

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

Written by Lauren Brett (Nov 2009)

In this essay, I will be discussing the statement that ‘everyone has the right to respect for their family life’, taking into account section 8 of the European Convention on Human Rights and the case of EM (Lebanon) v Secretary of State for the Home Department.

The right to respect for your family life means that everyone has the right to have and enjoy relationships with their family without interference from the government, for example, having the right to live with your family, or, if that is not possible, the right to have regular contact with them. The ‘family life’ relationships can be anything from an unmarried couple to the relationship between a foster child and his/her foster parent. However, the right must be reciprocated, as in people must also show respect for the rights of others.

Article 8 of the European Convention of Human Rights

Article 8 of the European Convention of Human Rights states that “Everyone has the right to respect for his... family life” and that there should be no interference of this right from a public authority unless it is necessary to uphold the law in a democratic society. This means that every person has the right to have and enjoy their relationships with their family, such as the right to live with your family or have regular contact with them, without interference from the government unless the respect for their family life contradicts that of the law and risks others within the democratic society in which we live. The statement also means that we must also respect the rights of others family life.

Taking this into account, the statement can be interpreted in different ways, for example, in the case of EM v Secretary of State for the Home Department as discussed below.

The case of EM v Secretary of State for the Home Department

In regard to this case, the statement ‘everyone has the right to respect for their family life’ had a lot of impact. The main reason for this was what started the case in the first place – EM felt it would be a breach of her right to respect for her family life if her and her son were removed from the UK to Lebanon as she would no longer have the right to live with her family (in this case her son) and that it is highly unlikely that she would be able to have regular contact with him due to the past with her husband. Also, EM said that her rights as stated in Article 14 – prohibition of discrimination – would be in breach due to her being a woman as it was for this reason that her child would be put into the care of his father.

Islamic Law, which is applied in Lebanon, states that when a child reaches the age of seven, the father is entitled to physical custody of the child, even if this decision is not in the best interests of the child as the courts have no discretion in this. This would mean that AF, the child of EM, would automatically be placed in the care of his father, or, if his father is seen to be unfit to care for the child, put into the care of a member of the father's family. These consequences of the removal of EM and AF were seen as a breach of both of their rights for respect as stated in Article 8 of the European Convention of Human Rights; EM's rights would be breached as she would no longer have the enjoyment of her current relationship with her son as she would no longer be able to live with her son due to AF being put into the care of his father who showed violence throughout his marriage to EM. Secondly, EM would unlikely be able to have regular visitations to her son as the visitations, in the possibility that they would go forward, would be severely restricted, which would again breach her rights to 'respect for your family' as she would no longer have a family relationship with her son.

The son's rights, as stated in Article 8, could also be destroyed. This is because the only family life that he has ever known – one with his mother – would be destroyed if he was moved to Lebanon as he would no longer be able to live with his mother with no guarantee that he would even be able to have visitation rights with his mother – and if so, they would be very restricted visits – therefore destroying his right to respect for his family life.

However, on the other hand, some may take the case of EM and say that the laws of the UK cannot be used to overcome the laws used in another country, in this case the Islamic Laws which are practised in Lebanon, no matter how socially unfair compared to other countries laws they may seem.

Secondly, it could be argued that, by sending EM and her son back to Lebanon, it would not be in breach of their rights in respect of their family as their family life and relationship may not be "completely denied or nullified", even if it was restricted, therefore EM would have no case when appealing about her rights as stated in Article 8 of the European Convention of Human Rights.

In conclusion, the statement that 'everyone has the right to respect for their family life' can have great impact on the decisions in the court of law, for example, in this instance in regard to the case EM (Lebanon) v Secretary of State for the Home Department where the decision was made that, by removing EM and her son from the UK to Lebanon, her rights as stated in Article 8 of the European Convention of Human Rights would be in breach as the family life between EM and her son would be destroyed.