


## The Baby Hatch at the Crossroads of Human Rights

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**Abstract:** When the baby hatch (known as “Window of Life”) came under public scrutiny in the Republic of Croatia, it was met with a number of criticisms. The most prominent among them were its lack of regulation under Croatian law, the alleged encouragement of committing a criminal offense, and the violation of the child’s right to identity. Neither the concept of the baby hatch, nor the criticisms directed at this method of caring for unwanted newborns are new in Europe or beyond, nor are they unfamiliar to the case law of the European Court of Human Rights. This paper will attempt to demonstrate that the only well-founded objection is the lack of adequate legal regulation. The claim that the existence of the baby hatch encourages criminal behavior is simply unfounded, while the potential violation of the child’s right to know their identity can be justified by the protection of a higher right – the right to life.

**Keywords:** baby hatch, right to life, right to private life, anonymous childbirth, rights of the child

### 1. Introduction

The baby hatch can most simply be defined as a place where unwanted newborns are left. Variants of this concept have existed since the medieval period, and today, they can be found around the world. In a broader sense, it is one of the methods of caring for unwanted children, whose mothers typically do not wish to keep the child but do wish to remain anonymous. This absolute and impenetrable anonymity is precisely what constitutes its *differentia specifica* when compared to the other two main forms of caring for unwanted children: the institute of anonymous childbirth, which guarantees the mother’s anonymity to a certain degree, and the typical USA<sup>1</sup> legal framework known as safe haven laws.

Among these mechanisms, the baby hatch is the most controversial and most frequently criticized, as it provides no even minimal state oversight. The core of this issue lies in the neglect of the child’s right to know its own identity, as well as in the fact that, due to the absence of any legal regulation concerning baby hatches, abandoning a child – even in such a place – constitutes a criminal offense.

This paper aims to examine the validity of these criticisms in light of the primary purpose of the baby hatch – saving lives.

<sup>1</sup> Kevin Browne, Shihning Chou, and Kate Whitfield, *Child Abandonment and Its Prevention in Europe* (Nottingham: The University of Nottingham, 2012), 17.

## 2. Models of Care for Unwanted Children as an Alternative to Abortion or Infanticide

Anonymous childbirth is particularly regulated in France under the term *accouchement sous X* and has even undergone review by the European Court of Human Rights (hereinafter: ECtHR) in the case *Odièvre v. France*.<sup>2</sup> This system balances the woman's interest in remaining anonymous with the child's interest in obtaining information about the child's origin. The woman can "cover" her personal data, and the child may access this information with her consent, provided she is informed about the consequences of her request for anonymity, as well as the child's rights to access data about the mother that does not allow identification.<sup>3</sup> In this process, a state council, a specialized public body, acts as an intermediary between the woman and the child. On the other hand, the anonymous childbirth system in Italy did not satisfy the ECtHR in the case of *Godelli v. Italy*,<sup>4</sup> since in that system an adopted child who was not recognized at birth may access non-identifying information about their origin or request the identity of their mother, only after 100 years.<sup>5</sup> Consequently, Italian constitutional court practice<sup>6</sup> and expected legislative changes should, if enacted,<sup>7</sup> correct the imbalance between the woman's right to anonymity and the child's right to access relevant information.<sup>8</sup> In systems with a regulated institute of anonymous or confidential childbirth, criminal liability for the woman who chooses this option does not arise.<sup>9</sup> In Italy, France, Austria, and Luxembourg, the presumption of maternity, as known in Croatian law, does not exist; a woman's consent is required for her to be registered in the relevant state registry as the child's mother.<sup>10</sup> The Committee on the Rights of the Child (hereinafter: the Committee) has expressed concern regarding anonymous

<sup>2</sup> European Court of Human Rights, ECtHR Judgment of 13 February 2003, Case *Odièvre v. France*, application no. 42326/98, hudoc.int.

<sup>3</sup> Nenad Hlača, "Pravo majke na anonimnost poroda – L'accouchement sous X – Porod pod X," *Gynaecologia et Perinatologia* 16, no. 3 (2007): 159.

<sup>4</sup> ECtHR Judgment of 25 September 2012, Case *Godelli v. Italy*, application no. 33783/99, hudoc.int.

<sup>5</sup> European Court of Human Rights (ECtHR), *Guide to the Case-Law of the European Court of Human Rights: Data Protection* (Strasbourg: Council of Europe, 2020), para. 271.

<sup>6</sup> Corte Costituzionale, Sentenza n. 278, 22 November 2013, accessed September 14, 2025, <https://www.biodiritto.org/Biolaw-pedia/Giurisprudenza/Corte-costituzionale-sent.-n.-278-2013-accesso-dell-adottato-alle-informazioni-sull-identita-della-madre-biologica>; Stefano Troiano, "Understanding and Redefining the Rationale of State Policies Allowing Anonymous Birth: A Difficult Balance Between Conflicting Interests," *International Journal of Jurisprudence of the Family* 4 (2013): 204, <https://ssrn.com/abstract=322394>.

<sup>7</sup> Sabrina Praduroux, "The Right to Know One's Genetic Origins: A Right in Need of Regulation," *Italian Law Journal* 7, no. 2 (2021): 813, <https://dx.doi.org/10.23815/2421-2156.ITALJ>.

