

“Everyone has the right to respect for their family life.”

Written by Joanna Ewuosho

This statement will be discussed in the light of the European Convention on Human Rights, and by looking at the case of *EM v Secretary of State for the Home Department*.

The ECHR

The purpose of the ECHR is to ensure human rights to those within Europe. It does this by stating what their rights are, and nullifying any possible way there can be discrimination; under Articles 8 and 14.

The European Convention on Human Rights, Article 8 states “Everyone has the right to respect for private and family life, his/her home and his/her correspondence.”

This article allows people to develop themselves in whatever way, with their own moral independence without fear of interference.

It also forbids “interference by a public authority...” but accepts certain interference when it is “in the interest of national security, public safety...for the protection of the rights and freedom of others.”

The case of *EM v Secretary of State for the Home Department* is relevant to article 14 as it was on the grounds of EM being a woman that there was a threat to her family life. Article 14 prohibits discrimination and allows people to enjoy their “rights and freedom...without discrimination on any ground such as sex, race, colour, language, religion, etc.”

The Facts of EM’s Case

In 2005 a Lebanese mother claimed asylum in the UK and her application was refused by the Secretary of State.

EM, a Lebanon national, fled to the UK with her son, AF, in December 2004. As a Muslim, she married under the Muslim rites, but was badly treated by her husband. EM filed a divorce against her husband due to his violence, but under the Lebanese law the father reserved legal custody of AF. The divorce court concluded AF could only remain in EM’s care until he was 7 years old, at which then the father is entitled full custody and the child must be transferred to him or another male member of the family.

After the divorce EM supported herself and her son, but when AF became of the age, EM fled to the UK with the help of an agent, and became at risk of being charged with kidnapping AF if she returned to Lebanon.

EM claimed that if she and her son AF were faced with removal from the UK, her right to respect for family life would be disregarded on a discriminatory basis because she is a woman.

EM appealed to the House of Lords on the grounds that sending her back to Lebanon would breach Articles 8 and 14 of the ECHR.

The Law Lords investigated the case in the light of Articles 8 and 14 of the European Convention.

EM's case in the light of Article 8

They considered the question as to whether the removal of EM and AF to Lebanon would completely deny their rights based on Article 8, and confirmed the answer to be true.

Baroness Hale of Richmond came from the angle of the child, AF, arguing the only family life the child was aware of was with his mother, EM; for his father had only seen him once at birth. If EM was forced to return to Lebanon, AF would automatically be removed from her care, thus making the removal of EM and AF to Lebanon an act of destruction on his right to respect for family life.

Lord Bingham of Cornhill similarly gave insight on the idea that occasional and supervised visits from EM to AF "at a place other than her home" could not be described as family life. Lord Bingham stated "the case for allowing EM and AF to remain in the UK on humanitarian grounds was compelling."

EM's case in the light of Article 14

Although emphasis in the argument on behalf of EM's case was due to the "arbitrary and discriminatory character of family law" in Lebanon, majority of the Law Lords rejected EM's claim under article 14.

One of the Lords, Lord Hope of Craighead stated "it was not the intention of the European Convention to provide protection against disparities in social economic rights." In other words, removing a woman who arrived in the UK to escape from the system of family law within her own country- however contradictory it is from the system of this country- would not "violate article 8 read with article 14."

Lord Bingham of Cornhill pointed out that as Lebanon is not a party of the European Convention the UK had no authority to impose its laws and values on other countries.

Baroness Hale of Richmond disagreed, however, explaining it was due to the discriminatory laws of Lebanon that the removal of EM would "destroy the very essence of her family life with AF."

Sharia Law

Due to the Islamic law- which is applied in Lebanon- even during the 7 years of which the mother is with her child, the father retains legal custody and has the power to dictate where the child lives. Even without the consent of the father, the child will automatically be transferred- regardless of court decisions or of any persons' interest. Whilst the father may be unfit to be parent the child, the child must still be given to a paternal member of the father's family and never to the mother; any attempt by her to retain custody of him is inevitable to fail. "This is simply because the law dictates that a mother has no right to the custody of her child after that age. She

may or may not be allowed what has been described as visitation. That would give her access to her son during supervised visits to a place where she could see him. But under no circumstances would his custody remain with her. The close relationship that exists between mother and child up to the age of custodial transfer cannot survive under that system of law where, as in this case, the parents of the child are no longer living together when the child reaches that age. There is a real risk in all these cases that the very essence of the family life that mother and child have shared together up to that date will be destroyed or nullified.”

