

The right to family life in the context of respecting the minor's best interest principle

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Abstract

The right to family life, as any other human right, is universally enjoyed by all children without distinction of any kind, such as race, sex, origin, social, economic status and other non-discriminatory criteria provided in national and international acts.¹

This right begins to be enjoyed at the moment states adopt laws focusing on the protection of children from birth and integration into the family.²

Notwithstanding the national and international commitment to sanctioning an integrated system of legislation for children, it is imperative to implement and take measures to ensure the effective enjoyment of the right to family life, the observance of which is a crucial step towards respecting the principle of the child's best interest.

Given the sensitivity of the case, this study aims to present a general overview of the implementation of the law in question, in view of national and international jurisprudence. Bearing in mind the current issues and the role of the state in minimizing problems, the paper presents a reflection on the importance of enforcing children's rights by any state institutions that has the proper competence.

Keywords: family life, child's best interest, jurisprudence, implementation, respect.

Introduction

The enjoyment of family life is an existential need for every child who needs special care due to age and intellectual immaturity.³ This care is attributed as a legal comprehensive obligation, not only to parents but also to state authorities.

Family life consists in recognizing the identity of parents, family traditions and the early development of the personality of all family members. The function of the family as an agent of socialization is especially evident in children of any society. The diversity of situations, which can question the importance of protecting this right, should be considered in view of acknowledgement of the 'child's best interest principle'. Nevertheless, in any present situation, especially regarding family matters, before the judicial or administrative authorities, the primary concern should be the best interest of the minor.

When the legal system has to deal with a child's family life, it normally operates differently from that of the parents because the awareness is paramount. Children become eventually responsibility of state institutions affairs not because of them, but because of the death of their parents, abandonment or separation. Consequently, their protection and care are paramount and necessary to fulfill their best interest.

¹ Art. 7 of the Convention on the rights of Children.

² Case of Merckx vs. Belgium, Application no. 6833/74, Decision of 13 June 1979.

³ Preamble of the Convention on the rights of Children.

The boundary between a child's right to family life and that of being cared for by a parent is determined depending on the specific circumstances and relevant situations. However, these rights are separately determined because children are human beings, subject to internationally recognized rights and obligations, and because of their vulnerable categories, issues related to their rights must be dealt with seriously and sensitively. It means that parents as decision-making authorities for underage children should also consider their opinions, based on age and intellectual maturity. If these rights are interchangeably accomplished, child's best interest is achieved.

The aim of this research study is to identify aspects of a child's family life by examining also the differences between this right and that of parents for family life. These two rights give the impression of being identical, but from the case-law of European jurisprudence it turns out that they are clearly differentiated. Considering the case law of the European Court of Human Rights, which addresses the notion of family life within the meaning of Article 8 of the European Convention on Human Rights and Fundamental Freedoms (ECHR), we will define the meaning of children's right to family life.

I. The Sanctioning in National and International Acts

Although not explicitly provided for in the Albanian Constitution, the presence of this right is evidenced in its Article 54, which stipulates that children, young people, pregnant women and young mothers have the right to special protection by the state. By interpreting article 15/1,⁴ in connection with article 18 of the Albanian Constitution, we conclude that children, like adults, are entitled to fundamental rights and freedoms, which are universally enjoyed, without any discrimination. Like any human right, children's right to family life is indivisible, inviolable and inalienable.

It is worth noting that ratified international agreements play a primary role in protecting children's rights. Based on the hierarchy of formal normative acts of law, the Constitution of the Republic of Albania, in article 116, lists it immediately afterwards. Their supra-legal status is sanctioned in article 122/2, according to which an international agreement ratified by law takes precedence over the laws of the country that do not comply with it.

International mechanisms are different not only because of the delicacy of the issue but also because of the moral and noble mission they pursue.

The United Nations Convention on the Rights of the Child⁵ is the principal international document which provides for the enjoyment of the right to family life not only as a legal obligation of the contracting states but also as positive obligation to take measures and remedies, necessary to guarantee effective enjoyment by children. The regional instrument, European Convention on Human Rights,⁶ does not expressly

⁴ Article 15/1. The fundamental human rights and freedoms are indivisible, inalienable, and inviolable and stand at the base of the entire juridical order.

⁵ Convention on the rights of children, Articles 2, 3, 9/1, 12, 16 and 20.

