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Contact with Children in Care

CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

IDEA Improving Decisions through Empowerment and Advocacy

This document provides summaries of judgments delivered by the European Court of Human Rights concerning the right to contact with children in care. It aims to assist child protection practitioners to utilise this case law in advocating for this right in domestic courts. The judgments focus on Article 8 of the European Convention on Human Rights.



ARTICLE 8: Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. 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.

The European Court of Human Rights ("the Court") has interpreted Article 8 and the right to respect for "family life" as encompassing contact rights between parents and children.[1] The Court reiterates in every case concerning contact disputes that "the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life."[2] According to the Court, "Article 8 of the Convention thus imposes on every State the obligation to aim at reuniting a natural parent with his or her child."[3] This obligation must however be determined on the basis of the best interests of the child. The Court may also require State action to regulate the conduct of the parties in question, thus actively respecting the party's rights under Article 8, as opposed to mere abstention from interference which may be insufficient in protecting this right to respect for family life.

- **HUDOC database**
- The European Convention on Human Rights was ratified by Ireland in 1953. The European Convention on Human Rights Act was enacted in 2003. See, in particular, s. 2: duty on courts to interpret and apply domestic law in a manner compatible with the ECHR; s. 3: duty on organs of the state (e.g. Tusla, HSE) to perform their functions in a manner compliant with ECHR; s. 4: judicial notice must be taken by the courts of the ECHR; s. 5: declarations of incompatibility).

NOTES

1 ***Marckx v Belgium*** (No 6833/74) Judgment 13.6.1979, para. 31.

2 ***Johansen v Norway*** (No 17383/90), Judgment 27.6.1996, para. 52; ***Kosmopoulou v Greece*** (No 60457/00), Judgment 5.2.2004.

3 ***Karadzic v Croatia*** (No.35030/04) Judgment of 15 March 2006, para. 52.

Contact and Family Reunification

Olsson v Sweden (No. 1), Application No. 10465/83, 24th March, 1988 (applicant's three children taken into public care; children were separated; two of them at a long distance from applicant's home; restrictions on applicant's visits prevented easy and regular access; "The care decision should … have been regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measures of implementation should have been consistent with the ultimate aim of reuniting the Olsson family … The ties between members of a family and the prospects of their successful reunification will perforce be weakened if impediments are placed in the way of their having easy and regular access to each other" para 81; *violation of Article 8*).

Eriksson v Sweden, Application No. 11373/85, 22nd June, 1989 (applicant's daughter taken into public care; despite care order being lifted the applicant did not have any enforceable visiting rights; severe and lasting restrictions on access; "In cases like the present a mother's right to respect for family life under Article 8 … includes a right to the taking of measures with a view to her being reunited with her child" para. 71; *violation of Article 8*).

Andersson v Sweden, Application No. 12963/87, 25th February, 1992 (applicant's son taken into public care; contact, including telephone and written communication, was prohibited for one and a half years; "In the Court's view the measures relating to this period were particularly far-reaching. They had to be supported by strong reasons and to be consistent with the ultimate aim of reuniting the Andersson family, in order to be justified under Article 8 para. 2 … Indeed, it is questionable whether the measures were compatible with the aim of reuniting the applicants" paras. 95 - 96; *violation of Article 8*).

R v Finland, Application No. 34141/96, 30th May, 2006 (applicant's son taken into public care; contact was severely restricted to once every other month; presumption by Finnish authorities that son would remain in care long term; "… the severe restrictions on the applicant's right to visit his son reflect an intention on the part of the social welfare authority to strengthen the ties between the boy and the substitute carers rather than to reunite the applicant and his son" para. 93, *violation of Article 8*).

Contact and the Child's Best Interests as a Limit on Family Reunification

Johansen v Norway, Application No. 17383/90, 7th August, 1996 (applicant's son and daughter taken into public care; evidence of improvement of applicant's circumstances; contact was prohibited; "(s)uch measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests" para. 78; *violation of Article 8*).

K. and T. v. Finland, Application No. 25702/94, 12th July, 2001 (applicants' children were taken into care; contact with children was restricted to once a month; "whilst national authorities must do their utmost to facilitate reunion of the family, any obligation to apply coercion in this area must be limited since the best interests of the child must be taken into account. Where contacts with the parents appear to threaten those interests, it is for the national authorities to strike a fair balance between them and those of the parents" para. 194; *no violation of Article 8*).

