*Elena Ignovska*[*]

# THE FAMILY LAW OF THE REPUBLIC OF NORTH MACEDONIA THROUGH THE PRISM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS



**Abstract**

Family law and human rights intersect in the field of rights related to couples, relationships between children and their parents and other relatives and children's rights. The text analyzes the provisions of the national family law regarding parental responsibilities and children's rights as well as their application in relation to the ECHR and the case-law of the ECtHR in order to demonstrate how necessary is to reform them better sooner than later. After several lost cases in front of the ECtHR (for instance, Oluri v. North Macedonia and Mitovi v. FYRM), as well as the possibility of others to be lost in the future, the national state authorities should manifest real intentions and plan to avoid further infringements of the Convention. Namely, the Family Act dates from 1992, was amended and changed many times but never harmonized as a whole and therefore represents a clash between old and new principles. The State should pay more attention to diagnosing national legal inconsistencies with internationally ratified documents and the ECtHR's case-law in order to be able to avoid further infringements. Even though there are official demands for changes regarding some aspects of the Family Act from legal professionals, non-governmental organizations and citizens initiatives (for instance – regarding the right to know child's origin, shared parental responsibilities, registered partnerships in the light of the right to private and family life), national authorities remain continually unresponsive and place the family law reforms in the waiting room.

*Key words: family law, ECHR, parental responsibilities, children's rights, reforms*

## I. INTRODUCTION

Family law matters historically have been treated as out of subjective nature allowing national states based on their own morals and traditions to rule what family life encompasses. This notion made difficult to enable harmonization of family law in European context or to even discuss about European family law as such. Nevertheless, over the years, the European Court of Human Rights (ECtHR) has changed the level of flexibility of the Margin of Appreciation, interpreting the European Convention on Human Rights (ECHR)[1] on grounds of rational and strict scrutiny in the European context, claiming that its decisions set a European hierarchy of values, which

[*] Elena Ignovska, PhD, Associate Professor, Ss. Cyril and Methodius University in Skopje, Iustinuanus Primus Law Faculty, e-mail: e.ignovska@pf.ukim.edu.mk

[1] European Convention on Human Rights, Council of Europe, 1950.

cannot vary drastically from State to State. [2] Family life has developed in a manner to respond to all kinds of modern issues, looking at the Convention as a living and evolving instrument. Family matters are present in many fields of life and do not only concern article 8 of the Convention but also other articles depending on the context in each particular case.[3]

The individual rights in the field of family life are protected in *article 8* – as a right to respect for private and family life*; article 12* – as a right to marry and establish a family; *article 14* – as a general principle of non-discrimination; and *article 6 (1)*, as a right to access civil law courts for solving family matters (among others) and fair trial. When the ECtHR analyzes potential infringements of the ECHR it may call upon other human rights internationally binding documents. One of them, being especially important in the context of family life is the Convention on the Rights of the Child.[4] Having these provisions in mind, family law and human rights intersect in the field of rights related to couples, relationships between children and their parents and other relatives and children's rights.

National – Macedonian Courts have an obligation (set forward in articles 98 and 118 of the Constitution) to judge according to internationally ratified documents regarding human rights. Even more, in case of collision with the national laws, they have priority. The ECHR is alive because of its interpretation by the ECtHR. Therefore the ECtHR's case-law is a sort of legal source and could be applied directly (even when against the national law). Unfortunately, Macedonian Courts still struggle to refer to ECHR and its interpretation by the ECtHR in particular cases. Instead, they are relatively strict and follow what is written in the Law – very often word by word. Of course they are exceptions but they are rare. A recent research has shown that generally a lot has to be done to improve such impression, even though higher courts and the Supreme Court started to refer to the ECtHR case-law only while ago. [5]