⁶ 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 secu-

sanction it as a right, but the existence of the right of the children to family life finds expression in a very rich jurisprudence underlying the notion of life family by giving meaning to the notion of family and the child's best interest.

The Law for the protection of children's rights⁷ defines the enjoyment of the right as a component of the realization of the child's best interest.

The Albanian Family Code,⁸ as one of the most important laws, expresses not only the protection of the right to family life but also the principle of the best interest of the minor. By strongly sanctioning this principle, it also highlights the importance of protecting the right to family life of a child. The realization of every right related to the protection of the family, is essentially aimed at enforcing the highest interest of the minor.

II. Findings and discussions

II.1. The beginning of children's family life

Family life begins at the moment of establishing the legal fact, the birth of a child alive.⁹ This moment also relates to the acquisition of legal capacity, that is, the possibility of having legal rights and obligations.

Confirmation of the legal fact brings about the birth of parental responsibility and consequently the enjoyment of family life. The enjoyment of this right is made possible by the child living with the biological, adoptive family or family created by other factual relationships.

The Family Code does not discriminate by excluding neither children born in wedlock nor children out of wedlock. Even the family relationship is established from the moment a child is born. The proof of the legal fact of birth is confirmed by the act of birth which shows the legal fact, time, gender and motherhood.¹⁰ It is the administrative document that legally certifies the birth of a child and constitutes the exclusive proof of the presumption of the child's legal existence.¹¹ Proof of the fact of birth is the premise for the existence and right to family life.¹²

III. 2. Aspects of children's family life

Every child, for a complete and harmonious development of personality, has

... rity, 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.

⁷ Article 6/3: Implementing the best interest of the child.

⁸ Family Code Articles:

Article 2: Parents, competent authorities and the courts, in their decisions and activities, should take the child's best interest as their primary consideration.

Article 4: Children born out of wedlock have the same rights and duties as children born in wedlock.

Article 5: Every child, for a full and harmonious development of personality, has the right to grow up in a family environment, in an atmosphere of joy, love and understanding.

⁹ Article 1 and 2 of the Albanian Civil Code:

1. Every physical/natural person shall enjoy full and equal capacity to have civil rights and duties, within the limits defined by law.

2. Legal capacity begins at the birth of the alive person and ends upon death. A child when born alive shall enjoy legal capacity from the time of conception.

¹⁰ Decision of the Albanian Supreme Court no. 412 of. 09.07.2013.

¹¹ Ibid.,

¹² Ibid.,

the right to grow up in a family environment, in an atmosphere of joy, love and understanding.¹³ Family life is a pure matter of fact and its protection applies as long as close personal ties exist and all forms of family life are protected.¹⁴ Even in the case of *Marckx vs. The Belgian court* held that the transformation of biological ties into legal relations is essential to guarantee the respect of family life under Article 8.¹⁵

Respect is not a clearly defined notion. Its meaning and requirements vary from case to case according to the practice followed and the situations of the Contracting States and because the notion of family under the Convention is autonomous and cannot be subject to national legal definitions. The interpretations of Article 8 of the ECHR are intended to reflect changes in the European concept of family notion.¹⁶

Regardless of the traditional form of family formation or forms of factual connection, the Family Code recognizes the equality of status between children born in and out of wedlock.¹⁷ The treatment of children differently because of the civil status of parents is prohibited not only by Article 8 but also by Article 14 of the ECHR.

It is naturally assumed, that parental responsibility guarantees the best interest of the child better than any other means.¹⁸ Normally, when parents live with their children, the right of children to family life materially realizes the principle of the best interest of the child. Family life is outlined with the right to know not only childhood and personal development, but also the identity and personal data of biological parents. However, the right to know the identity of parents cannot be absolute as long as it competes with other rights.

In the case *Odievre vs. France*,¹⁹ refusal to disclose the identity of biological parents was not in breach of Article 8. The Court held that people have a vital interest, protected by the Convention, in recognizing and understanding their childhood and early development. The individual interest in discovering parents and origins does not vanish over time but is reinforced.²⁰

The right to know personal origin lies within the scope of Article 8. On the other hand, the protection of Article 8 is also enjoyed by the interest of a woman who brings a child to preserve anonymity, but also the interest of third parties, such as adoptive parents who may also be denied the right to private and family life.²¹

In the case of *Keegan vs. Ireland*,²² the Commission of Human Rights notes that the existence or not of family life, within the context of Article 8, depends on a number of factors of which cohabitation is only one, and the circumstances of each particular case. This link also extends to biological fathers and their unborn offspring. The application of this article should extend not only to ascertaining family ties but also

¹³ Article 5, Family Code.