<sup>8</sup> Nataša Hadžimanović, "Confidential and Anonymous Birth in National Laws: Useful and Compatible with the UN Convention on the Rights of the Child?," *Comparazione e diritto civile* (2018): 132.

<sup>9</sup> Browne, Chou, and Whitfield, *Child Abandonment*, 31; Initiative for Reproductive Health Information (IRHI), "Anonymous Birth," accessed October 9, 2025, <https://anonymegeburt.at/anonymous-birth>.

<sup>10</sup> Adéla Lemrová et al., "Anonymous Births: A Conflict of Three Rights – Which Prevails?," *Social Pathology and Prevention* 7, no. 2 (2022): 40; Tamara Mladenović, "Pravo na anonimni porođaj naspram prava deteta na identitet," *Pravni zapisi* 12, no. 2 (2021): 460, <https://doi.org/10.5937/pravzap0-34192>; Troiano, "Understanding and Redefining the Rationale of State Policies Allowing Anonymous Birth," 181; Valentina Colcelli, "Anonymous Birth, Birth Registration and the Child's Right to Know Their Origins in the Italian Legal System: A Short Comment," *Journal of Civil & Legal Sciences* 1 (2013): 2, <https://doi.org/10.4172/2169-0170.1000101>; ECtHR Judgment of 13 February 2003, Case *Odièvre v. France*, application no. 42326/98, para. 19, hudoc.int.

childbirth in Luxembourg, which requires the biological mother's consent as a *conditio sine qua non* for the child's access to any information related to her.<sup>11</sup>

Germany, as well as Slovakia,<sup>12</sup> recognizes so-called confidential birth, a variant of anonymous childbirth with somewhat less protection of the woman's right to anonymity. In Germany, a child can access information about their biological mother from the age of 16, after which they are obliged to leave with a professional counselor.<sup>13</sup> The Committee has supported the German confidential birth model,<sup>14</sup> and recommended it, for example, to Switzerland<sup>15</sup> and Hungary.<sup>16</sup>

"Safe haven" locations are in hospitals, police departments, or fire departments, where mothers can anonymously leave their child without fear of criminal prosecution.<sup>17</sup> The age at which a child can be left is not uniformly regulated across U.S. states,<sup>18</sup> and the mechanisms that allow the child, later in life, to access information about their origin vary from state to state as well.<sup>19</sup> Although quite similar to baby hatches, what distinguishes "safe haven" sites is their minimal level of institutionalization. This enables contact with professional staff, who, through appropriate consultations, can ensure the mother's safety in deciding to leave the child, provide necessary healthcare, and offer any relevant information that may assist her. Conversely, professional staff can collect data that the child might seek later in life.<sup>20</sup> Similar systems exist in Hungary and Slovakia, where special incubators are installed in front of hospitals, and all counseling and leaving personal data are optional.<sup>21</sup>

<sup>11</sup> Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Luxembourg, Adopted at the Sixty-Fourth Session (16 September–4 October 2013)*, UN Doc. CRC/C/LUX/CO/3–4 (Geneva: United Nations, October 29, 2013), para. 9, accessed September 14, 2025, <https://digitallibrary.un.org/record/767372?v=pdf>.

<sup>12</sup> Rodovan Blažek and Margita Prokejinová, "How to Provide a Legal Safe Harbor for Mothers of Unwanted Newborns," *Issues in Law & Medicine* 32, no. 1 (2017): 64.

<sup>13</sup> Lemrová et al., "Anonymous Births," 38.

<sup>14</sup> Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth to Sixth Periodic Reports of Germany*, UN Doc. CRC/C/DEU/CO/5–6 (Geneva: United Nations, September 23, 2022), para. 19, accessed October 9, 2025, [https://unfairtobacco.org/wp-content/uploads/2022/10/CRC\\_Germany\\_Concluding-Observations\\_Sept2022.pdf](https://unfairtobacco.org/wp-content/uploads/2022/10/CRC_Germany_Concluding-Observations_Sept2022.pdf).

<sup>15</sup> Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Switzerland*, UN Doc. CRC/C/CHE/CO/5–6 (Geneva: United Nations, October 22, 2021), para. 22, accessed October 9, 2025, [https://digitallibrary.un.org/record/3945313?ln=zh\\_CN&v=pdf](https://digitallibrary.un.org/record/3945313?ln=zh_CN&v=pdf).

<sup>16</sup> Committee on the Rights of the Child, *Concluding Observations on the Sixth Periodic Report of Hungary*, UN Doc. CRC/C/HUN/CO/6 (Geneva: United Nations, March 3, 2020), para. 26, accessed October 9, 2025, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FCO%2FHUN%2FCO%2F6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FCO%2FHUN%2FCO%2F6&Lang=en).

<sup>17</sup> Browne, Chou, and Whitfield, *Child Abandonment*, 17; Jurgita Stasiūnienė, Viktoras Justickis, and Algimantas Jasulaitis, "Newborn Murder and Its Legal Prevention," *Health Policy and Management* 1, no. 8 (2015): 112, <https://doi.org/10.13165/SPV-15-1-8-05>.

