

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

Written by Melissa Trichard

Article 8 from the European Convention on Human Rights states that everyone has the right to respect for his private and family life, his home and his correspondence. Article 14 states that the enjoyment of this right shall be secured without discrimination on any ground. The case of *EM v Secretary of State for the Home Department* encouraged deep discussion of whether sending a woman and her son back to Lebanon from the UK would infringe her right to respect for family life.

Article 8

Article 8 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.” In other words, it imposes a positive obligation on public authorities to actively protect your rights in certain circumstances. To be in “accordance with the law” means that there must be a strong legal basis for the interference and that the law must be readily accessible. Article 8 can be related to the removal of an individual from the United Kingdom, but it has to be shown that the person risks suffering a flagrant denial of the right such as would completely deny or nullify the right in their own country.

Article 14

The enjoyment of this right was, by article 14 of the European Convention, to 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.” In the case of *EM v Secretary of State for the Home Department*, the mother claimed that if she and her son, AF, were removed back to Lebanon, her right to respect for family life would be infringed on a discriminatory basis. She claimed that the conduct of the UK in sending her home would lead to a violation of her European Convention rights in Lebanon. On the other hand is the argument that it is not the intention of the European Convention to provide protection against disparities in social and economic rights. It would not violate article 8 read with article 14, because you cannot claim a right to stay in the UK to escape discrimination in family law in your country.

The case of EM

EM is a Lebanese national who claimed asylum in the UK with her son in 2004. Her husband had subjected her to violence throughout their marriage, so she had divorced him. When her son, AF, was born, her husband tried to take away the child but failed. Under Lebanese law, the father can require physical custody to be transferred to him or another male in the family once the child is 7 years old. EM lived in hiding to prevent this and eventually left for the UK. If she returned to Lebanon, she was at great risk of being imprisoned for kidnap. Because of these laws, lots of women are afraid to divorce abusive partners, as they will lose care of their children. Lord Hope of Craighead stated that the case for allowing the appellant and her son to remain in this country is compelling on humanitarian grounds. The mutual enjoyment by parent and child of each other's company is a fundamental element of family life. EM has cared for her son since his birth and this is the only life AF knows. There is a real risk of a flagrant denial of their article 8 rights if they are returned to Lebanon, on a discriminatory basis. However, the place of the mother in the life of a child under a male-dominated 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. The Secretary of State argued that EM's enjoyment of family life with her child would not be "completely denied or nullified."

Further arguments

A majority of Law Lords rejected EM's claim under article 14 on the basis that the return of the appellant would not violate article 8 read with article 14. Lord Bingham of Cornhill stated that the family law of Lebanon reflects a religious and cultural tradition that is observed throughout the world and that an interference with this cannot be justified. However, Sharia law is incompatible with human rights legislation. Lord Brown of Eaton-under-Heywood emphasised that it is not the discriminatory character of the rule of Sharia law dictating that at the age of 7 a child's physical custody passes to the father which makes this case as one for protection under article 8, but the exceptional facts of this case. In no meaningful sense could occasional supervised visits by EM to AF at a place other than her home be described as family life. The effect of return would be to destroy the family life of EM and AF as it was now lived. The western approach to family life puts greater emphasis on the rights of family life with the mother, against the emphasis on family life with the father in sharia law. The argument is held that sharia law is unjust and discriminatory, violating universal human rights. However, Lebanon is outside the scope of the ECHR and this must be respected. The Court's agreement with EM would likely lead to many desperate Muslim mothers fleeing to seek asylum in the UK. This would create a big problem for the English Legal System and much of their time would be focused on this. The

case of EM is likely to set a precedent for future cases and bind the lower courts. The Court of Appeal and decisions made by the House of Lords always bind the lower courts with just a few exceptions.

My opinion

I do agree with the decision of the House of Lords, based on the fact that this will protect their right to respect for family life. In reality, the only family that truly exists is EM and her son. His father has shown no sign of care for him and cannot be trusted after inflicting physical and psychological pain on his own wife. AF needs to be brought up by someone who is committed to him completely and removing him from the care of his mother would be deprivation. To an extent, it is a case of whether the decision will protect the family life of the father because it will take away his power to prevent the rights and freedom of EM and her son.

Therefore to conclude, I do believe that everyone has the right to respect for their family life and if article 8 did not exist, it would give rise to lots of problems within the European Convention on Human Rights.