Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Post-separation Arrangements and Parental Religious Beliefs: The Appearance of Article 9

Question(s) at stake:

Whether the prohibition for a mother to expose her children to the members of Raëlism, the religious movement she adheres to, violates Articles 8, 9, 10, 11, both alone and in combination with Article 14 of the ECHR.

Outcome of the ruling:

The complaints were declared manifestly ill-founded because the contested prohibition had been aimed at reconciling the opposite educational choices of parents with a view to ensure the children's best interests.

Topic(s):

- Education
- Personal Status, Family and Inheritance

Keywords:

- Right to respect for private life
- Right to respect for family life
- Freedom of thought, conscience and religion
- Best interests of the child
- Private divorce
- Custody

Tag(s):

- Raëlism

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Country:

France

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F.L. v. France, App. no. 61162/00, 03 November 2005

Link to the decision:

https://hudoc.echr.coe.int/eng?i=001-71411

ECLI:

ECLI:CE:ECHR:2005:1103DEC006116200

Date:

03 November 2005

Jurisdiction / Court / Chamber:

European Court of Human Rights, Second Section

Remedy / Procedural stage:

Final

Previous stages:

- Cour de Cassation (22 February 2000)
- Cour d'appel de Versailles (4 December 1997)
- Juge aux affaires familiales près le Tribunal de grande instance de Nanterre (6 July 1995 and 4 June 1996)

Subsequent stages:

None

Branches / Areas of law:

Human rights law; Family law; Private law

Facts:

The applicant had two children with her former partner P.: M. and G., born in 1991 and 1992. Their relationship ended and she joined the Raëlism movement, to which also her new partner, C., belongs. The *juge aux affaires familiales* granted P. contact rights with the children, who continued to live with their mother. The judge also ordered a social enquiry report and a medical-physiological examination of the children, their parents, and C. While waiting for extra-legal expertise, the judge prohibited the mother from exposing the children to members of Raëlism (except for herself and C.) and taking them to the so-called "Stages of Awakening" or Raëlian meetings, particularly to the four annual prayer gatherings. These restrictions were confirmed also after a social enquiry report and a psychiatric report indicated that the children had adapted well to the new circumstances and were progressively adjusting to the fact of having "two homes".

The applicant – i.e., the mother – appealed against the prohibition on exposing her children to members of the movement, arguing that Raëlism had existed in France for the past 20 years without posing any danger and that such a restriction breached her freedom of religion and privacy rights. The Court of Appeal of Versailles upheld the first instance decision. It explained that, by prohibiting the children's contact with members of Raëlism, the national court undertook its duty to settle the dispute between the parents on the education of their children. The Court of Appeal further observed that the contested restriction had been aimed at advancing the children's interest by maintaining their development in the family environment created by their mother without pushing them too far – morally and culturally – from their father and respecting their freedom of choice. The Court of Cassation rejected the applicant's further appeal.

Before the ECtHR, the applicant complained that the prohibition against exposing her children to members of her religious movement breached her right to respect for private and family life under Article 8 – both alone and in combination with Article 14. She also invoked Article 9 (right to freedom of thought, conscience,

and religion) alone and in conjunction with Article 14, and argued that she was unable to practice her religion individually and collectively at her place. She also claimed a breach of Article 10 (freedom of expression) and Article 11 (freedom of assembly and association).

Ruling:

The Court declared all complaints made by the applicants manifestly ill-founded.

Starting from Article 8, the Court established that the interference the applicant complained of was in accordance with the law and pursued the legitimate aim of protecting the rights of the children and the father. In assessing the proportionality of the contested measure, the Court observed that the interests of the children principally resonated with the need to support their development in an open family environment, reconciling to the extent possible the rights and convictions of each parent.

In order to determine whether the restrictions imposed on her by the domestic courts were relevant and sufficient to meet this objective, the Court found it relevant to note that the applicant was not prevented from raising her children in accordance with the educational principles she had embraced as a member of Raëlism. Nor was she personally prohibited from attending meetings of the community. This was – in the Court’s view – indicative of the national authorities’ willingness to take into consideration the rights of both parties. The sensitive attitude of the French courts was further manifested by their decision not to extend the applicability of the contested restriction to the mother’s partner. Moreover, the Court was of the view that since the first instance judge had commissioned a social inquiry report as well as a medical-psychological examination, domestic courts had conducted a careful and serious investigation thus fulfilling their procedural obligations under Article 8. The complaint under Article 8 was therefore to be declared manifestly ill-founded.

Moving onto the applicant’s complaint under Article 9, the Court noted that she could continue to practice her religion at a personal level, even in the presence of her children, provided that they would not be exposed to other community

members. The contested measure, the Court reiterated, pursued the children's best interests which, in the Court's view, required reconciling the educational choices of each parent with the view of ensuring a balance between their different conceptions without any value judgment. Even accepting that the contested decisions amounted to an interference with the applicant's Article 9 rights, this interference was indispensable to strike a balance between the rights of the applicant and the rights of others, in the specific case those of the children and those of the father.