¹⁴ Grand Chamber, Case of *Paradiso and Campanelli vs. Italy*, Application no. 25358/12, Decision of 24 January 2017.

¹⁵ Case of *Marckx vs. Belgium*, Application no. 6833/74, judgment of 13 June 1979.

¹⁶ *Ibid.*,

¹⁷ Article 4 of Family Code.

¹⁸ Judgment of the High Collage of the Supreme Court no. 188 of. 08.05.2014.

¹⁹ *Odievre vs. France*, (GC)-42326/98 Decision of 13.2.2003.

²⁰ Case of *Godelli vs. Italy*, Application no.33783/09, Decision of 25.9.2012.

²¹ *Odievre vs. France*, (GC)-42326/98 judgement of 13.2.2003.

²² Case of *Keegan vs. Ireland*, Application no. 16969/90, Decision of 26 May 1994.

to developing these relationships before and after birth.²³

Within the concept of family, relationships with close relatives such as grandparents and grandchildren are also included, as they can have a special role in each other's family life.²⁴ Other forms will be developed in the continuation of the article. It is worth noting that respect for these forms of family life of children is a key indicator of respect for the principle of the best interest of the minor.

III.3. The child's best interest

Article 3/1 of the Convention on the Rights of the Child (CRC) provides that in judicial or administrative proceedings involving a minor, the primary consideration shall be his or her best interest.

This principle, enshrined in a series of international acts relating to the rights of the child, ratified by the Republic of Albania, is also sanctioned in the Family Code in Article 2. According to this provision, it is not only parental duty but also of the competent bodies and the courts, which in all their decisions and activities should have this interest in the spotlight.²⁵

Just as the concept of respect is indefinable, the content of the notion of "child interest" is complex, different for different situations and depending on the case and the specific circumstances.²⁶ Their meaning is interconnected because enabling children to effectively enjoy the right to family life also fulfills their best interest.

It is intertwined and dependent on the material possibilities of the parents, the possibilities of the child's physical, moral and intellectual development, his maturity in conceiving the situation and the solutions he expresses through his way of thinking.²⁷

The Committee on the Rights of the Child has emphasized that "the best interest of the child" is an obligation that overlaps with all other obligations that Contracting States assume under article 4 of the CRC.²⁸ The "best interest of the child" is a principle that is placed above all rights, gaining an "absolute status", which means that no human right can prevail over it. The jurisprudence of the Strasbourg Court is the best evidence of this. In the case of Pini and others v. Romania,²⁹ notwithstanding the existence of a final court decision granting the adoption of two Romanian daughters, to two Italian couples, failure to execute this decision by the Romanian authorities would not constitute a violation of the legal basis, until this decision was in violation of children's rights.

The best interest of the minor does not constitute a material or procedural right,³⁰ but is a guiding principle for the decision-making of all state instances. This article places states before a positive obligation to incorporate the principle into law and to apply

²³ Case of Keegan vs. Ireland, Application no. 16969/90, Decision of 26 May 1994.

²⁴ Case of Marckx vs. Belgium, para. 45.

²⁵ Decision of the High Collage of the Supreme Court no. 357 of. 11.09.2008.

²⁶ Ibid., para. 13.2.

²⁷ Ibid., para. 13.2.

²⁸ Center for Integrated Legal Services and Practices, Albanian Legislation and the Convention on the Rights of the Child p.55.

²⁹ Case of Pini and others vs. Romania. Applications nr78028/01 and 78030/01, Decision of 22.09.2004.

³⁰ Center for Integrated Legal Services and Practices, Albanian Legislation and the Convention on the Rights of the Child p.55.

it in any judicial or administrative proceedings involving the minor, that is, the state has a positive obligation.

