



THE BEST INTEREST OF CHILDREN

GROUP 3- NINO KATSIASHVILI

introduction

CRIMES AGAINST CHILDREN VIOLENCE, ABUSE AND DISCRIMINATION GROWING ALL OVER THE WORLD. WHICH REFLECTS ON THE DEVELOPMENT OF INTERNATIONAL AND REGIONAL HUMAN RIGHTS STANDARDS.

THE DEFINITION OF CHILD –CENTERED CONVENTION OF 1951 DOES NOT, OF COURSE, MEAN THAT ASYLUM-SEEKING CHILDREN SHOULD AUTOMATICALLY RECEIVE REFUGEE STATUS.

THE CHILD MUST PROVE THAT SHE OR HE HAS A WELL-FOUNDED FEAR OF PERSECUTION BECAUSE OF RACE, RELIGION, BELONGING TO PARTICULAR SOCIAL GROUP OR POLITICAL BELIEF .

THE NATURE AND VALIDITY OF CHILDREN`S RIGHTS. THE SCOPE VARIES CONSIDERABLY DEPENDING ON THE NATIONALITY OF CHILD AND HIS OR HER PARENTS. IT ALSO DETERMINES WHETHER THE CHILD MOVES WITH THE PARENTS OR INDEPENDENTLY.

Migration and Asylum

The rights granted to EU citizens are quite broad in this respect and aim at optimal mobility across the EU.

First of all, article 21 of the Treaty on the Functioning of the European Union stipulates that citizens of the European Union and their family members have the right to free movement and residence within the territory of any state of the Union.

In the context of international protection procedures, children are considered to be “vulnerable persons” whose special situation is the responsibility of the member states.



Children's rights under European law

Article 24 of the charter of fundamental rights applies to the territory of a member state of the European Union entry and residence established by the general rules governing asylum on all requests when it comes to a child . It undertakes to take any action related to children, whether by private institutions or public institutions, in the European Union.

Member states should pay the utmost attention to the best interests of the child and consider first.



Family reunification

The most important tool is a family reunification directive that obliges member states to define issues of entry into and residence in the country of the parents of an unaccompanied child who are third country nationals in circumstances where it is not in the best interests of the child to return the child to the parents abroad.

The principle of the best interests of the child should always be used in the decision-making process regarding family reunification. For example, parents need to be able to prove that they can truly fulfill their parental responsibilities for the welfare of their children.



National courts return the child in the country of origin it is considered illegal when the authorities fail to gather the necessary evidence to show that a child in that country adequate conditions for admission and care really exist.

CASE:

IN THE CASE OF SEN V. THE NETHERLANDS, THE EUROPEAN COURT OF HUMAN RIGHTS HAS FOUND THAT THE BALANCE BETWEEN THE RIGHTS OF THE CHILD/FAMILY AND THE WIDER PUBLIC INTEREST. IMPORTANT FACTORS MUST BE TAKEN INTO ACCOUNT WHEN DETERMINING: THE AGE OF CHILDREN, THEIR CONDITION IN THE COUNTRY OF ORIGIN AND INTENSITY, WHATEVER INTENSITY THEY ARE CHAINED TO PARENTS.

THIS CASE RELATE TO THE REFUSAL OF THE NETHERLANDS AUTHORITIES FOR A SURINAMESE WOMAN WHO WANTED A DUTCH MAN-HER THREE CHILDREN, FOR THE FATHER-MARRIAGE AND MOVING TO THE NETHERLANDS FOR FAMILY LIFE. THE EUROPEAN COURT OF HUMAN RIGHTS HAS RULED THAT THE STATE IS SUFFICIENT NO ATTENTION WAS PAID TO HIS REFUSAL TO GRANT THE MARRIAGE PERMIT TO THE APPLICANT. THE IMPACT ON THE BEST INTERESTS OF CHILDREN AND THE NEGATIVES CAUSED BY IT RESULTS.

THE EUROPEAN COURT HAS FOUND A VIOLATION OF ARTICLES 8 OF THE EUROPEAN CONVENTION ON THE GROUNDS THAT THE STATE FAILED TO ENSURE A FAIR BALANCE PERSONAL MAINTENANCE OF FAMILY LIFE OF THE APPLICANT AND HIS FAMILY IN NETHERLANDS BETWEEN THE WILL AND THE PUBLIC INTEREST OF THE STATE, WHICH IS RESPONSIBLE FOR CONTROLLING MIGRATION.

Definition of best interests of children

THE BEST INTERESTS OF CHILD REINFORCED BY THE CHILD ARTICLE 3 OF CONVENTION O THE RIGHTS OF THE CHILD MUST BE TAKEN INTO ACCOUNT, ANY DECISION RELATING TO A CHILD OF THE FAMILY OR REUNITING WITH A CHILD WITHOUT AN ACCOMPANYING PERSON.

