

"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).

In today's modern society there should be no hesitation in believing that everyone has the right to respect for their family life and those whom intrude within it have no right to do so, even those who perhaps engage themselves in the public eye still have a right to a family life without criticism or interference from others. The idea of having respect for one's family life is clearly of great importance as regulations are in place to ensure that this is kept as apparent in the European Convention on Human Rights (ECHR). In the case of EM (Lebanon (FC) (Appellant) (FC) v Secretary of State for the Home Department (Respondent) the ECHR is contended and questioned as cultural differences make it a difficult decision to make.

### ECHR

Article 8 of the ECHR proclaims that <sup>1</sup>everyone has the right to respect for his private and family life, his home and his correspondence. Suggesting that nobody is excluded from having the basic human right of living a private life and also a family life, meaning that it is not for others to judge what is right or wrong but simply to respect the way people choose to live and how they choose to cohabit as a family. However, there is limitations as human rights can only give a certain level of freedom as made apparent in Article 8 (2) which claims that, <sup>2</sup>There shall be no interference by a public authority with the exercise of this right except such as is 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 freedoms of others. This proves that the limitations are only apparent if it is in the interest of the state to interfere as someone is coming to harm or the law is being breached.

Article 14 of the ECHR is also relevant to the case as it claims that, <sup>3</sup>The enjoyment of the 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 is relevant to the case as it involves intervention of different cultures, religions and also controversy with race. Article 14 clearly underlines that all rights set forward in the ECHR including those portrayed in article 8, that it does not matter of which origin, race, sex or even political opinion you hold you are still entitled to these rights obviously until how you exercise these rights is a concern to the state.

### EM

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<sup>1</sup> <http://www.hri.org/docs/ECHR50.html#C.Art8>

<sup>2</sup> <http://www.hri.org/docs/ECHR50.html#C.Art8>

<sup>3</sup> <http://www.hri.org/docs/ECHR50.html#C.Art14>

Within the case EM is the mother of AF, she claimed asylum in the UK as she feared that her son would be taken from her due to Lebanese laws favouring the father of legal custody. EM feared for her son's life and also for hers as she was subjected to much violence throughout her marriage and for that reason appealed for a divorce. The divorce court then ruled that until the age of 7 AF could be in the custody of his mother EM. EM then waited for AF to reach his 7<sup>th</sup> birthday and then left Lebanon with the assistance of an agent, leaving the country on 20 December 2004. If she returned to Lebanon, she was possibly at risk of imprisonment on a charge of kidnapping AF.

The law applied in Lebanon is the Islamic law and it states clearly that the father has full rights to custody and also gets to choose where the child lives during the 7 year period and the transfer after the 7 years should be automatically passed onto the father and if he is unable to perform these duties then the child is given to the paternal grandfather or the next male member of the fathers family, not to the mother.

EM's case was heard at the High Court and it was put forward that, <sup>4</sup>The right of a mother to participate in the upbringing of her child was a fundamental right, recognised by domestic, European and international law; and a legal system which denied EM that right, after AF has reached 7 years, solely on the grounds of EM's sex, also bearing in mind the violence of the father and the fact that the father had not participated in the child's upbringing, was a "flagrant denial or gross violation" of that right. Clearly this proved that a breach of Article 8 of the ECHR and most importantly the breach of Article 14 was apparent in EM's case. The state however did not feel that all of her rights were taken from her as the law did not suggest she could not see her son and therefore was not completely restricted. However the Law Lords investigated further establishing that there would be a disruption to both AF's and EM's family life as they would have a fragmented and partly broken family life which gave compelling grounds for EM and AF to remain in the UK under humanitarian grounds. In the case of the breach of Article 14 many Law Lords rejected this as they felt that the ECHR does not claim to allow people to appeal against their own country's family law as this would be questioning morals and certain cultural beliefs which would contradict Article 14 itself. Some Lords didn't agree with this and Baroness Hale of Richmond felt that <sup>5</sup>discriminatory laws of Lebanon were the reason why there was a real risk [that the removal of EM would destroy the very essence of her family life with AF and violate articles 8 and 14] in this case and these laws were also the reason why the interference could not be justified.

The points of law are clearly evident and it cannot be denied that there is a breach in these however due to the cultural implications enforcing UK laws upon others brings great controversy as many would claim that it would be extremely contradictory to the ECHR especially in the case of Article 14 therefore making it hard for the High Court to make a decision which wouldn't offend others.