The national - Macedonian Family Act dates from 1992, was amended and changed many times but never harmonized as a whole and therefore represents a clash between old and new principles.[6] Such inconsistency reflects in daily lives of many families. For instance, regarding relationships between children and their parents, on the one hand, adopted children or children conceived by gamete donations are disabled from access to any information about their genetic origin which is against article 8 of the ECHR and articles 7 and 8 of the CRC. Yet, they use alternative means to match each other, such as networking on different social media, trying their luck in tracking their biological roots, usually very important part of their personal identity. On the other hand, children of known origin but with divorced/separated parents are legally under custody of one of them, often experiencing estrangement from the other parent due to lack of contact which is also against article 8 of the ECHR and article 3 of the CRC. Regarding these matters, there are already demands of experts, group of parents, NGO's and the Children's Embassy Megjashi to change the current legislation which unfortunately, never received proper governmental response. This unresponsiveness resulted with several lost cases in front of the

---

[2] Marauhn T., Ruppel N., "Balancing Conflicting Human Rights: Konrad Hesse's Notion of "Praktische Konkordanz" and the German Federal Constitutional Court", pp. 246 and 247, Brems E. (ed.) *Conflicts Between Fundamental Rights*, Intersentia, 2008. See also Lester L. Herne H. Q.C., "Universality *v.* Subsidiarity: A Reply", *European Human Rights Law Journal*. Vol. 3, No. 1, pp. 73-81, 1998.

[3] Laffranque J., HELP Family Law, European Court of Human Rights, 14.12.2018.

[4] Convention on the Rights of the Child, United Nations, 1989.

[5] Ристиќ Ј., Треневска З., Деловски В., *Анализа на степенот на користење и цитирање на судската пракса од страна на националните судови*, Центар за правни истражувања и анализи, Скопје, 2020.

[6] Закон за семејството, *Службен весник на Република Македонија* 80/1992 - консолидиран текст.

ECtHR (for instance, Oluri v. North Macedonia – repetitive case or a previous - Mitovi v. FYRM – leading case, analyzed below). There is also a possibility of others to be lost in the future. For instance, if we follow the ECtHR's case-law, children of „unknown origin" could build a case in front of the ECtHR referring to the case Odièvre v. France[7] and Godelli v. Italy[8], same-sex couples restricted from the possibility to share legal consequences from mutual family life could call upon Vallianatos and Others v. Greece[9] or Oliari and Others v. Italy[10] and Orlandi and Others v. Italy[11] etc. Having this as a trigger point, the purpose of this text is to analyze the provisions of the national family law as well as their application in relation to the ECHR and the case-law of the ECtHR in order to demonstrate how necessary is to reform them better sooner than later. Due to format restrictions, the focus will be on the parents-children relationships and the related cases that the State lost already in front of the ECtHR: Oluri v. North Macedonia – the recent case and Mitovi v, FYRM – the previous case.[12]

## II. THE CASE OF OLURI VS. NORTH MACEDONIA

Ms. Oluri ("the applicant", "the mother") gave birth to a daughter in a non-marital partnership. (a term used by the European Court of Human Rights (ECtHR) to translate „вонбрачна заедница"). Nevertheless, it is important to mention that this kind of partnership incudes mutual life for more than one year (as is the case) and is regulated in the Family Act (Article 13) almost in the same manner as marriage. The -relevant for the case- exception however, includes Social Care Centre's direct competence (in practice, questionable if so in the Family Act too) to decide and act upon custody after the partnership dissolution, instead of the Court when dissolving marriage (as in the previous case of Mitovi).

Soon after the birth of the child, the parents' relationship ended. The applicant moved back in with her parents, while the child remained in the same household with the father and his father's parents. Following a request by the applicant and an expert opinion, the Inter-Municipal Social Welfare Center granted custody of the child to the applicant while the father was granted contact rights ("the 2015 decision"). The problems have started only after because the father refused to hand over the child to the mother even though he was summoned to the Center and warned about the handover. The applicant was continually asking for the enforcement during the whole process, but the Centre always had excuses, such as complications due to inter-municipal cooperation, attributing the execution to the Ministry of Justice etc. Despite the different excuses of the father (such as "the child is ill" or a simple refusal to cooperate) the result was always the same – the Center could not execute its own decision. Meanwhile, the mother and the Centre lodged a criminal complaint that resulted in a judgment of child abduction in which the father was sentenced to six months imprisonment, suspended on condition that he returns the child within two months. As he failed to return the child and prior to serving his sentence he was

