

“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) v Secretary of State for the Home Department (Respondent).

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Plan

Intro- the idea that “everyone has the right to respect for their family life” is in principle a good thing and at first glance appears to be a right that can be easily upheld, however in practice it is in fact not a right that everyone is entitled to due to s.8 of the ECHR and is shown in the case EM (Lebanon (FC) (Appellant) v Secretary of State for the Home Department (Respondent). This essay will explain why the statement in question is not a right everyone is entitled to by analysing the statement, s.8 of the European Convention of Human Rights and the above case.

Para 1- Everyone has the right to respect for their family life.- this statement includes ‘everyone’ which would suggest that no one is discriminated against, it focuses on ‘family life’ which suggests it includes the rights of more than one person to make it a family, addresses the standard of living for that family, the relationships within the family and how the ‘respect’ for that family life is a ‘right’. The ‘respect’ aspect of the statement implies that a family’s privacy and the way it operates should be taken into account and not interfered with or criticised. The statement has deeper meanings than is apparent at face value.

Para 2- s.8 of the European Convention of Human Rights.- The European Convention of Human Rights was a number of human rights agreed upon by the Council of Europe in 1950 and the Convention was incorporated into the European Union. In 1998 the United Kingdom incorporated it into UK Law. In the ECHR s.8 focuses on the ‘Right to respect for private and family life.’ and paragraph 1 of s.8 states that ‘Everyone has the right to respect for his private and family life’ which supports the statement in question, however paragraph 2 of s.8 states that this right does not apply in certain circumstances. It states that ‘There shall be no interference by a public authority with the exercise of this right except in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or the protection of rights and freedoms of others.’. When looking at each exception to this right it throws into light the limitations of its application as a right for everyone. This implies that not everyone has the right to respect for their family life, only in certain circumstances is this right given when certain criteria are met. This appears to undermine the idea that it is a right that everyone is entitled to, and shows that in practise this right cannot be guaranteed to everyone.

Para 3- The case of EM (Lebanon (FC) (Appellant) v Secretary of State for the Home Department (Respondent). - EM is a Lebanese national aged 36 who came to the UK in 2004 with her son AF who was born in 1996 and is now aged 12. She came to the UK seeking an asylum. She did this because under Islamic Law, which is applied in Lebanon, once her son had reached the age of seven her ex-husband whom she

divorced on the grounds of his violence towards her could claim custody of the child. She fled to the UK to seek an asylum in order to prevent her ex-husband from gaining custody of AF. She was refused an asylum on the grounds that she had not demonstrated a real risk of mistreatment sufficient enough to engage s.8. After several appeals her case was brought before the House of Lords and her appeal was heard by five Lords.

Conclusion-

“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) v Secretary of State for the Home Department (Respondent).

Introduction

The idea that “Everyone has the right respect for their family life” is in principle a good thing and at first glance appears to be a right that can easily be upheld. However it is in fact not a right everyone is entitled to due to s.8 of the ECHR and is shown in the case EM (Lebanon (FC) (Appellant) v Secretary of State for the Home Department (Respondent). This essay will explain why the statement in question is not a right everyone is entitled to by analysing the statement, s.8 of the European Convention on Human Rights and the above case.

Everyone has the right to respect for their family life.

The statement “everyone has the right to respect for their family life” contains several key aspects that make this statement important. Its key focus is ‘family life’ which involves ideas such as the fact that more than one person is involved or being affected in a subject to do with family life as a family must be made up of more than one person. It also could address the standard of living for those in the family as this would have an affect on the family life, the income of a family has a large effect on how well it operates and how happy the people in that family are. Family life can also involve how guardians intend to raise their children, the religious beliefs in that family and activities that family chooses to take part in. All these things make up ‘family life’. Another key word in this statement is ‘respect’, as it shows what this statement is about in relation to family life. Respect for family life implies that a family’s privacy and the way it functions should be taken into account and not be interfered with or criticised. In the statement it says that respect for family life is a ‘right’ that ‘everyone’ is entitled to. The word ‘everyone’ suggests that no one should be discriminated against, there should be no one who doesn’t receive that right. And finally the fact that respect for family life has been described as a ‘right’ suggests that it is something that governments should uphold. The main idea behind democratic governments is that they should uphold people’s basic rights which this statement says that respect for family life is.

s.8 of the European Convention on Human Rights.