WHAT WAS RECOGNIZED AS A GUIDING PRINCIPLE IN THE 1959 DECLARATION WAS REFLECTED IN THE CONVENTION ON THE RIGHTS OF THE CHILD AS A PRINCIPLE IN FORCE IN SPECIFIC AREAS OF THE CHILD'S LIFE; ACCORDING TO THE COMMITTEE ON THE RIGHTS OF THE CHILD, IT IS NOT ONLY THE RIGHT OF THE CHILD BUT ALSO A PRINCIPLE, ALONG WITH THE OTHER THREE PRINCIPLES (PROHIBITION OF DISCRIMINATION AGAINST THE CHILD (ARTICLE 2), THE RIGHT TO INVOLVABILITY, MAINTENANCE AND HEALTHY DEVELOPMENT OF THE CHILD (ARTICLE 6); TO FREELY EXPRESS HIS VIEWS AND THE RIGHT TO BE HEARD (ARTICLE 12) .15 THIS PRINCIPLE, WITH THE EXCEPTION OF ARTICLE 3 OF THE CONVENTION, APPLIES TO ALL RIGHTS GUARANTEED BY THE CONVENTION, AND IN A NUMBER OF ARTICLES REFERENCES: ARTICLE 9 ON THE SEPARATION OF A CHILD FROM THE FAMILY; ARTICLE 18 ON THE UPBRINGING AND DEVELOPMENT OF A CHILD; ARTICLES 20 AND 21 ON DIFFERENT PROCEDURES FOR THE SEPARATION AND ADOPTION OF A CHILD FROM A FAMILY; ARTICLES 37 AND 40 ON THE RELATIONSHIP OF CHILDREN WITH THE POLICE AND THE JUDICIARY. SECURING THE BEST INTERESTS AGREEMENT MEANS RECOGNIZING THE FACT THAT, IN CERTAIN CASES, THE SPECIFIC RIGHTS OF THE CHILD MAY CONFLICT WITH THE RIGHTS, INTERESTS AND OBLIGATIONS OF THE PARENTS OR GUARDIANS AND THE STATE.

THE UN COMMITTEE ON THE RIGHTS OF THE CHILD SOUGHT TO CLARIFY THE DEFINITION OF THE CONCEPT OF THE BEST INTERESTS OF THE CHILD AND IN 2013 DEVELOPED A GENERAL COMMENTARY ON THE RIGHTS OF THE CHILD # 14.

1. MATERIAL RIGHT: WHEN DIFFERENT INTERESTS ARE CONSIDERED WHEN MAKING A DECISION ON A CERTAIN ISSUE, THE BEST INTERESTS OF THE CHILD SHOULD BE CONSIDERED FIRST AND FOREMOST, AND THESE INTERESTS SHOULD BE GIVEN PRIORITY, AS WELL AS ENSURING THAT THIS RIGHT IS ALWAYS EXERCISED WHEN MAKING DECISIONS ABOUT THE CHILD.
2. BASIC LEGAL PRINCIPLE: IF THE LEGAL NORM ALLOWS FOR MORE THAN ONE EXPLANATION, THE DEFINITION THAT BEST SERVES THE BEST INTERESTS OF THE CHILD SHOULD BE USED.
3. PROCEDURAL NORM: THE DECISION-MAKING PROCESS REGARDING A PARTICULAR CHILD SHOULD INCLUDE AN ASSESSMENT OF THE POSSIBLE IMPACT (POSITIVE OR NEGATIVE) OF THAT DECISION ON THE CHILD. ASSESSING AND DETERMINING THE BEST INTERESTS OF THE CHILD REQUIRES PROCEDURAL SAFEGUARDS AS WELL. IN ADDITION, THE REASONING OF THE DECISION MUST CLEARLY STATE THAT THE BEST INTERESTS OF THE CHILD HAVE BEEN TAKEN INTO ACCOUNT. IT IS THE RESPONSIBILITY OF THE PARTICIPATING STATES TO STATE WHAT THEY CONSIDERED TO BE IN THE BEST INTERESTS OF THE CHILD, ON WHAT CRITERIA BASED ON THESE INTERESTS WERE IDENTIFIED AND HOW THE BEST INTERESTS OF THE CHILD WERE ASSESSED WHEN BALANCING WITH OTHER INTERESTS

Interesting argument of the European Court in the case - Sommerfeld v. Germany 262, where the father appealed to the European Court of Justice against the decision of the local court, according to which he had restricted contact with his own daughter, due to the child himself refusing to have any contact with the father. According to the plaintiff, the court did not conduct a psychological examination to determine whether the child really wanted to contact the father and made a decision only after interviewing the child. The European Court stated in the present case that there had been no violation of Article 8 of the Convention, since the domestic court had conducted a thorough and several interviews with the child as to whether the child wished to have contact with the father. The court said that each time the child refuses, the reason is that the local court took into account the best interests of the child.



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Thank you for attention

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