[7] Odièvre v. France, European Court of Human Rights, No. 42326/98, judgment of 13.02.2003.
[8] Godeli v. Italy, European Court of Human Rights, No. 33783/09, judgment of 25.10.2012.
[9] Vallianatos and Others v. Greece, European Court of Human Rights, No. 29381/09 and 32684/09, judgment of 7.11.2013.
[10] Oliari and Others v. Italy, European Court of Human Rights, No. 18766/11 and 36030/11, judgment of 21.7.2015.
[11] Orlandi and Others v. Italy, European Court of Human Rights, No. 26431/12, 26742/12, 44057/12 and 60088/12, judgment of 14.12.2017.
[12] Игновска Е., „Случајот Олури против Северна Македонија: одложена правда е оспорена правда", *Justice Observers*, 7.3.2020 (analyzes taken from https://justiceobservers.org/article/74024/63647/187).

exempted under the general Amnesty Act.[13] As he went on with the same behavior, another criminal judgment prescribed six-month suspended prison and an order to return the child (April 2018).

In the period from January to May 2018 the mother established four contacts with the child, some of them at the Center. It is unclear why the Centre allowed reversed roles (father's custody and mother's visiting rights). Even more, the rarity of such visits cannot satisfy the requirements of developing and maintaining a family life between them. The meetings were discontinued at her request. During this period, the father requested from the Center to overturn its 2015 decision and decided in his favor due to changed circumstances. Namely, he claimed that he and his family were taking good care of the daughter while the mother was lacking emotional bond with her, they did not speak the same language (the parents spoke different languages), and it was in the best interests of the child to remain in the given environment. This request was accepted by the Centre due to the best interests of the child argument in its **"**2018 decision**"** in which it gave custody rights to the father and visiting rights to the mother. Because of this new decision, the criminal judgment could not be executed since he had no obligation to hand over the child to the mother anymore. While the proceedings were still pending, the applicant decided to lodge an application in front of the ECtHR under article 34 (Individual applications) complaining that her family life with the daughter was infringed as a result of protracted failure of the Centre to enforce its 2015 decision leaving her with no effective remedy in regards to her complaints.

When it comes to the judgment, the Court brought it unanimously. It considered the case admissible since the Centre did not enforce its 2015 decision for a period of three years and three months resulting in the subsequent opposite 2018 decision. This is mostly because the case falls under category of cases at risk by their length. Therefore, the Court rejected the Government's objections of abuse of the right of individual application and their non-exhaustion objection (Articles 34 and 35 of the ECHR).

Regarding the merits of the case, the Court considered that the interpretation of Article 8 of the ECHR represents the mutual enjoyment of each other's company that constitutes family life. Once this perpetual relationship is (unjustly) interrupted, especially at such an early stage of the child's development, it is very clear that the right to family life is infringed. Therefore, any excuses by the Centre for non-execution of its 2015 decisions are irrelevant since the damage that is done cannot be restituted. Namely, in this case the damage that was done lead to even graver damage to the applicant resulting in the subsequent 2018 decision that recognized alienation between the mother and daughter and consequently acknowledged custody rights for the father.

The Court found the Centre's work unsatisfactory since it failed to justify its own competences as justice executor in family law matters. Despite the police assistance, the Centre could have taken other coercive matters to execute its decision. Furthermore, the Court noted that it was unclear whose duty it was to execute its decision. Consequently, such confusion and lack of efficiency led to further delays that did not allow the emotional bond between the mother and the daughter to develop and resulted with infringement of the applicant's right to family life, and a subsequent 2018 decision. Even more, the Court found infringement of Article 13 in conjunction with Article 8 of the Convention recognizing that the applicant did not have effective remedy in regards to her complaint of (the impossibility of) building and maintaining family life. Namely,

[13] Закон за амнестија, *Службен весник на Република Македонија*, 11/2018.