An important feature is self-implementation, which implies that this principle applies by itself without the need for a law. Because the primary consideration in any decision-making process involving the minor is the best interest, the latter is applied with the power conferred not only by law but also by international agreements ratified in this context.³¹ So its legitimacy derives not only from the law, but also from ratified international agreements, which have supra-legal status.³²

In procedural terms, this principle seeks to guarantee the right of children to express their opinions, the right to freely express their views, not only to be heard but also to be considered on the basis of their age and maturity.³³ So as children mature and become able to formulate their own opinions about parenting, their views, feelings, and rights to privacy should be weighed.³⁴

In the case of *M and M Croatia*,³⁵ the court held that the state authorities had failed to guarantee the right to hear the girl's views regarding the choice to live with her mother and not with the father whom she alleged for violence. Given article 3/1 of the CRC, in any judicial or administrative proceeding affecting the rights of the child, in particular custody proceedings, as well as Article 8 of the ECHR, it cannot be said that children capable of expressing their views are sufficiently involved in the decision-making process if they are not given the opportunity to be heard and express their views.³⁶ Nor can the child's age or his / her maturity be based on arguing whether or not he was able to express his views freely.³⁷

The obligation to obtain accurate and complete information about the parent-child relationship arises before state authorities, as a necessary prerequisite for assessing the child's real wishes.³⁸ It is true that the wishes expressed by a child who understands them are key factors to be considered in any administrative and judicial proceedings related to them,³⁹ but the child's opinion cannot be given absolute priority as it must be assessed accordingly with age, maturity, situations created in court and those with a psychologist.⁴⁰ The role of the psychologist is essential to arguing whether a child's expressed thoughts are sincere or manipulated. Taking note of the case of *Sommerfeld vs. Germany*,⁴¹ it is worth noting that the State authorities have a procedural legal obligation provide the presence of the psychologist and his expertise, namely the psychological report, as a reference document in judicial decision-making.

Also, in assessing the best interests of the child, there should be taken in consideration

³¹Center for Integrated Legal Services and Practices, Albanian Legislation and the Convention on the Rights of the Child p.56.

³²Article 122/2 of the Albanian Constitution.

³³Center for Integrated Legal Services and Practices, Albanian Legislation and the Convention on the Rights of the Child p.56.

³⁴*Khusnutdinov and X v. Russia* – 76598/12, Decision of 18.12.2018.

³⁵*M.K. v Greece*, Application no. 51312/16, Decision of 1 February 2018.

³⁶*Ibid.*,

³⁷*Ibid.*,

³⁸Case of *Shahin vs. Germany* (Application no. 30943/96), Decision of 08.07.2003.

³⁹*M.K. vs. Greece*, Application no. 51312/16, Decision of 1 February 2018.

⁴⁰Decision of the High Collage of the Supreme Court no. 357 of. 11.09.2008.

⁴¹Application no. 31871/96, 08.07.2003.

such as age, parent-child affection, psychological and social status, their affections, and so on. Also, for the realization of the best interest of the child, the court must choose the alternative that fits the "best interest of the child".⁴²

In an overview of national jurisprudence it is held by the Supreme Court of Albania that the district courts have failed to carry out a thorough and comprehensive investigation in accordance with the law as they have failed to make an accurate determination of the facts relating to the disputes, making a thorough and objective analysis of the evidence, leading to a lack of reasoning and argumentation of the decision.⁴³

By taking a critical look at cases of national jurisprudence, the Supreme Court held that district courts for the fair resolution of cases, in conducting judicial investigation and in the applicable law on evidence admitted and valued at trial, should have been guided by the principle of "the best interest of the child".⁴⁴

Further, the Civil College of the High Court, regarding the practical application of this principle, states that: *The application of this principle does not mean that the court will achieve the ideal result for the child, but that it is obliged to comply with the requirements of procedural law. Its material and its conclusion should be the synthesis of an analysis of all the elements and factors related to the growth, development, well-being, education, evaluation of the child's psychological state. In the decision, the court must explicitly argue every aspect of these considerations and, in pursuit of the child's best interest, choose the alternative that suits the child's best interest.*⁴⁵

III.4. The interplay between family life, the best interests of the minor and state obligations.

Children's right to family life does not enjoy the status of an absolute right, as its limitation depends on the protection of other persons' rights and the public interest. The purpose of article 8 of the ECHR is to protect the individual against arbitrary interference by the authorities concerned. In addition to the content of this article we emphasize that the necessary state interventions in family life are those, carried out in accordance with the law, necessary in a democratic society and pursuing a legitimate aim provided for in article 8.