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<sup>4</sup> Case Study

<sup>5</sup> Case Study

### Sharian Law

Sharian Law is the Islamic Law which is practiced in certain Islamic countries and <sup>6</sup>When it comes to divorce, laws can be very different than in the West. In some areas divorce is solely the decision of men, whereas in others women have equal rights to a divorce. One interpretation of the law is that a man simply has to say the Islamic equivalent of "I divorce you" three times for a divorce to be official. This means that saying this in a moment of weakness could mean the end of a marriage, even if it is not what he really wanted. If he then changes his mind, his wife will have to wait three months before marrying and divorcing someone else, and then wait another three months before marrying her original husband. This is much different from a western divorce where a divorce must go through the courts before being granted and can take several months of even years.

The way that men and women are treated when it comes to divorce varies in certain interpretations of Sharia Law and western family law. In Sharia Law certain rights such as custody of children and ownership of property tend to go more to men, whereas in Europe, for example, they are more likely to go to women, although this depends on the circumstances. The Sharian Law differs quite apparently to Western Law as it is based upon Islamic teachings and belief mainly based on the of the Quran. It is also clear that these are the rules that the Islamic people choose to live by and understand them meaning that those who perhaps don't agree should move to a westernised culture. The Law is also questionable to those who perhaps have a more westernised approach to society suggesting that it is sexist and wrong however to do so would be discriminating against peoples beliefs and again breaching the ECHR as it would be intruding in another persons family and private life.

The Sharian Law also makes it evident of how those who follow Islam feel about the rights to a private, family life. They clearly feel that it is not in people's interests to have a private life when it comes to certain matters as they must follow the Laws which are put in place to reinforce their culture and religion. This is in complete contrast to Western Law, morals and ideals.

### Western Morals

This is a completely controversial case which is going to bring great unrest either way the decision swings due to the conflict between western morals and the Sharia Law. The Westernised ideas clearly indicate the importance of basic Human Rights and in the case of family law it is each to their own in the sense that interference from the state will not occur unless harm is brought in the house. However if anyone in Europe aimed to argue that the Sharia Law goes against basic Human Rights as enforced in the ECHR then it would be a contradictory argument as Article 8 clearly indicates that everybody is entitled to a private family life regardless of how they choose to live it as long as they do not harm others and do not breach the law. Article 14 also states that

regardless of culture or religious beliefs that everybody is entitled to a private family life and as long as it does not breach the law then it is fine and in the case of EM it does not break the Sharia law therefore giving no real grounds for the case to swing in EM's favour.

This also poses the question of how the case is going to be settled. On the one hand if it is left upon the High Court would they rule in favour of EM under the breach of the ECHR or would they rule in favour of the Sharia Law in order not to breach ECHR. The decision is extremely important as it does not simply resolve the case but also shows where the UK stand on respecting other cultures and their beliefs. It is also apparent though that any decision made would most definitely set a precedent for cases in the future which perhaps have difficult and confusing points of law concerning the ECHR and would not only be used in UK cases but in other European cases giving a huge amount of pressure to the decision makers of the case considered to make the right decision so that in the future they uphold the correct legal regulations and make the right decisions.

#### Conflicts of the decision

If the decision was to go in EM's favour it could easily encourage many other Muslim women to seek asylum in the UK adding to the already overgrown population which could cause protesting within the UK. The decision to allow EM to the rights of the child does not give a fair family life to the father whom also should be entitled to have a certain amount of custody yet does not. It could be suggested that the court has ruled in favour of the mother also due to the fathers past violent behaviour.

The decision to give EM custody of AF I feel is the correct decision as it is apparent that she cares greatly for AF and is simply not willing to give up custody due to the fear she has for her son's well being. In the eyes of the ECHR it is the correct decision to make however it does lead to difficulties as the Sharia Law then seems to be undermined by the UK and the ECHR however this is only once case and it is one incident therefore it shouldn't be perceived as this as that would be an unfair judgment to be made.

Everybody should have the right to have respect for their private family life and that is apparent in our basic Human Rights however if you choose to reside somewhere where perhaps your Human Rights differ then it becomes extremely difficult to argue this case. Human Rights are seen as the basis on which many peoples freedom is achieved and it is understandable and in modern society it should be this way, but if you try to impose this on other more traditional society's it causes conflicts and problems therefore compromise has to be reached and in certain cases also a sense of negotiation is needed in order not to cause great conflict or breach of one's private and family life.