Article 8 relates to de facto family relationships while related proceedings are time-sensitive since any delays may obstruct such relationships to develop.

## III. THE CASE MITOVI V. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

The State lost a similar case (Mitovi v. "the FYROM**"**) in front of the ECtHR in 2015. The case concerned mother's refusal of contact rights (and a criminal sentence for child abduction respectively) between the child, the father (who lived in Australia) and the grandparents. The Court also found the State responsible for not executing contact rights for a lengthy period leading to infringement of Article 8 of the Convention. In this earlier case, the Court with a help of the Centre (as stipulated in articles 80, 81, 280 and 281 of the Family Act) decided who to give the sole custody to (to the mother) and acknowledged it in its decision divorcing the marriage while leaving the decision for contact frequency up to the Centre. Even though the Centre decided that the father should establish contacts with his child on frequent basis, it failed to execute its decision due to many excuses (incompetence, allocating the execution to the Ministry of Justice according to the Administrative Proceedings Act -in force than- etc.). The father in this case asked for temporary custody rights because he was living far away from the mother, yet did not want to be alienated from the child. The Centre reasoned that such arrangements were not in the best interests of the child and may lead to stress due to change of environment. The father appealed claiming that the situation was causing him and the child irreparable damage estranging each other. The Ministry of Labor and Social Policy upheld the Centre's decision (not the Court in civil proceeding or the Administrative Court). Despite the confusion in competences, the Family Act gives capacity to the Centre to change the essence of the decision itself. In this sense, the Centre has also the capacity to order temporary residence if the custodial parent does not allow the other parent to establish contact rights (Article 87 in contrast with Article 80(4) of the Family Act). No party in the proceeding mentioned Articles 280 and 281 of the Family Act that regulate that in such matters the Execution Proceeding of the Court's decision is left on the Court itself with a possibility of seeking help from the Social Care Centre, stressing the urgency of the proceeding due to protection of the child's interests. Therefore, it is unclear if the decision should be delivered by the Court (who just appoints the Centre to act further) or by the Center itself. The ECtHR concluded that the domestic authorities failed to make adequate and effective efforts to enforce the applicants' right to respect for their family life, as guaranteed by Article 8 of the Convention (as in the case of Oluri). The Court reiterated that the likelihood of family reunification will be progressively diminished and eventually destroyed if the father and the child are not allowed to see each other at all, or only so rarely that no natural bonding between them is likely to occur (mutatis mutandis Görgülü v. Germany)[14]. Regarding the existence of an effective remedy, the Court underlined that the Government did not bring to the Court's attention any special piece of legislation or domestic practice regarding which body had competence for the administrative enforcement of the Centre's contact orders and therefore found that there has, accordingly, been a violation of Article 13 taken in conjunction with Article 8 of the Convention.

[14] Görgülü v. Germany, European Court of Human Rights, No. 74969/01, judgment of 26.5.2004.

As part of the Communication regarding the case and its aftermath, the State sent an Action plan regarding the measures undertaken to avoid similar infringements in the future. [15] The measures have been taken to ensure that the violations at hand were brought to an end (effective enforcement of the applicants' contact rights) and that the applicants were provided adequate redress for the consequences sustained. The father will have contact rights during his restricted stay in Skopje while the grandparents are entitled to exercise their contact rights with their granddaughter on the third Tuesday each month. So far, contacts have been held in the Skopje Social Care Centre under the supervision of professionals (one could furthermore criticize such monitored meetings because they institutionalize the relationship).

The Government also stated that further legislative measures were undertaken to prevent similar violations: 1) new General Administrative Procedure Code and 2) amendments in the Social Protection Act and the Family Act (Article 281 (2) and (3)). Namely, since the Enforcement Act (Article 1)[16] applies to Court judgments and administrative decisions regarding pecuniary obligations (different in essence from Centre's contact orders), the new General Administrative Procedure Code[17] specifically stipulates that "the public body which has had adopted administrative act in first instance has the competence for enforcement of that act even in cases where the administrative act have been modified by second instance body or by the Administrative Court" (Art. 130 (1)). It also guarantees that an administrative body in the Ministry of Interior will assist on request and if necessary to execute the order (Art. 130 (2)). It furthermore stipulates fines for failure to comply with a non-pecuniary obligation imposed by an administrative decision, such as the contact rights set out in an order made by the Social Care Centre. These fines are also stipulated in the Family Act (Article 281 (2) and usually come prior to forced execution. It is very much questionable if fines are proper sanction for parents not complying with contact orders.