To draw a parallelism with the right of adult individuals to family life, this is a personal right that falls within the scope of Article 8. This article establishes the positive obligation of the State not to arbitrarily interfering, that is, the intervention should consist only in protection and pledge of this right.

It is difficult to identify the circumstances in which compliance with Article 8 requires positive intervention to balance public interests with personal interests.⁴⁶ Circumstances vary depending on the situations and practices followed by the Contracting States. The most drastic cases of state authorities interfering in children's family life are those of separation from parents.

According to Article 9/1 of the Convention on the Rights of the Child: *States Parties shall ensure that a child shall not be separated from his or her parents against their will,*

⁴²Decision of the High Collage of the Supreme Court no. 428 of. 03.07.2014.

⁴³Decision of the High Collage of the Supreme Court no. 357 of. 11.09. 2008.para.12.

⁴⁴Decision of the High Collage of the Supreme Court no.202 of.24.04.2012.

⁴⁵Decision of the High Collage of the Supreme Court no. 357 of. 11.09.2008.

⁴⁶ Ursula Kilkelly, The right to respect for private and family life, A guide to the implementation of Article 8 of the European Convention on Human Rights, p.21.

except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately, and a decision must be made as to the child's place of residence.

Even European jurisprudence upholds the principle that a child since birth has the right to maintain relationships with parents and that only extraordinary events can end this relationship.⁴⁷ Among the most drastic cases are the decisions to remove children from their respective parents, place them in foster/ social care institutions, and determine the right to child custody. European jurisprudence shows that a serious interference with the exercise of the right to family life can lead to irreversible situations.⁴⁸ In any case, the removal of custody follows a public interest, the protection of morals and health, and the rights and freedoms of others. The ultimate goal is to reunite with the family.⁴⁹ The circumstances in which a child may need to be taken to a public care center and make a decision to implement a childcare act are so varied that it is impossible to formulate a law to cover every case.⁵⁰ However, due to the proximity of the State authorities to the issues, they have a more favorable position in assessing the circumstances of each particular case and in determining the most appropriate form of action to be taken.⁵¹ Often the selection of the state action, that best serves the purpose, constitutes arbitrary intervention.

In the case K and T k. in Finland,⁵² the authorities had sufficient time to take the necessary measures and actions to mitigate the immediate dissociation of the newborn baby from the schizophrenic mother. The situation was not an emergency because the Finnish authorities had been aware of K's birth for months and her mental problems. When state authorities take the extreme measure of physically detaching a newborn infant from maternal care against her wish, they must give compelling reasons. They should also beware of the matter that the fact that a child may be placed in an environment more conducive to growth does not justify the removal of biological parents.⁵³ Regardless of the infant's placement in a social care institution, further state obligations consisted of updating the family situation, its improvements, delegated obligations to social services. The child's interests dictate that ties to the biological family must be maintained unless the family has been proven inadequate.⁵⁴ These relationships are exacerbated in exceptional situations, and the state authorities should take measures to preserve the personal relationship and, where appropriate, rebuild the

⁴⁷ Case of Croon and Others vs. The Netherlands, Application no. 18535/91, 27 October 1994.

⁴⁸ Jean-François Akandji-Kombe Positive obligations under the European Convention on Human Rights, A guide to the implementation of the European Convention on Human Rights Human rights handbooks, No. 7.

⁴⁹ Case of K. and T. v. Finland, Application no. 25702/94, Decision of 12 July 2001.

⁵⁰ Ursula Kilkelly, The right to respect for private and family life, A guide to the implementation of Article 8 of the European Convention on Human Rights, p.26.

⁵¹ Ursula Kilkelly, The right to respect for private and family life, A guide to the implementation of Article 8 of the European Convention on Human Rights, p.8.

⁵² Case of K. and T. vs. Finland, Application no. 25702/94, Judgment of 12 July 2001.

⁵³ Case of Barnea and Caldaru vs. Italy, Application no. 37931/15, Final Decision of 22.09.2017.

