

‘Everyone has the right to respect for their family life’. Discuss this statement in light of s.8 of the ECHR and the case of EM (Lebanon) (FC) (Appellant) (FC) v Secretary of State for the Home Department (Respondent)

Introduction

In the UK, it is stated that ‘everyone has the right to respect for their family life’ under article 8 of the European Convention on Human Rights. This should not suffer any interference from public authority except under certain situations which are set out in article 8. Under article 14, this right is to be secured without discrimination on any grounds. The case of EM v Secretary of State for the Home Department raised these two sections of the European Convention on Human Rights as the basis of the case. In this essay, I am going to discuss the statement ‘everyone has to right to respect for their family life’ in relation to the EM case and look at how the decision of this particular case can affect other court cases in the future.

What is EM’s case about?

EM is a Lebanese mother who came to the UK on the 30<sup>th</sup> December 2004, with her son AF, born on the 16<sup>th</sup> July 1996. EM was Muslim as was married in Lebanon according to Muslim rites, but divorced her husband because he subjected her to violence. During her marriage her husband subjected her to violence by beating her, trying to throw her off a balcony and trying, on at least one occasion, to strangle her, causing EM to have a mental breakdown. EM’s husband had also ended her first pregnancy by hitting her on the stomach with a heavy vase whilst claiming that he didn’t want children, however, on the day of AF’s birth, the father came to the hospital with his family to attempt to take AF away to Saudi Arabia, but was prevented from doing so and has not seen AF since. During a court case in Lebanon EM’s evidence of violence was accepted as true and she was allowed to divorce her husband. Under Lebanese law, the father regained legal custody of AF, but the divorce court ruled that the child should remain in EM’s care until he reached the age of seven, thereafter Islamic law entitled the father to require that physical custody of AF should be transferred to him or a male member of his family. To avoid losing AF, and in an attempt to safe her family life, EM moved out of her parents’ house into hiding to prevent the removal of AF from her care, until she left Lebanon, after her former husband issued proceedings in court. If she were to return to Lebanon then it is likely that EM would face charge of kidnapping AF. Therefore, she began a court case in the UK in an attempt to stay, using Articles 8 and 14 from the European Convention on Human Rights to support her argument.

What is the relevance of Article 8?

Article 8 is from the European Convention on Human Rights and was incorporated into UK law by the Human Rights Act 1998. The article states that ‘everyone has the right to respect for his private and family life, his home and his correspondence’. It also states that ‘there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others’. This article was viewed as relevant in the EM case as sending EM and her son back the Lebanon would destroy the family life of both EM and her son, AF. This is because the only family life AF had known was with his mother, and if AF were obliged to return to a country where he would inevitably be removed from EM’s care, with only the possibility of supervised visits then the very essence of his right to respect for his family life would be destroyed. However, during the trail the Secretary of state put forward the argument that although EM would lose custody of her son, this did not establish that she would lose all contact with

him, therefore meaning that even though EM's enjoyment of family life with her son would be severely restricted, it would not be 'completely denied or nullified'. However, this would not be guaranteed for EM so her family life could still be destroyed.

#### What is the relevance of Article 14?

Article 14 is also from the European Convention of Human Rights, and like Article 8 was incorporated into UK law by the Human Rights Act 1998. The article states that 'the enjoyment of rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'. This article was viewed as relevant in the EM case as the risk of her losing custody of AF was due to the fact that she was a woman. Even if the father were found to be unfit as a parent, AF would not be passed back to the EM as the mother, but to the paternal grandfather or some other male member of the father's extended family. EM did not claim that the UK had violated her European Convention rights within its own territory but that the conduct of the UK in removing EM from its territory but that the conduct of the UK in removing EM from its territory to Lebanon would lead to a violation of her European Convention rights in Lebanon.

#### What problems could occur with the court's decision over the case?

The courts finally ruled that EM was allowed to stay in the country. This was a conflict of cultural traditions as the Sharia Law that is enforced in Lebanon puts the emphasis of family life with the father, whereas the western approach to family life puts greater emphasis on the rights of family life with the mother. The final decision of the court over the case, allowing EM to stay in the UK where she remained custody of her son, AF, could cause possible problems in the future. EM's case was heard in the House of Lords, which was the highest court in the country, before being replaced by the Supreme Court in 2009. This means that it sets a precedent for future cases as it binds lower courts to follow decisions made in cases held in the House of Lords. This could cause issues as the success of EM could lead to an increase of Muslim mothers fleeing to the UK, with their children, also attempting to avoid loss of custody under Sharia law. Due to the setting of a precedent for future cases, lower courts who receive cases from any other mothers attempting to avoid deportation from the UK would have to allow them to become residents if they used Article 8 and 14 of the European Convention on Human Rights.

#### Do I agree with the decision of the House of Lords?

In some sense I do agree with the decision of the House of Lords as I believe it would have been unfair to have refused EM's case and deported her back to Lebanon, as it would not only have ruined her family life, but that of her son also. Removing AF from his mother's care would undoubtedly have destroyed his right to respect for his family life, and he may well have been at risk of violence and abuse from his father due to the evidence used in EM's previous court case, when AF's father declared that he did not want children. However, I do not agree to some degree with the decision of the House of Lords, as it binds lower courts to follow the decisions made over cases in the House of Lords, and could lead to a number of problems including an increase of people trying to get into an already heavily populated country.

#### Does the decision protect family life for everyone?

The court's decision over the EM case does not protect family life for everyone. Although it protects the family life of EM and her son, AF, in this case, it does not protect the family life of the father, as he is still refused custody of his son, even though in Sharia Law which is enforced where he lives

states that he should have custody as a father. The decision of the court also affects the family life for parents and children in future cases. If the same decision is made on other cases it could destroy the family life of fathers who have not subjected their wife to violence and abuse, which is unfair and breaches their right to respect for family life. The decision could also lead to mothers attempting court cases to destroy the family life of fathers out of spite and personal disagreements without thinking much about the family life of the child. Overall, the decision over EM's case does protect family life for EM and AF, but it will not protect family life for everyone.

### Conclusion

Overall, I agree with the statement 'everyone has the right to respect for their family life' as to many people it is the most important aspect of their life. Article 8 of the European Convention of Human Rights states the importance of this and the rights of the individual. The case of EM reflected this right and prevented the destruction of the family life for both EM and her son, AF. In conclusion, article 8 protects the family life for many people such as EM and AF, however, it does not protect the family life for everyone.