## IV. THE SIGNIFICANCE OF BOTH CASES - SIGNALS FOR NATIONAL STRUCTURAL REFORMS IN THE FIELD OF FAMILY LAW

Both cases – the previous Mitovi and the recent Oluri v. North Macedonia deal with a similar matter: not executing Social Care Center's orders resulting in infringement of Article 8 and Article 13 taken together with Article 8 of the ECHR. This shows that the measures which the State took to avoid future infringements after the Mitovi case were not adequate or the State's competent bodies were not fully informed or up to the task to perform. According to the Action Plan, the Centre could have obtained police assistance or undertaken other coercive measures with a help from the Ministry of Interior. One may claim that it was an isolated case depending on "human factor". Even though this is true to an extent, yet, it shows systematic failure with a potential to be repeated in the future. What was not properly addressed in the case, but is of great importance is the misinterpretation of the Court's v. Centre's competences in custody cases

[15] *Action Plan* (29/05/2017), Communication from "the former Yugoslav Republic of Macedonia" concerning the case of MITOVI v. "the Former Yugoslav Republic of Macedonia" (Application No. 53565/13), Secretariat of the Committee of Ministers.

[16] Закон за извршување, Службен весник на РМ, бр.72/16 и 142/16 и Одлука на Уставен суд.бр.143/2016 од 29 ноември 2017 година, Службен весник на РМ бр.178/17 и Одлука на Уставен суд У.бр.135/2016 од 24 јануари 2018 година, Службен весник на РМ" бр.26/18), пречистен текст.

[17] Закон за општата управна постапка, *Службен весник на Република Македонија*, 145/2015.

(irrelevant if they follow marital or non-marital relationship dissolution). Therefore, the State should go beyond recognized infringements in both judgments because they are a consequence of a rather outdated and not harmonized national family law system and cannot be seen isolated per se. If not, it may face more repetitive cases in the future because it has not put forth an active legislation to implement and safeguard the rights in effect.

Firstly, custodial cases have to be resolved in front of a competent national authority. Comparatively and from the ECtHR's case law[18], such competent authorities are courts. Custodial cases are complex and ask for a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what would be the best solution for the child. Even more, courts are more authoritative to bring such decisions than administrative bodies (as in the national case – centers which are already overloaded with many other competences). The procedural aspect of Article 8 is related to the rights and interests protected by Article 6 § 1 of the Convention (fair trial). Article 6 affords a procedural safeguard, namely the "right to a court" in the determination of one's "civil rights and obligations" and is also ancillary to the wider purpose of ensuring proper respect for, inter alia, family life (Tapia Gasca and D. v. Spain,[19] Bianchi v. Switzerland,[20] McMichael v. the United Kingdom,[21] B. v. the United Kingdom,[22] Golder v. the United Kingdom[23]). Family Act gives Court's competences to decide on custody in divorce proceedings/annulment of marriage/establishing/rebutting of paternity/maternity. This is interpreted as if Courts are competent only when custody (of already established parenthood) is discussed together with marriage and not when is discussed per se (as for instance after non-marital partnership break-up and as in the Oluri case). Even more, once Courts are competent to make such decisions, it should not be allowed for the Centre to change them by its own decisions (as it is stipulated in the Family Act now and as in Oluri case).

Secondly, as stipulated in the same Article 6 § 1 (within a reasonable time), custody cases ask for urgent and efficiently enforceable decisions because of the risk that the passage of time may result in a de facto determination of the matter. This also forms part of the procedural requirements implicit in Article 8 (Ribić v. Croatia).[24] Therefore, States must also provide measures to ensure that custody determinations and parental rights/responsibilities are enforced (Raw and Others v. France;[25] Vorozhba v. Russia[26]; Malec v. Poland[27]). In this light (even though Article 6 is not explicitly called upon), the Court found violation due to failure to enforce a decision concerning contact rights in the case Mitovi v. the FYRM and Oluri v. North Macedonia.