⁵⁴ Case of V. D and others vs. Russia, Application no. 72931/10, Final Decision of 09.09.2019.

family.⁵⁵ Given the essential relationship of family life between parents and the child, a guardianship order is intended to be temporary and its implementation is always governed by the ultimate goal of family reunification. It continues as long as circumstances permit.⁵⁶

Once the juveniles are temporarily placed in social care institutions, the state is born with the responsibility of facilitating parenting, and now the possibility of reunification would be diminished or progressively eliminated, including biological leaders will not meet with the other.⁵⁷ The state must give importance to the enforcement of communication between children and parents. In the general view of the police, without preparatory measures for the return of the child to the parents, the implementation of a guardianship order may be of interest to the child's latest interest.⁵⁸ In the case of *Andersson c. Sweden*⁵⁹, a mother and her son complained that the right of contact between them had been curtailed and that they had been deprived of any contact by email or telephone over a period of 18 months. The justifying reason of the state was that the child could be abducted from the environment where he was placed in the period in need of treatment. For the court these reasons were not sufficient to justify the harsh measure taken.

Part of the arbitrary interference with the family life of children shall be considered the indeterminacy of a time limit in the orphanage, the conduct of social services, which inevitably lead to irreversible separation of children from parents.⁶⁰ Also the unjustified prohibition of meetings and contacts without first examining the "best interests of the child" constitutes a violation of Article 8 of the ECHR.⁶¹

Prior to such situations, the authorities had to periodically examine improvements in the family situation. Reunification opportunities would progressively disappear/diminish if biological parents and their children did not meet.⁶²

Family issues, which affect children as vulnerable categories, need to be treated with special care by state authorities. One aspect of them is the manner of conducting meetings between children and parents who do not live with them. These ways should be such as not to bring about emotional, psychological and social uncertainty and instability in the child. They should reflect the parent's right to a personal relationship with the child and in turn should be easier to overcome than the separation of parents.⁶³

It is understood that the primary consideration should be the best interest of the child, but adherence to this principle is not guaranteed and is not intended to prevent the parent from exercising parental rights and responsibilities.⁶⁴ Article 8 of the ECHR

⁵⁵ Case of *Olsson vs. Sweden*, Application no. 10465/83, para. 81, Decision of 24 March 1988.

⁵⁶ *Ibid.*,

⁵⁷ Case of *K. and T. v. Finland*, Application no. 25702/94, Decision of 12 July 2001.

⁵⁸ Ursula Kilkelly, *The right to respect for private and family life, A guide to the implementation of Article 8 of the European Convention on Human Rights*, p.52.

⁵⁹ *Andersson v. Sweden*, judgment of 25 Feb 1992.

⁶⁰ Case of *Scozzari and Giunta v. Italy*, Applications nos. 39221/98 and 41963/98, Judgment of 13 July 2000.

⁶¹ Case of *Nazarenko vs. Russia*, Application no. 39438/13, Final Decision of 13 July 2000.

⁶² Case of *K. and T. vs. Finland*, Application no. 25702/94, Decision of 12 July 2001.

⁶³ Case of *Scozzari and Giunta v. Italy*, Applications nos. 39221/98 and 41963/98, Decision of 13 July 2000.

⁶⁴ Judgment of the High Collage of the Supreme Court no. 188 of. 08.05.2014.

imposes on every state the positive obligation to reunite biological parents with the child.⁶⁵ Despite this prediction the dimensions of a child's family life are varied depending on the existence of the family form. Another common case of family relationship is adoption. It should be emphasized that the highest interest of the child to be adopted outweighs the legitimate desire of the adoptive parents because the very moral mission of this institute is to provide the family with the child and not the child with the family.⁶⁶

However, even in this context, problems have been practically identified. In the case of *Pini vs. Romania*,⁶⁷ the European Court of Human Rights has stated that when a final adoption decision is in violation of children's rights, it does not apply. The conflict arose precisely from the prolonged time of non-enforcement of a court decision in the interests of the children. The problem also consisted of the lack of Romanian authorities to take all appropriate measures to enable adoptive parents to get acquainted with the daughters or to prepare them psychologically for their social and family transfer. Given the respect for the high interest principle of girls, the Romanian authorities had no obligation to ensure that children leave their country against will and ignore delayed procedures which impeded the execution of the decision at a time when legality of adoption would be opposed.