<sup>18</sup> Whitney Rosenberg, "The Illegality of Baby Safes as a Hindrance to Women Who Want to Relinquish Their Parental Rights," *Athens Journal of Law* 1, no. 4 (2015): 203, <https://doi.org/10.30958/ajl.1-4-1>.

<sup>19</sup> Kurium Govender, "An Ethico-Legal Case for Baby Hatches in South Africa" (MSc diss., University of the Witwatersrand, Johannesburg, 2021), 25, <https://wiredspace.wits.ac.za/items/12cc9eee-b0c2-4e92-ab95-459fe5c03e50>.

<sup>20</sup> Browne, Chou, and Whitfield, *Child Abandonment*, 19; Govender, "An Ethico-Legal Case," 24.

<sup>21</sup> Browne, Chou, and Whitfield, *Child Abandonment*, 16.

Baby hatches exist, among others, in Austria, Belgium, the Czech Republic, Italy, Latvia, Lithuania, Hungary, the Netherlands, Germany, Poland, Portugal, Russia, Slovakia, Switzerland, the United Kingdom, as well as the Philippines, India, Japan, South Korea, South Africa, and Malaysia.<sup>22</sup> Poland and the Czech Republic also offer accommodation services for women planning to leave their child, ensuring their anonymity upon request.<sup>23</sup>

As one of the most controversial methods of caring for unwanted children, they raise numerous ethical, legal, and social concerns. In the following sections, the most frequently voiced criticisms of their operation will be presented, with a systematic attempt to address each and examine its underlying rationale.

### 3. The Baby Hatch – The Other Side of Saving Lives

Three arguments against the baby hatch will be presented in the following chapters, and attempts will be made to respond to them.

#### 3.1. The Right to Know One's Origins and Other Rights from the Convention on the Rights of the Child

In Germany, the right of every individual to know their origins has been established as a fundamental personal right, based on the general right to dignity and free development, by the Federal Constitutional Court in a ruling dated January 31, 1989. In Switzerland, the right of every individual to know their origins has been recognized by the Federal Constitution since 1992.<sup>24</sup> Nevertheless, both countries recognize the aforementioned methods of caring for unwanted newborns. There are persistent objections that baby hatches violate the Convention on the Rights of the Child from 1989 (hereinafter: the Convention).<sup>25</sup> In its 2011 report on the Czech Republic<sup>26</sup> and India,<sup>27</sup> the Committee on the Rights of the Child<sup>28</sup> expressed opposition to baby hatches, citing several provisions of the Convention. Without providing any arguments, it stated that this practice violates the provisions of Articles 6, 7, 8, 9, and 19 of the Convention. Similar views were expressed in its 2015

<sup>22</sup> For example Blažek and Prokeínová, “How to Provide a Legal Safe Harbor,” 64; Browne, Chou, and Whitfield, *Child Abandonment*, 17; Shadiya Mohamed Baqutayan et al., “Should We Maintain Baby Hatches in Our Society? Baby Hatch Policy in Malaysia,” *International Journal of Academic Research in Business and Social Sciences* 12, no. 11 (2022): 3073–88, <https://doi.org/10.6007/IJARBS/v12-i11/15032>.

<sup>23</sup> Browne, Chou, and Whitfield, *Child Abandonment*, 17.

<sup>24</sup> Dissenting opinion of Judges Wildhaber et al., ECtHR Judgment of 13 February 2003, Case Odièvre v. France, application no. 42326/98, hudoc.int.

<sup>25</sup> United Nations Children's Fund (UNICEF), *Convention on the Rights of the Child: Full Text*, accessed October 9, 2025, <https://www.unicef.org/child-rights-convention/convention-text>.

<sup>26</sup> Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Convention on the Rights of the Child: Concluding Observations: Czech Republic*, UN Doc. CRC/C/CZE/CO/3–4 (Geneva: United Nations, August 4, 2011), para. 49, accessed October 9, 2025, <https://digitallibrary.un.org/record/708485>.

<sup>27</sup> Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of India*, UN Doc. CRC/C/IND/CO/3–4 (Geneva: United Nations, July 7, 2014), para. 42.

<sup>28</sup> Govender, “An Ethico-Legal Case,” 17.

report concerning the Netherlands,<sup>29</sup> and the elimination of baby hatches was set as a goal regarding Germany,<sup>30</sup> Austria,<sup>31</sup> Czech Republic,<sup>32</sup> Slovakia,<sup>33</sup> and Hungary.<sup>34</sup>

In accordance with Article 6 of the Convention, states recognize the inherent right to life of every child and shall ensure, to the maximum extent possible, the survival and development of the child.

Article 7, paragraph 1, stipulates that 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.<sup>35</sup>

According to Article 8, paragraph 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.<sup>36</sup>

Article 9, paragraph 1, states that States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case, such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.<sup>37</sup>

<sup>29</sup> Committee on the Rights of the Child, *Concluding Observations on the Fourth Periodic Report of the Netherlands*, UN Doc. CRC/C/NLD/CO/4 (2015), para. 35, accessed October 9, 2025, <https://docs.un.org/en/CRC/C/NLD/CO/4>, para. 35.