The European Convention on Human Rights is a number of rights that humans should have according to the Council of Europe in 1950. The convention was adopted by the European Union and in 1998 was incorporated into United Kingdom Law under the Human Rights Act. In the ECHR s.8 focuses on respect for private and family life and paragraph one of s.8 states that 'Everyone has the right to respect for his private and family life, his home and his correspondence'. This supports the statement in question as it states almost exactly the same thing, including having all the same key words as the statement and implying the same things. However s.8 also states that a government will not seek to uphold this right unless that right is threatened in certain ways, as it says that 'There shall be no interference by a public authority with the exercise of this right except in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or the protection of rights and freedoms of others.'. This suggests that 'everyone has the right to respect for their family life' is a right that can be easily upheld as it appears to be protected under the ECHR from most possible threats. The government will step in to protect a person's right to respect for their family life if a lack of that right could lead to a threat to their safety, a threat to their morals or beliefs and a threat to the freedoms of others. However the ECHR does not protect everyone's rights as it only applies to European Union Citizens or those living in the EU. People in non EU countries are not legally entitled to that right, nor are EU countries obliged to uphold that right for them. This means that the statement is in a way false as legally not everyone has the right to respect for their family life, only a select number of people in the world have under the European Convention on Human Rights that particular right. It may be so that everyone should have that right, but it does not mean that they have it.

The case of EM (Lebanon (FC) (Appellant) v Secretary of State for the Home Department (Respondent).

This case involves EM who is a Lebanese national aged 36, her son AF who is 12 and the Secretary of State for the Home Department. EM came to the UK with her son AF and claimed asylum, hoping to escape having to give up custody of AF to her ex-husband who she divorced on the grounds of his violent nature towards her. Her ex-husbands violence towards her included trying to kill her several times and ending her first pregnancy by hitting her hard in the stomach with a heavy vase. After divorcing him the father never saw AF again. Under Islamic law, which is applied in Lebanese law, once AF reaches the age of 7 the father can gain custody of him, thus removing him from the care of his mother EM if the father chooses to do so. EM was denied asylum by the Secretary of State on the grounds that she had not demonstrated a real risk of mistreatment sufficient to engage s.8. It would appear that under s.8 the violent nature of the father towards the mother is evidence enough that there is a threat to the health of AF to be in the custody of such a violent person. However this does not seem to have been taken into account or does not seem to have been deemed as an important enough factor. It would appear that EM and AF's right to respect for their family life did not exist in relation to the right of AF's father to have custody. This

demonstrates that not everyone has the right to respect for their family life. It also demonstrates a difference in opinion on what the best family life is and should be for EM and AF in relation to the father. In the UK it would be deemed that a person who attempted murder several times and forcefully terminated the pregnancy of a woman, as well as not having any contact with the child prior to his 7th birthday would not be deemed as being suitable for gaining custody of AF. However in Lebanon the Islamic beliefs of that country dictate that as the father of AF he has the right to have custody of him as because he is a man he can provide the best family life and upbringing, as well as the fact that EM can still visit AF would mean that he would still be a part of her life and they would be a family life still there. Both interpretations of what the best family life is affect the interpretation of the statement 'everyone has the right to respect for their family life'. However EM appealed the decision to deny her asylum and the case was brought before five Lords in the House of Lords. It was deemed that as the only family life AF had ever known was with EM the removal of AF from EM's custody would result in the destruction of their family life. Despite this the decision to grant EM and AF asylum was again denied on the grounds that under s.14, which focuses on preventing people from being discriminated against having the right to respect for their family life, could not be used. This was because the UK did not have the right to impose the ECHR on Lebanese citizens as Lebanon was not part of the EU and did not have to abide by the ECHR. Also as Islamic law is recognised and accepted across the world the UK could not ignore it and impose its own decisions. This shows that different interpretations of respect for family life affect whether people have the right to respect for their family life and show that because of conflicting laws in other countries not everyone has the right to respect for their family life.

Conclusion

Overall it has been shown that the idea that "everyone has the right to respect for their family life" whilst being a sound principle upheld by many different countries is viewed and upheld in different ways and cannot be seen to be a universal right of everyone as there are circumstances where people do not have the right to respect for their family life, as shown in the case *EM (Lebanon (FC) (Appellant) v Secretary of State for the Home Department (Respondent)*.