NP v Moldova, Application No. 58455/13, 6th October, 2015 (applicant's son taken into public care; contact was restricted for more than two years; "(i)n identifying the child's best interests in a particular case, two considerations must be borne in mind: firstly, it is in the child's best interests that his ties with his family be maintained except in cases where the family has proved particularly unfit; and secondly, it is in the child's best interests to ensure his development in a safe and secure environment" para 66; "(t)he Court finds that these measures were excessively harsh and that the authorities failed to advance sufficient reasons to justify them in the course of court proceedings" para 84; *violation of Article 8*).

Süss v Germany, Application No. 40324/98, 10th November, 2005 (The marriage broke down in 1989; applicant instituted enforcement proceedings in 1992 as his former wife obstructed contact; the District Court granted the applicant an interim injunction ordering contact twice; the District Court also held that the applicant's former wife had not deliberately failed to comply with the applicant's claim to enforce contact; the Court held that the domestic courts carefully reasoned their decisions relying on the wishes of the child, who was ten years old at the time, not to have such contact and also on a report by a psychological expert which noted that enforcing contact would cause serious psychological harm to the child; the Court also noted the tension between the parties and the significant number of motions that the applicant lodged with the District Court which added to the difficulties in the case; suspending the applicant's contact was in the child's best interest; *no violation of Article 8*).

Enforcement of Contact Orders

Hansen v Turkey, Application No. 36141/97, 23rd September, 2003 (applicant instituted divorce and custody proceedings in October, 1991 and these were concluded in March, 1997; in the intervening years, the applicant saw her children on only four occasions despite making over fifty personal visits to the children's home, accompanied by an enforcement officer; applicant's former husband consistently obstructed contact orders; the Court held that the authorities did not take all the necessary measures to enforce the applicant's contact rights; for example, it was noted that they did not try to locate the children or impose any effective measures against him when it was clear that the imposition of fines was not effective; they also failed to seek the advice of social services or the assistance of psychologists or psychiatrists; "… the adequacy of a measure is to be judged by the swiftness of its implementation. Proceedings … require urgent handling as the passage of time can have irremediable consequences for relations between the children and the parent …" para. 100; *violation of Article 8*).

Zawadka v. Poland, Application No. 48542/99, 23rd June, 2005 (applicant separated from son's mother; they agreed a "friendly settlement" as to contact arrangements but did not agree exact dates as to when contact would take place;applicant instituted court proceedings as contact was obstructed; the domestic court held that the contact arrangements were impossible to enforce as the dates were not specified; the Court discussed the positive obligations required to ensure an effective "respect" for family life:"(t)hese obligations may involve the adoption of measures designed to secure respect for family life even in the sphere of relations between individuals, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific steps" para. 53; *violation of Article 8*).

Krasicki v. Poland, Application No. 17254/11, 15th April, 2014 (applicant's relationship with his sons' mother broke down; applicant was granted contact rights; the district court imposed fines on the mother for obstructing contact and also threatened imprisonment; a guardian was appointed by the court to supervise the case; the courts, guardian, schools and police cooperated; no delays; the Court held that "the domestic authorities have an obligation to ensure enforcement of contact arrangements, since it is they who exercise public authority and have the means at their disposal to overcome issues of enforcement", para. 89; the Court concluded that the "national authorities took all the steps necessary as could reasonably be required of them in order to enforce the applicant's right to contact", para. 100; *no violation of Article 8*).

Ribic v. Croatia, Application No. 27148/12, 2nd April, 2015 (applicant and wife sought a divorce in 1996 and this was granted in 2001; applicant had contact with son twice from 1994-1996 and once in 2000; in 1999 the applicant requested the domestic court to regulate contact; the domestic court ruled that it did not have authority to do so, instead it was the social welfare centre that did; in 2005, the judgment was finalised as regards contact arrangements; the former wife obstructed contact; the applicant instituted enforcement proceedings in 2005 and again in 2007; the former wife paid the imposed fine for obstructing contact; "The Court considers that such a lengthy period during which the applicant was unable to maintain contact with his son is *a priori* in breach of the State's positive obligations under Article 8 of the Convention and could be justified only in exceptional circumstances", para. 91; "The Court is particularly struck by the fact that before 20 March 2003 the local social welfare centre did not find it necessary to provisionally regulate the issue of the applicant's contact with his son …, para. 99; *violation of Article 8*).

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