<sup>30</sup> Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth to Sixth Periodic Reports of Germany*, 2022, para. 19.

<sup>31</sup> Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Austria*, UN Doc. CRC/C/AUT/CO/5–6 (Geneva: United Nations, March 6, 2020), para. 20.

<sup>32</sup> Committee on the Rights of the Child, *Concluding Observations: Czech Republic*, 2011, para. 50.

<sup>33</sup> Committee on the Rights of the Child, *Concluding Observations on Slovakia*, UN Doc. CRC/C/15/Add.140 (Geneva: United Nations, April 9, 2014), para. 18.

<sup>34</sup> Committee on the Rights of the Child, *Concluding Observations on the Sixth Periodic Report of Hungary*, 2020, para. 26.

<sup>35</sup> Article 7(2), Convention on the Rights of the Child: "States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

<sup>36</sup> Article 8(2), Convention on the Rights of the Child: "Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing his or her identity speedily."

<sup>37</sup> Article 9(2–4), Convention on the Rights of the Child: "2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known. 3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned."

According to Article 19, paragraph 1, States Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury, or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child.<sup>38</sup>

The Committee on the Rights of the Child failed to explain how baby hatches violate the aforementioned articles. The baby hatch in no way threatens a child's right to life, survival, and development; on the contrary, by its very purpose, it supports these rights. Moreover, the phrase stating that states "shall ensure, to the maximum extent possible, the survival and development of the child" could actually serve as a justification for the existence of baby hatches, or even as an argument in their favor.<sup>39</sup> The words "to the maximum extent possible" could be interpreted as "under all circumstances," "at any cost," or similar, and in any case imply an absolute priority. In contrast, the words "if possible" from Article 7 of the Convention carry a different meaning, indicating a relative nature of the provision, as opposed to the absolute nature characterizing Article 6.

Objections based on disagreement with Article 7 of the Convention can, once again, be dismissed by the logic of the primacy of the right to life.

As early as *Gaskin v. the United Kingdom*,<sup>40</sup> the ECtHR recognized that access to information concerning one's childhood and origins falls within the scope of "private life," emphasizing the vital interest protected by Article 8 in obtaining information necessary to understand one's personal history and identity. In *Mikulić v. Croatia*,<sup>41</sup> the ECtHR stressed that uncertainty as to one's personal identity, including paternity, engages Article 8 and that States must provide effective and timely procedures enabling the determination of such claims. The importance of the child's interest in knowing the truth about his or her origins was accorded decisive weight in *Mandet v. France*.<sup>42</sup> Based on this case-law,<sup>43</sup> it can be argued that the ECtHR has consistently held that respect for private life requires that everyone should be able to establish details of their identity as an individual human being, which includes knowledge of one's parentage and the legal parent-child relationship. Nevertheless, it is not absolute.

Asai and Ishimoto write that fixating exclusively on respecting the right of the child to know his or her parents without considering the circumstances will lead to violation of the right to life, which is a condition *sine qua non* for the realization of every

<sup>38</sup> Article 19(2), Convention on the Rights of the Child: "Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

<sup>39</sup> Rosenberg, "Illegality of Baby Safes," 207.

<sup>40</sup> ECtHR Judgment of 7 July 1989, Case *Gaskin v. the United Kingdom*, application no. 10454/83, para. 37, hudoc.int.

<sup>41</sup> ECtHR Judgment of 7 February 2002, Case *Mikulić v. Croatia*, application no. 53176/99, para. 66.

<sup>42</sup> ECtHR Judgment of 14 January 2016, Case *Mandet v. France*, application no. 30955/12, paras 56–60.

<sup>43</sup> European Court of Human Rights, *Guide on CaseLaw of the European Convention on Human Rights: Rights of the Child* (Strasbourg: ECtHR, 2025), accessed February 23, 2026, [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_rights\\_of\\_the\\_child\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_rights_of_the_child_eng).

other right.<sup>44</sup> Stasiūnienė, Justickis, and Jasulaitis emphasize the same point, particularly highlighting the words from Article 7's provision: "as far as possible."<sup>45</sup> Hlača points out that the Convention itself relativizes the right of a child to know who their biological parents are and is not classified as one of the child's original rights.<sup>46</sup> Furthermore, objections regarding inconsistencies with Articles 7 and 8 fail to take into account the *travaux préparatoires* of the Convention.<sup>47</sup> Regarding Article 7, even at that time, the German Democratic Republic and the USSR, as well as the USA, emphasized that the "right to know one's parents" is not always feasible.<sup>48</sup> Other objections, or rather discussions, mostly concerned issues related to nationality.<sup>49</sup>

As for Article 8, it is a product of the political situation in Argentina,<sup>50</sup> which proposed it, and it aims to protect children separated from their parents or otherwise endangered due to war or similar circumstances.<sup>51</sup> From the very beginning, the article was considered redundant, even incorrect, in its definition of identity and connection through blood relations, and was accepted primarily for emotional reasons.<sup>52</sup>

Referring to Article 9 is especially unfounded, considering that it explicitly states that a child must not be separated from their parents against their will. In this sense, Article 9 would rather support the existence of baby hatches than oppose it. Of course, it cannot be ruled out that someone might leave another person's child in a baby hatch, for example, another family member.<sup>53</sup> However, the same risk should not be a reason to ban baby hatches. The same risk exists in "safe haven" systems. Abuse of any institution is a possibility, but that possibility cannot be a reason to prohibit the institution itself. After all, cases of leaving children in baby hatches are rare. So far, the only cases in the Republic of Croatia, as well as cases of leaving children in unsuitable places, have been extensively covered by the media, so reunification with the biological mother, if she wishes, is very likely.