Thirdly, courts and other administrative bodies have to demonstrate sensitivity in all cases where children's interests are at stake and upheld their interests first. This is already a legal obligation (on a paper) but it also has to become a legal reality. There is a broad consensus (including in

[18] See more in *Guide on Article 8 of the European Convention on Human Rights*, European Court of Human Rights, updated on 31 August 2019 https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf.
[19] Tapia Gasca and D. v. Spain, European Court of Human Rights, No. 20272/06, judgment of 22.12.2009.
[20] Bianchi v. Switzerland, European Court of Human Rights, No. 7548/04, judgment of 22.6.2006.
[21] McMichael v. the United Kingdom, European Court of Human Rights, No. 16424/90, judgment of 24.2.1995.
[22] B. v. the United Kingdom, European Court of Human Rights, No. 9840/82, judgment of 9.6.1988.
[23] Golder v. the United Kingdom, European Court of Human Rights, No. 4451/170, judgment of 21.2.1975.
[24] Ribić v. Croatia, European Court of Human Rights, No. 27148/12, judgment of 2.7.2015.
[25] Raw and Others v. France, European Court of Human Rights, No. 10131/11, judgment of 7.6.2013.
[26] Vorozhba v. Russia, European Court of Human Rights, No. 57960/11, judgment of 16.1.2015.
[27] Malec v. Poland, European Court of Human Rights, No. 28623/12, judgment of 28.6.2016.

international law, especially Article 3 of the CRC) in support of the principle that in all decisions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be a primary consideration (Neulinger and Shuruk v. Switzerland,[28] X v. Latvia[29]). Even more, the child's best interests may, depending on their nature and seriousness, override those of the parents (Sahin v. Germany,[30] Article 257 of the national Family Act). In these lines, in the Oluri case, the applicant (or the Court) could have turned an eye on the child since she too has interests to establish and maintain contacts with the mother, while their negation also constitutes infringement of hers enjoyment of Article 8.

Fourthly, the Macedonian legislator has to seriously consider changing its Family Act in light of promoting and regulating shared custody instead of the current sole custody after parents' relationship dissolution. This is in line with Article 9 of the CRC, the Principles of the European Family Law regarding Parental Responsibilities (Principle 3:11)[31] and has already been practice in most of the Member States of the Council of Europe. Nationally, is also in line with Articles 45 and 76 of the national Family Act, demands of group of parents and the Children's Embassy Megjashi[32]. Even though the parents' interests, especially in having regular contact with their child, remain a factor when balancing the various interests at stake (Neulinger and Shuruk v. Switzerland)[33], the child's interests dictate that the child's ties with the family must be maintained, except in cases where the family has proved particularly unfit. It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family (Gnahoré v. France).[34] It remains unclear why in the national context further steps have not been taken to elevate shared custody next to the concept of sole custody (only when necessary). Such legal changes have to be seen primarily through children's lenses and their interests to be taken care of by both parents (not because of parents' interests). Even the national terminology "parental rights" (as if parents have rights over children) instead of "parental responsibilities" (parents have responsibility to take care of their children) shows lack of understanding of the internationally binding documents in this field.

In regards to the future destiny of the Oluri case in the existent national legal context, the ECtHR did not analyze (it was not its competence) the 2018 Centre's decision that granted the father with sole custody while the mother with contact rights. The damage is already done due to execution delays of the previous (opposite) 2015 decision resulting with child's alienation from the mother. The applicant can hope that the father will allow such contacts rights (especially having in mind his previous behavior) and that the State will ensure them this time (already has mechanisms at disposal). Another hope left to the applicant is that the Centre will reopen the case in the future and if the child's interests ask for it will grant more contact hours or eventually will change the custody decision in the mother's favor.

