni sud Republike Hrvatske, Istraženo postupanje općinskih sudova u svezi s posvajanjem djece iz Demokratske Republike Kongo, <https://www.vsrh.hr/istrazeno-postupanje-opcinskih-sudova-u-svezi-s-posvajanjem-djece-iz-demokratske-republike-kongo.aspx>.

80 Act on Private International Law, Art 71a(1).

81 *Ibid*, Art 71a(2).

82 *Ibid*, Art 71a(3).

83 Act on Legalization of Documents in International Legal Transactions (Official Gazette 53/91). For detailed analyses see: Župan, Poretti, Golub, 2023.

and protection of legal expectations. Meanwhile, the CJEU points out that the status and family law regarding its cross-border effects can no longer be seen as separate from the impact of the EU law. The CJEU showed openness to diversity and new family forms to benefit mobile EU citizens.

Intercountry and international adoption cases are rare before Croatian competent bodies. Still, the available practice unnerves whether the Croatian authorities can follow the methodology of the right balance set by the ECtHR and CJEU. While deciding on the matter of recognition of foreign adoption, teleological interpretation should prevail over grammatical interpretation. The court's reasoning should be solidly considered and referred to in the jurisprudences of the ECtHR and CJEU. Special awareness should also be given to the effects of foreign adoption, namely, by stressing the rights to which the child will be deprived if the foreign adoption decision is not recognised in Croatia.

However, unfortunate events and public pressure have prompted legislative changes to the Croatian Act on Private International Law. The new provision is partly politically motivated and hasty, thus raising the question of necessity. Nevertheless, it brings improvements, considering that it prescribes the obligation that in non-Hague cases, the parents must be included in the Register of Adoptive Parents and that recognised foreign adoption decisions must be entered in the Adoption Register.

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