Similarly, the reference to Article 19 of the Convention is unfounded. Provided that baby hatches are legally regulated, not only does Article 19 not oppose baby hatches in any way, but it can even be considered a measure aimed at protecting the child "from

<sup>44</sup> Atsushi Asai and Hiroko Ishimoto, "Should We Maintain Baby Hatches in Our Society?," *BMC Medical Ethics* 14, no. 9 (2013): 2, <https://doi.org/10.1186/1472-6939-14-9>; Mladenović, "Pravo na anonimni porođaj naspram prava deteta," 448.

<sup>45</sup> Stasiūnienė, Justickis, and Jasulaitis, "Newborn Murder," 113.

<sup>46</sup> Hlača, "Pravo majke," 160.

<sup>47</sup> Rosenberg, "Illegality of Baby Safes," 206.

<sup>48</sup> "...the right to know one's parents could not be applied everywhere." United Nations, *Legislative History of the Convention on the Rights of the Child* (New York–Geneva: UN, 2007), 378, accessed October 9, 2025, <https://digitallibrary.un.org/record/602462?v=pdf>.

<sup>49</sup> *Ibid.*, 370.

<sup>50</sup> Katherine O'Donovan, "Real' Mothers for Abandoned Children," *Law & Society Review* 36, no. 2 (2002): 352; Barbara Preložnjak, "Modern Challenges in the Implementation of the Child's Right to Know His Origin," *EU and Comparative Law Issues and Challenges Series (ECLIC)* 4 (2020): 1175–203, 1178, <https://doi.org/10.25234/ecllc/11944>; Hadžimanović, "Confidential and Anonymous Birth," 130.

<sup>51</sup> Rosenberg, "Illegality of Baby Safes," 206.

<sup>52</sup> O'Donovan, "Real' Mothers for Abandoned Children," 352.

<sup>53</sup> Troiano, "Understanding and Redefining the Rationale of State Policies Allowing Anonymous Birth," 203.

all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment, or exploitation.”<sup>54</sup>

Furthermore, the Committee urges India “to take all necessary measures to end the practice of anonymous abandonment of children and to strengthen and promote alternatives as soon as possible” and “to increase its efforts to address the root causes of abandonment of infants, including by providing family-planning services, adequate counselling and social support for unplanned pregnancies.”<sup>55</sup> This is, alongside the Committee’s similar statements regarding the Netherlands, the Czech Republic, and Slovakia in contrast to the general position of the ECtHR in the case *Odièvre v. France*, where the avoidance of abortion was recognized as a legitimate public interest.<sup>56</sup>

In this regard, it is useful to emphasize the concurring opinion of Judges Ress and Kūris in *Odièvre v. France*, 2003, which states that taking appropriate measures to improve the situation of mothers in distress and to protect the lives of children by reducing the number of abortions – whether legal or illegal – as much as possible, is in the public interest.<sup>57</sup> A similar *ratio* can be found in the judgment of the Constitutional Court of Italy,<sup>58</sup> which – although the ECtHR challenged the specific judgment of that court – was not itself contested.<sup>59</sup>

### 3.2. Instigation to Commit a Criminal Offense

In the legal system of the Republic of Croatia, abandoning a child in a baby shelter or in any other place is a criminal offense. Article 176 of the Criminal Code of Republic of Croatia prescribes that “whoever deserts his or her child with the aim of permanently getting rid of him or her shall be punished by imprisonment not exceeding three years.”<sup>60</sup> In cases where the child’s parentage is not established, according to Article 181 of the Croatian Family, a child left in a baby hatch will, after a period of three months, meet the conditions for adoption.<sup>61</sup> If the identity of the mother is later established, she is subject to criminal prosecution. Regarding the child itself, it may be adopted if the mother and father are deprived of the right to exercise parental care,<sup>62</sup> since their consent for adoption is not required in this case.<sup>63</sup> If the mother or the child’s father has not been deprived of parental rights and does not wish to give consent for adoption, that consent may, under legally prescribed conditions, be substituted by a court decision.<sup>64</sup>

<sup>54</sup> Article 19(1), Convention on the Rights of the Child.

<sup>55</sup> Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of India*, 2014, para. 42.

<sup>56</sup> ECtHR Judgment of 13 February 2003, Case *Odièvre v. France*, application no. 42326/98, para. 45, hudoc.int.

<sup>57</sup> *Ibid.*

<sup>58</sup> Corte Costituzionale, Sentenza n. 425, 25 November 2005; Colcelli, “Anonymous Birth, Birth Registration,” 4.