---

[28] Neulinger and Shuruk v. Switzerland, European Court of Human Rights, No. 41615/07, judgment of 6.7.2010.

[29] X v. Latvia, European Court of Human Rights, No. 27853/09, judgment of 26.11.2013.

[30] Sahin v. Germany, European Court of Human Rights, No. 30943/96 and 31871/96, judgment of 8.7.2003.

[31] Boele-Woelki K., Ferrand F., Gonzalez-Beilfuss C., Jantera-Jareborg M., Lowe N., Martiny D., Pintens W., *Principles of European Family Law regarding Parental Responsibilities,* Intersentia, 2007.

[32] Велјаноски М., *Родители бараат измени на Законот за семејството: заедничко старателство и одговорно родителство и по развод*, Академик, 22.6.2015.

[33] Neulinger and Shuruk v. Switzerland, European Court of Human Rights, No. 41615/07, judgment of 6.7.2010.

[34] Gnahoré v. France, European Court of Human Rights, No. 40031/98, judgment of 19.9.2000.

It is up to the State's authorities though to ensure that such hopes will not be diminished due to administrative labyrinths, that family life will be respected and justice satisfied and not denied. As analyzed above, this will ask for profound and substantial legal changes and not just superficial legal "make-up".

## V. CONCLUSION

The ECtHR has established the notion of family life as a right to live together so that family relationships may develop normally (starting from 1979 in the case Marckx v. Belgium –one of the most cited cases in the field of family law).[35] Even though family life is often connected with traditions and culture, for the ECtHR, it is an autonomous concept. Whether or not family life exists is a question of fact depending upon the real existence in practice of close personal ties. Therefore, the Court looks „whether the national authorities have examined all aspects of these de facto family ties including commitment, living together, the length and nature of relationship, but also conformity of the conduct with the law".[36] Judge Julia Laffranque comments that „the margin of appreciation is more limited regarding questions of contact and information rights and much narrower when it comes to prolonged separation of a parent and child".[37] Once fair judgment is released, for the ECtHR is especially important that it will be enforced. This is even more important when children's interests are at stake as constituted and reaffirmed in many cases (as mentioned above) including R.I. and Others v. Romania,[38] Mitovi v. FYRM and Oluri v. North Macedonia.[39] In these cases, the Court found that the national authorities had not acted in a timely or reasonable manner to enforce the custody orders and that the applicants had not received effective protection of their rights.

As for the cases regarding North Macedonia, the national state authorities should manifest real intentions and plan to avoid further infringements of the Convention.

Firstly, courts should judge according to internationally ratified documents especially those in the field of human rights, as well as the case-law of the ECtHR.

Secondly, the national legislator should pay more attention to diagnosing national legal inconsistencies with internationally ratified documents and the ECtHR's case-law in order to be able to avoid further infringements. Despite the positive obligations that arrive from the above analyzed lost cases, as well as official demands for changes regarding some aspects of the Family Act from legal professionals, non-governmental organizations and citizens' initiatives, the family law reforms still remain in „the waiting room".

**Bibliography:**


1. *Action Plan*, *Communication from "the former Yugoslav Republic of Macedonia" concerning the case of Mitovi v."the Former Yugoslav Republic of Macedonia" (Application No. 53565/13)*, Secretariat of the Committee of Ministers, 29/05/2017.
2. B. v. the United Kingdom, European Court of Human Rights, No. 9840/82, judgment of 9.6.1988.


[35] Marckx v. Belgium, Europian Court of Human Rights, No. 6833/74, judgment of 13.6.1979.
[36] Op. cit. Laffreanque J.
[37] Op. cit. Laffreanque J.
[38] R.I. and Others v. Romania, European Court of Human Rights, No. 57077/16, judgment of 4.12.2018.
[39] Op. cit.