The most serious form of arbitrary state interference in the family life of children and biological parents is the abolition of parental custody and the transfer of the child from one type of custody to another, due to the difficult living conditions of the biological family. The seriousness of the right to family life also violates the principle of the highest interest of minors. Often this intervention can be accompanied by disturbing health and psychological problems.⁶⁸

Often, procedures such as recognizing custody and executing final court decisions in this context require urgent solutions, because delays can have unavoidable consequences for the relationship between children and parents who do not live with them.⁶⁹

As we have quoted above, the family life of children manifests itself in various forms, and it is sufficient to have emotional links between the biological parent / adoptive parent / guardian. According to the European Court, the complete and automatic exclusion of an individual from the life of a child whom he had lawfully known and cared for, for years after being found not to be a biological father constitutes a violation of Article 8 of the ECHR. If the State authorities do not carefully consider whether maintaining contact with the child is in their best interest, they have deliberately violated Article 8 of the ECHR.⁷⁰

III.5. Children's right to family life and parents' right to family life.

The right of children to family life is incorporated in the principle of the best interest of the minor and cannot remain independent of that. Its existence depends on

⁶⁵ Case of *V. D and others vs. Russia*, Application no. 72931/10, Final Decision of 09.09.2019.

⁶⁶ *Manuale di diritto europeo in materia di diritti dell'infanzia e dell'adolescenza.*

⁶⁷ Case of *Pini and others vs. Romania*. Applications nr78028/01 and 78030/01, judgment of 22.09.2004.

⁶⁸ Case of *Barnea and Caldararu vs. Italy*, Application no. 37931/15, Final Decision of 22.09.2017.

⁶⁹ Case of *Bajrami vs. Albania*, Application no. 35853/04, final judgment of 12.03.2007; Case of *Hansen vs. Turkey*, Application no. 36141/97, Final Decision of 23.12.2003.

⁷⁰ Case of *Nazarenko vs. Russia*, Application no. 39438/13, Final Decision of 13 July 2000.

adherence to this principle. The right of parents or other entities to family life stands for itself and often competes with that of children. There is often confusion between these rights, given the parental and affective parent-child relationships, but we must emphasize that these rights are neither identical nor parable. They can coexist in harmony and may coincide depending on the relevant situations, but there is a dividing line between them, that of the best interest of the child. The case study of Strasbourg Court jurisprudence best evidences this frontier.

For example, in the case of Pini and others in Romania, adopted girls enjoyed a stable family life in orphanage settings, a conducive environment for their upbringing as well as emotional and psychological development. Despite the de facto lack of affective bonds and recognition between the parties, the adoptive parents viewed themselves as minor parents and behaved as such, sending letters through the only open means.⁷¹ A final court decision was also ignored for the protection of the legitimate interests of the children because it violated their rights. By balancing these two interests, there is no doubt that the highest interest of the juvenile reaches the goals of absolutism. There is no doubt that in this context the right of the adoptive parents to exercise their parental responsibility is violated, after the obstructive actions of the Romanian authorities, over time the adoption of the decision brought about irreversible consequences for the establishment of a family relationship.

Bearing in mind a diametrically opposite case, we note that non-enforcement of a final court decision does not always protect the highest interest of the minor. Failure of measures to unite the petitioner with the girl in fulfilling a final decision at the same time violates the girl's right to family and parent life. State authorities should make the necessary efforts to avoid the irreversible consequences on the parent-child relationship.⁷²

Giving a child for adoption without the consent of a parent constitutes interference with family life, which is very difficult to justify. However, despite the fact that the right of biological father was violated, the consequences of his relationship with the child were inevitable. Despite efforts to challenge the adoption decision, the family life of children with adoptive parents, with whom the children were safe and stable, could no longer be compromised.⁷³

Thus, the parental right to family life cannot be extended to the best interest of the minor. In the Antkowiak case vs. Poland,⁷⁴ despite the biological mother's consent to give the child for adoption, her revocation violates the right of adoptive parents to family life. As the child's best interest was realized by living with biological parents, the right of adoptive parents was limited. The child's best interest consisted in avoiding the trauma of his identity and early development in the future, which posed a threat his emotional security and stability. The same view has been taken by the European Court in the case of V.D and others vs. Russia.⁷⁵

Close personal and affective bonds can also be established with foster families who take care of children for a significant period of time. If we face the competition of

⁷¹ Case of Pini and others vs. Romania. Applications nr78028/01 and 78030/01, judgment of 22.09.2004.