<sup>59</sup> See also: Troiano, “Understanding and Redefining the Rationale of State Policies Allowing Anonymous Birth,” 203.

<sup>60</sup> Criminal Code of Republic of Croatia, Official Gazette, Nos. 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021, 114/2022, 114/2023, 36/2024.

<sup>61</sup> Official Gazette, Nos. 103/2015, 98/2019, 47/2020, 49/2023, 156/2023.

<sup>62</sup> Article 171 of the Family Act.

<sup>63</sup> Article 188, para. 5 of the Family Act. See also: Hlača, “Pravo majke,” 159.

<sup>64</sup> Article 190, para. 1.

As for the argument of instigation to abandon a child, this argument can be viewed from two perspectives: a moral or philosophical one, and a legal one. The first seems completely unfounded. The existence of a baby hatch is just as encouraging of child abandonment as the existence of anonymous births in France, or the existence of other institutionalized modalities.<sup>65</sup> The argument that abandoning a child in the context of a baby hatch constitutes a criminal offense represents a shift into the criminal law domain. Article 37, paragraph 1 of the Criminal Code stipulates that whoever intentionally incites another to commit a criminal offense shall be punished as if he or she himself or herself has committed it. The key point is that the instigation must relate to a specific, concrete criminal act and a specific person, or a defined group of persons.<sup>66</sup> The argument that the existence of a baby hatch encourages the commission of a criminal offense is, therefore, entirely misguided.

### 3.3. Insufficiently Proven Effectiveness of Baby Hatches – Cost-Benefit Test

It is impossible to determine with certainty whether, and to what extent, baby hatches save human lives. A study conducted in Austria showed a “significant decrease in the number of police-reported neonaticide cases in Austria following the implementation of the anonymous delivery law in mid-2001” and a “possible connection of these two events.”<sup>67</sup> Likewise, the number of abandoned children, as well as cases of infanticide, decreased after the introduction of baby hatches in Hamburg.<sup>68</sup> On the other hand, there are also studies that indicate the opposite.<sup>69</sup>

The argument that it has not been proven that baby hatches save lives<sup>70</sup> is, in fact, scientifically unsubstantiated. Moreover, some authors argue the opposite and even view baby hatches as a preventive measure to avoid infanticide.<sup>71</sup> Likewise, just as it is

<sup>65</sup> Lorana Bartels, “Safe Haven Laws, Baby Hatches and Anonymous Hospital Birth: Examining Infant Abandonment, Neonaticide and Infanticide in Australia,” *Criminal Law Journal* 36 (2012): 19–37, 34.

<sup>66</sup> Željko Horvatić and Petar Novoselec, *Kazneno parvo: opći dio* (Zagreb: Ministarstvo unutarnjih poslova Republike Hrvatske, Policijska akademija, 1999), 351; Berislav Pavišić and Petar Veić, *Komentar Kaznenog zakona* (Zagreb: Ministarstvo unutarnjih poslova Republike Hrvatske, Policijska akademija, 1998), 125; Ivan Vukušić and Nina Mišić Radanović, “Pokušaj sudioništva u kaznenom pravu,” *Hrvatski ljetopis za kazneno pravo i praksu* 22, no. 1 (2015): 95–123, 106.

<sup>67</sup> Claudia M. Klier et al., “Is the Introduction of Anonymous Delivery Associated with a Reduction of High Neonaticide Rates in Austria? A Retrospective Study,” *BJOG: An International Journal of Obstetrics & Gynaecology* 120, no. 4 (2013): 428–34, <https://doi.org/10.1111/1471-0528.12099>; see also: Christina Grylli et al., “Anonymous Birth Law Saves Babies – Optimization, Sustainability and Public Awareness,” *Archives of Women’s Mental Health* 19, no. 2 (2015): 291–97, <https://doi.org/10.1007/s00737-015-0567-3>.

<sup>68</sup> Browne, Chou, and Whitfield, *Child Abandonment*, 22.

<sup>69</sup> M. Orthofer and R. Orthofer, “Is the Introduction of Anonymous Delivery Associated with a Reduction of High Neonaticide Rates in Austria? A Retrospective Study,” *BJOG: An International Journal of Obstetrics and Gynaecology* 120, no. 8 (2013): 1028, <https://doi.org/10.1111/1471-0528.12260>.

<sup>70</sup> Troiano, “Understanding and Redefining of State Policies Allowing Anonymous Birth,” 195. See: Tobias Bauer, “A Discussion of the Baby Hatch from the Viewpoint of a Child’s Right to a Knowledge of His/Her Parentage: Perspectives from the German Debate,” *Journal of Philosophy and Ethics in Health Care and Medicine*, no. 9 (2015): 31; ECtHR Judgment of 13 February 2003, Case Odièvre v. France, application no. 42326/98, para. 45, [hudoc.int](http://hudoc.int).

<sup>71</sup> Stasiūnienė, Justickis, and Jasulaitis, “Newborn Murder,” 115.

unknown, and cannot be known, how many lives – of both children and possibly mothers<sup>72</sup> – can be saved by a baby hatch, it is also impossible to determine how many lives would be destroyed by depriving individuals of their right to privacy due to ignorance of their own origins. More importantly, it is uncertain whether such deprivation would negatively affect the development of every child left in a baby hatch to such an extent that sacrificing someone's right to life for that knowledge would be justified.