3. Bianchi v. Switzerland, European Court of Human Rights, No. 7548/04, judgment of 22.6.2006.
4. Boele-Woelki K., Ferrand F., Gonzalez-Beilfuss C., Jantera-Jareborg M., Lowe N., Martiny D., Pintens W., *Principles of European Family Law regarding Parental Responsibilities,* Intersentia, 2007.
5. Convention on the Rights of the Child, United Nations, 1989.
6. European Convention on Human Rights, Council of Europe, 1950.
7. *Guide on Article 8 of the European Convention on Human Rights*, European Court of Human Rights, updated on 31 August 2019 https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf.
8. Gnahoré v. France, European Court of Human Rights, No. 40031/98, judgment of 19.9.2000.
9. Godeli v. Italy, European Court of Human Rights, No. 33783/09, judgment of 25.10.2012.
10. Golder v. the United Kingdom, European Court of Human Rights, No. 4451/170, judgment of 21.2.1975.
11. Görgülü v. Germany, European Court of Human Rights, No. 74969/01, judgment of 26.5.2004.
12. Laffranque J., HELP *Family Law*, European Court of Human Rights, 14.12.2018.
13. Lester L. Herne H. Q.C., "Universality *v.* Subsidiarity: A Reply", *European Human Rights Law Journal*. Vol. 3, No. 1, pp. 73-81, 1998.
14. Malec v. Poland, European Court of Human Rights, No. 28623/12, judgment of 28.6.2016.
15. Marauhn T., Ruppel N., "Balancing Conflicting Human Rights: Konrad Hesse's Notion of "Praktische Konkordanz" and the German Federal Constitutional Court", Brems E. (ed.) *Conflicts Between Fundamental Rights*, Intersentia, 2008.
16. Marckx v. Belgium, Europian Court of Human Rights, No. 6833/74, judgment of 13.6.1979.
17. McMichael v. the United Kingdom, European Court of Human Rights, No. 16424/90, judgment of 24.2.1995.
18. Neulinger and Shuruk v. Switzerland, European Court of Human Rights, No. 41615/07, judgment of 6.7.2010.
19. Odièvre v. France, European Court of Human Rights, No. 42326/98, judgment of 13.02.2003.
20. Oliari and Others v. Italy, European Court of Human Rights, No. 18766/11 and 36030/11, judgment of 21.7.2015.
21. Orlandi and Others v. Italy, European Court of Human Rights, No. 26431/12, 26742/12, 44057/12 and 60088/12, judgment of 14.12.2017.
22. R.I. and Others v. Romania, European Court of Human Rights, No. 57077/16, judgment of 4.12.2018.
23. Raw and Others v. France, European Court of Human Rights, No. 10131/11, judgment of 7.6.2013.
24. Ribić v. Croatia, European Court of Human Rights, No. 27148/12, judgment of 2.7.2015.
25. Sahin v. Germany, European Court of Human Rights, No. 30943/96 and 31871/96, judgment of 8.7.2003.
26. Tapia Gasca and D. v. Spain, European Court of Human Rights, No. 20272/06, judgment of 22.12.2009.
27. Vallianatos and Others v. Greece, European Court of Human Rights, No. 29381/09 and 32684/09, judgment of 7.11.2013.
28. Vorozhba v. Russia, European Court of Human Rights, No. 57960/11, judgment of 16.1.2015.
29. X v. Latvia, European Court of Human Rights, No. 27853/09, judgment of 26.11.2013.
30. Велјаноски М., *Родители бараат измени на Законот за семејството: заедничко старателство и одговорно родителство и по развод*, Академик, 22.6.2015.
31. Закон за амнестија, *Службен весник на Република Македонија* 11/2018.
32. Закон за извршување, *Службен весник на Република Македонија* 72/16 и 142/16, пречистен текст.
33. Закон за општата управна постапка, *Службен весник на Република Македонија* 145/2015.

34. Закон за семејството, *Службен весник на Република Македонија* 80/1992 - консолидиран текст.
35. Игновска Е., „Случајот Олури против Северна Македонија: одложена правда е оспорена правда“, *Justice Observers*, 7.3.2020.
36. Ристиќ Ј., Треневска З., Деловски В., *Анализа на степенот на користење и цитирање на судската пракса од страна на националните судови*, Центар за правни истражувања и анализи, Скопје, 2020.