⁷² Case of Bajrami vs. Albania, Application no. 35853/04, Final Decision of 12.03.200.

⁷³ Case of Keegan v. Ireland, Application no. 16969/90, Decision of 26 May 1994.

⁷⁴ Antkowiak vs. Poland, Application no.27025/17, Decision of 22.5.2018.

⁷⁵ Case of V.D and others vs. Russia, Application no. 72931/10, final judgment of 09.09.2019.

the right to family life of foster family and biological parents, we appreciate that effective respect for family life is really determined by relevant situations and not by the passage of time. Every state should weight the circumstances in which parents and children are. The decisions of the internal authorities can be examined in the light of the situations presented at the time these decisions were taken,⁷⁶ because circumstances can change.

If it happens that ties deteriorate, the state must intervene to rebuild the family. The State must act to facilitate this development and to provide legal protection to facilitate the integration of the child into the family, interpreting the ECHR in accordance with the principles of international law.⁷⁷

It is worth noting that the right of children to family life cannot be reconciled with the right of biological parents / adopters / other entities, because the separation unit is the best interest of the child. Its absolute advantage eclipses any individual right.

IV. Conclusions and Recommendations

The right of children to family life, as an existential right, outlines the importance of adapting relevant legislation and ratifying international agreements that embodies the important and necessary principles for the implementation of fundamental rights. Its self-execution guarantees materially the right to family life, the non-violation of which brings about the fulfillment of the principle of the best interest of the minor.

In order to effectively guarantee this right, the boundary between the family life of the children and the family life of the parents or other individuals must be clear. The right of children to family life is not limited by the fact of living with biological or adoptive parents or foster families. Family life of a child, based on the examples of the European Court of Justice, also exists in the premises of social care institutions, if they offer a good perspective of growth, education and a healthy social environment for their development. A child's family life exists when it competes with, the interests of biological parents or third parties. A child's family life exists when it coexists with the best interest of a child. Its realization also requires the coexistence not only of substantive but also procedural rights. In general, we can say that, their existence gives meaning not only to the right to family life, but also to all the rights children are entitled in the Convention on the Rights of the Child.

It is understood that the state intervenes to respect the wide range of a child's personal interests in relation to other individuals, but this intervention must be justified and should balance these rights. The importance of the intervention consists in maintaining the family relationship and the parent-child relationship. Despite the exceptional circumstances implicating the situations of separation of parents from children, the purpose of taking action is to reunite the family.

The implication of a range of actors, whether state or civilian, will influence the implementation of the principle of high interest of the minor and the guarantee of their right to family life. Since the primary consideration in any legal or administrative proceedings should be the best interests of the child, the involvement of the parents, their active role in these proceedings is essential and serves the best realization of the

⁷⁶ Case of B.B and F.B vs. Germany, Applications nos. 18734/09 and 9424/11, Final Decision of 14.6.2013.

⁷⁷ Case of X. vs.Latvia, Application no. 27853/09, Decision 26.11.2013.

best interests of the child.

An integral part of the implementation of due process of law is the reasonable time for the conduct of procedures.⁷⁸In itself, the guarantee of the right to family life is defined in the light of relevant, existing circumstances, but the passage of time often becomes the determinant of an irreversible aggravation of parent-child relationships.⁷⁹

Article 8 also imposes a procedural obligation on States which requires that when assessing applications for the return of a child, to consider the possibility of exposure to the high risk that the child may suffer if he or she returns. According to The Hague Convention, high risks are considered those situations that go beyond what a child can afford.⁸⁰

The Strasbourg Court's experience through diverse decisions, its presence and impact on our domestic legislation, constitutes a consolidating factor in the field of children's rights.

In the course of this paper I would recommend conducting research on children's right to family life, so that the focus should be only on children.

Preparation of professionals to train children that are temporarily in social care institutions, in overcoming the situation and in easy reunification with the biological family, is very important.

Involvement and implication of a range of non-state actors in lobbying for the protection of this right and the integration of children into the family, increases the awareness of respecting the principle of the children's best interest.

Also, by constitutionally sanctioning the children's right to family life, it will not be eclipsed by the right to family life of individuals.

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⁷⁸ Appl. No. 12402/86, Price vs. the United Kingdom, 14 July 1988.

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