In this regard, there are critiques that the issue should be considered not from an abstract, but from a concrete, statistical perspective. These critiques are based on the view that not all children left in a baby hatch would have been saved from a life-threatening situation if they had not been placed there. On the other hand, almost all such children would be deprived of the right to know information about their own origins, or, in conventional terms, their right to privacy. Therefore, according to these critiques, from an interpersonal perspective, the majority's right is sacrificed to save the right of a large minority.<sup>73</sup> The argument that, given the different ranking of the right to life and the right to privacy, such a sacrifice is acceptable, even if only one life is saved, could be rejected in this sense. In this context, it seems necessary to consider how many children's lives baby hatches would actually save and compare that number with the number of children who, due to baby hatches, have been deprived of their right to privacy.<sup>74</sup>

As much as the aforementioned considerations may make sense, in the context of insufficient evidence regarding the actual role of baby hatches in saving lives, the deprivation of the right to privacy for a larger number of children, and the risks posed to other institutions, they are essentially irrelevant from an intrapersonal as well as from an interpersonal perspective. From an intrapersonal viewpoint, the right to life takes precedence over or is above the right to privacy,<sup>75</sup> since the former implies the latter, as well as any other right, meaning that without the realization of the former, none of the others can exist.<sup>76</sup> From an interpersonal perspective, it seems indisputable that it would be acceptable to sacrifice the rights of many children to privacy to save the right to life of fewer children, simply because the right to life is superior to all other rights,<sup>77</sup> including the rights of all other persons.<sup>78</sup>

In this regard, Hadžimanović's conclusion that mothers should be allowed to consider whether they want to keep the child without any time pressure seems implausible, even though the note acknowledges that the child suffers if not provided with the love of a mother and father and if it does not become part of a family that can offer such love

<sup>72</sup> Sylwia Olejarz, "Ethical Concerns Relating to Child Abandonment and Baby Hatches: The Case of Poland," *Journal of Philosophy and Ethics in Health Care and Medicine*, no. 11 (2017): 52.

<sup>73</sup> Bauer, "Discussion of the Baby Hatch," 35; German Ethics Council, ed., *Anonymous Relinquishment of Infants: Tackling the Problem* (Berlin: German Ethics Council, 2009), [https://www.ethikrat.org/fileadmin/Publikationen/Stellungnahmen/englisch/DER\\_Stn\\_AnonKind\\_Engl\\_online\\_Auf2.pdf](https://www.ethikrat.org/fileadmin/Publikationen/Stellungnahmen/englisch/DER_Stn_AnonKind_Engl_online_Auf2.pdf).

<sup>74</sup> Bauer, "Discussion of the Baby Hatch," 37; Browne, Chou, and Whitfield, *Child Abandonment*, 17.

<sup>75</sup> Bauer, "Discussion of the Baby Hatch," 34.

<sup>76</sup> Troiano, "Understanding and Redefining of State Policies Allowing Anonymous Birth," 203; Mladenović, "Pravo na anonimni porođaj naspram prava deteta," 460.

<sup>77</sup> Blažek and Prokeinová, "How to Provide a Legal Safe Harbor," 66.

<sup>78</sup> Joint dissenting opinion of Judges Wildhaber et al., ECtHR Judgment of 13 February 2003, Case Odièvre v. France, application no. 42326/98, hudoc.int.

as soon as possible.<sup>79</sup> The best interest of the child is an impenetrable barrier protecting the child's right to grow up in a family founded through adoption, where they will receive the necessary love of a mother and father. This right cannot be overridden by the right of a woman, who may indefinitely hesitate whether to allow the realization of that child's right or not, especially considering that such a woman may be unable to make such a decision due to health or moral reasons.

#### 4. Conclusion

Baby hatches are subject to criticism even from supporters of anonymous birth.<sup>80</sup> Indeed, they are not regulated by law, leaving a child in a baby hatch constitutes a criminal offense, and ultimately, that the institutions of anonymous and confidential birth are more acceptable from the perspective of protecting the health of both the mother and the child,<sup>81</sup> as well as from the perspective of safeguarding the child's right to know their origins.

In every discussion about anonymous birth, baby hatches, or any other form of care for anonymously abandoned children, a necessary condition for their justification is their institutionalization. This is the fundamental problem of baby hatches within the legal system of the Republic of Croatia. Legalization of baby hatches could be achieved through an appropriate amendment to the Criminal Code regarding the legal description of the criminal offense of Child Abandonment. An example can be found in Polish legislation and case law, according to which child abandonment includes leaving a child and ceasing to care for them without ensuring that another person takes responsibility for the child.<sup>82</sup>

The Committee on the Rights of the Child favors confidential birth. It considers the child's right to identity as the most important value to protect, despite the provision containing the limitation "as far as possible" and the fact, confirmed by the ECtHR, that all other rights derive from the right to life. Accordingly, the child's right to life is hierarchically superior to all other rights.