The Sharia law puts great emphasis on family life in favour of the male gender. During the argument, the system was described as arbitrary and discriminatory; for it goes against the human rights standard within the convention.

The Sharia law “was created by and for men in a male dominated society. The place of the mother in the life of a child under that system is quite different under that law from that which is guaranteed in the Contracting States by article 8 of the Convention read in conjunction with article 14. There is no place in it for equal rights between men and women.”

Lord Bingham stated this family law reflects religious and cultural traditions, and is respected in many areas around the world.

The Sharia law appears to be discriminatory because it denies women of their rights (custody of their child) simply because they are women.

Westernised Law

The western approach to family life is opposite, and puts emphasis on the interest of the mother. Although in the light of both Article 8 and 14, “everyone has the right to respect for private life”; and this right can be enjoyed “without discrimination on any ground,” it seems women are the main beneficiaries, especially in the case of EM and AF.

This case appears to be about a conflict of cultural traditions; the western values oppose those within the Sharia law, however the European Convention on Human Rights does not provide a solution for such conflicts. The ECHR aids those within Europe, for that is where the law is applied. Because of this, it should be reasonable to allow all those who come into law to be able to benefit from the law- as Article 14 prohibits discrimination “on any ground such as religion, national or social origin...etc.”

The court agreeing to EM’s appeal can however, open the door to many other types of refugees fleeing to abide under a more appropriate law- this can in-turn lead to a greater pool of immigrants and outsiders. The act of agreeing with cases like EM’s indirectly agrees to oppose the laws of other nations; this can cause more hatred toward the westernised countries if more people under the Sharia law -for example- flee for the western-valued life.

Cases as such go to higher courts, and this can bind the lower courts if there are a continuous number of these cases.

The case of EM is inevitable to set a pattern for future cases because although from UK’s perspective EM had not broken any law of the land, the case had proven to be an issue because a law had still been broken. The

problem was if UK were to act they could be restricting EM's rights based on article 8 and 14 of the ECHR.

Nevertheless, I disagree with the decision of the House of Lords; removing AF from the care of his mother EM- even with occasional supervised visits- is a breach of Article 8. As Lord Bingham pointed out, the visits would not take place in the home associated with and familiar to AF- which is that of EM's. I also agree with Lord Bingham that "the case for allowing EM and AF to remain in this country on humanitarian grounds is compelling", especially when the point of view of the child is taken into account. AF has only known his mother as a parent, and life with his father or any other male family member on his father's side would be alien to him. Because of this, AF's right to family life will be denied if EM were removed to Lebanon where the Sharia law prevails.

However, I believe whatever the outcome of the matter, there will be a party involved that will have to compromise. The decision to keep EM and AF in the UK may be protecting their rights, but it doesn't put the rights of AF's father into consideration. AF may never have seen him and EM may never want to see him, but it doesn't change the fact that he is still AF's father. Naturally, AF's father would want to be with his child; and as the Sharia law states, AF's father does reserve the right to have custody of AF. The decision that favours EM and AF goes against the father's rights under the Sharia law, whilst the decision in support of the Sharia law infringes EM and AF's right to respect for their family life under the ECHR. Although I believe AF's father is not worthy of custody of AF because he had violent records and in my opinion, is not a satisfactory parent.

To conclude it is evident that although article 8 under the European Convention on Human Rights states "everyone in this country has the right to respect for their family life", this right may be subject to "interference by a public authority if the interference is lawful".

The case of EM involved the mother and her son AF fleeing from their country, Lebanon based on the laws within, to arrive to the UK in hope for better justice. EM had suffered violent abuse from her husband, and divorced him. She gave birth to her son AF but due to the Sharia law observed in Lebanon, EM was not entitled the custody of that son after the child reached the age of 7. Before this could come to pass EM fled, for she could not part with her son to his father.

The ECHR reserves the right for everyone to have respect for family life, but when EM applied for asylum, her application was denied by the Secretary of State; the claim for the breach of EM's human rights could not be categorised as "flagrant".

It was then argued from the account of AF that EM's removal would indeed oppose article 8 and destroy his rights for respect to family life, and the discriminatory factor of the Sharia law breached article 14 because she was in this situation for being a woman.

Footnotes:

Case Study June 2009.pdf and the Full Judgment:

<http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd081022/leban-1.htm>

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