Here, we can mention Susan Ayres' reasoning that a woman in the given situation must have multiple options available "to do the right thing at the right time."<sup>83</sup> In this light, Judge Greve's concurring opinion is also relevant. This judge states that "it would be plainly inhumane to invoke human rights to force a woman in this situation to choose between abortion or a clandestine birth."<sup>84</sup>

Finally, the criticisms regarding the negative impact on other modalities that assist women wishing to give up their newborn children fail to consider that these very

<sup>79</sup> Hadžimanović, "Confidential and Anonymous Birth," 130.

<sup>80</sup> Troiano, "Understanding and Redefining of State Policies Allowing Anonymous Birth," 203.

<sup>81</sup> Ibid.

<sup>82</sup> Browne, Chou, and Whitfield, *Child Abandonment*, 30.

<sup>83</sup> Sarah Ayres, "Kairos and Safe Havens: The Timing and Calamity of Unwanted Birth," *William & Mary Journal of Women and the Law* 15, no. 2 (2009): 289, <https://ssrn.com/abstract=1356169>; Govender, "An Ethico-Legal Case," 17. See also: Lemrová et al., "Anonymous Births," 38.

<sup>84</sup> Concurring opinion of Judge Greve, ECtHR Judgment of 13 February 2003, Case Odièvre v. France, application no. 42326/98, hudoc.int.

modalities may represent too great a challenge for some women. Some may hesitate to use institutionalized options out of fear that their identity might still be revealed.<sup>85</sup> In countries where anonymous birth is regulated, there is always a risk that anonymity may be compromised by medical or other staff, or, for example, by visitors.<sup>86</sup> An unavoidable factor that might lead women to avoid other modalities is the fear of social stigma,<sup>87</sup> criminal prosecution,<sup>88</sup> or family members.<sup>89</sup>

Moreover, there are factors of mental, moral, and intellectual maturity. Discussions generally focus on mature and competent individuals, but often overlook those who are simply not intellectually capable of engaging in procedural legal actions required by certain modalities. Also, as noted by Asai and Ishimoto, there are individuals who, whether out of fear or selfishness, do not wish to communicate with either their relatives or the competent institutions, as well as those who are unable to do so for various reasons.<sup>90</sup> They conclude that “we should consider the continuation of baby hatches with such realities in mind.”<sup>91</sup>

At this point, it seems appropriate to highlight the concurring opinion of Judges Ress and Kūris, as harsh as it may sound, according to which “persons who seek disclosure at any price, even against the express will of their natural mother, must ask themselves whether they would have been born had it not been for the right to give birth anonymously.”<sup>92</sup>

Such a view confirms the primacy of the right to life. Ultimately, the situation in which a woman leaves a child in a baby hatch or enters the anonymous birth system is undoubtedly the result of circumstances indicating that the quality of the child’s life would have been questionable, even if the child had been kept. Furthermore, it is likely that, in the case of adoption, such a child will experience all aspects of parenthood within their new family, where their quality of life will be ensured in every respect. This was also stated in the case of *Odièvre v. France*, where the ECtHR held that Ms. Odièvre “has parental ties with her adoptive parents and a prospective interest in their property and estate.”<sup>93</sup> Therefore, one should not assume that, in these cases, quality of life would be sacrificed at the expense of the right to life.<sup>94</sup> The right to knowledge of one’s origins would be sacrificed for the protection of the right to a life of full quality. Ultimately, nothing prevents a woman from leaving some information about herself when leaving the child, which would one day enable the child to discover their own identity.

Against the backdrop of these competing interests, it is indisputable that the paramount legal objective is the protection of the child’s best interests, which necessarily

<sup>85</sup> E.g., Lemrová et al., “Anonymous Births,” 37.

<sup>86</sup> Olejarz, “Ethical Concerns,” 50.

<sup>87</sup> *Ibid.*, 51.

<sup>88</sup> E.g., Baqutayan et al., “Should We Maintain Baby Hatches?”

<sup>89</sup> See: Rosenberg, “Illegality of Baby Safes,” 207.

<sup>90</sup> Asai and Ishimoto, “Should We Maintain Baby Hatches in Our Society?,” 7.

<sup>91</sup> *Ibid.*

<sup>92</sup> Concurring opinion of Judges Ress and Kūris, ECtHR Judgment of 13 February 2003, Case *Odièvre v. France*, application no. 42326/98.

<sup>93</sup> ECtHR Judgment of 13 February 2003, Case *Odièvre v. France*, application no. 42326/98, para. 56.

<sup>94</sup> Olejarz, “Ethical Concerns,” 47.

encompasses the safeguarding of the child's life.<sup>95</sup> In this framework, while striving to identify an optimal solution that balances the interests of both the child and the parents, baby hatch facilities serve as a practical instrument toward the realization of the highest principle – the protection of the child's life.

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<sup>95</sup> Nataša Lucić, "Anonimni porod – treba li nam zakonsko uređenje?," *Pravni vjesnik: časopis za pravne i društvene znanosti Pravnog fakulteta Sveučilišta J.J. Strossmayera u Osijeku* 41, no. 4 (2025): 45, <https://doi.org/10.25234/pv/37480>.

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