The Court found it important to also underline that the children were particularly young when domestic courts decided the case (4-6 years old; 3-5 years old) and, therefore, were unable to compare the educational choices of their parents. It was also observed that national jurisdictions had limited their appreciation of the parent's convictions as opposing each other without ever expressing any value judgment. The interference complained of was, therefore, to be considered necessary in a democratic society, and, consequently, the complaint under Article 9 was also declared manifestly ill-founded.

Finally, the Court assessed the discrimination claim brought by the applicant. Even assuming that the mother and the father were in a comparable position, the Court reiterated that the contested restriction has only a limited influence on the religious practices of the mother and that it was aimed solely at reducing the conflict between the parents with a view to ensuring the children's best interests. The case was, therefore, to be distinguished from the precedent in *Hoffmann v Austria* (1993), where domestic courts had transferred residence rights from the mother to the father due to "essentially religious reasons" and, consequently, a violation of Article 8 in conjunction with 14 had been found. Differently, the decisions of the domestic courts in F.L. had been taken without any value judgment on the conceptions and ideological practices of the applicant, i.e., the mother. In light of these considerations, the Court concluded that the applicant had not been subject to any differential treatment based on religion. As to the applicant's claims under Articles 10 and 11, they were considered not to need a separate analysis as they raised the same substantial issues analyzed under

Articles 8 and 9.

Main quotations on cultural or religious diversity:

*translated from French (the language of the original text)

Decision of the juge aux affaires familiales près le tribunal de grande instance de Nanterre (6 July 1995):

“However, the fact that the mother belongs to the Raelian group and the fact that she lives with a guide from that group must lead the family court to consider the educational principles developed by this sect, given that the fact that the mother belongs to this movement, which extols the merits of sensual meditation, does not immediately justify a change in the exercise of parental authority.

It appears from the documentation submitted by the plaintiff to the debates that, according to Raelian principles, adolescents should have the right to a sexual, political, and religious life independent of their parents from the age of 14, and sex education should be provided in centres by specialists [...]

However, according to the statements of the two daughters of C., the partner of [the applicant], himself a Raelian guide, the latter has never sought to involve his daughters, who are not Raelian and who vowed to follow their father when the couple separated [...].

In view of the very young age of the children, who risk being profoundly disturbed by a prolonged and definitive separation from their mother, who up to now and since joining the Raelian movement has not undermined or neglected her duties as a mother, the children’s residence will remain with [the applicant’s] home, with the father nevertheless exercising a very broad right of access and accommodation which will enable him to share the same amount of time with his children”. (p. 2)

Decision of the juge aux affaires familiales près le tribunal de grande instance de Nanterre (4 June 1996):

“The psychiatric expert clearly stated that ‘beyond the intrinsic dangers of sectarianism, which remain very uncertain, there is the question of paternal

representation.’ […] Thus, while it is perfectly acceptable for everyone to profess and teach in complete freedom, in accordance with the declaration of human rights, the beliefs and opinions they consider to be good, it is nevertheless the duty of the judiciary, and particularly of the family court, to investigate the interests of children who are, as in this case, placed in a conflictual situation between their parents.

Accordingly, the measures, taken on a provisional basis, which ensure a certain separation between family life and religious activity, are maintained”. (p. 4)

Submissions of the parties before domestic courts:

“She maintained that the Raelian movement had existed in France for more than 20 years without presenting any danger or illegality and that the ban on it constituted a violation of international and French texts on freedom of opinion, thought, and religion, and was an invasion of her privacy. P. replied that the Raëlien movement is classified by the public authorities as one of the 172 sectarian organizations considered dangerous and based his reply on a circular dated 29 February 1996 and sent by the Minister of Justice to the public prosecutors at the courts of appeal and the public prosecutors at the regional courts entitled ‘Combating attacks on persons and property committed within the framework of sectarian movements’.” (p. 4)

Submissions of the applicant before the ECtHR:

“She affirms that the Raelian religion, whose dangerousness has not been demonstrated in any way, is above all a philosophy and a way of life.

The applicant alleges that the interference suffered runs counter to the principles of pluralism and tolerance, which characterize a democratic society, since it is based on the classification of the Raëlian grouping as a sectarian movement (as set out in particular in the ministerial circular of 1996) and on the applicant’s membership of that group”. (p. 8)

“On the basis of the Court’s case-law (see the Hoffmann v Austria judgment of 23 June 1993, Series A no. 255 C, and the Sahin v. Germany [GC] judgment, no.

30943/96, § 65, ECHR 2003 VIII), the applicant emphasises that no value judgment on the parents' religious beliefs should interfere with the adoption by the domestic courts of measures relating to the exercise of parental authority and, as such, she asserts that none of her actions has hitherto prejudiced the interests of her children. She, therefore, concludes that the interference by the authorities with her right to respect for her family life is evidence of a negative consideration of her convictions, without proof of any danger to the children. She adds that the Raelian religion is above all a philosophy and a way of life and concludes that there is no need for interference in a democratic society". (p. 11)

Court's assessment:

"The Court also notes the importance, and therefore the relevance, of such a measure in the pursuit of the overriding aim of taking into account the best interests of children. In the Court's view, this objective, in this case, involves reconciling the educational choices advocated by each parent and must make it possible to ensure a satisfactory balance between the views of each parent without making any value judgments and, where appropriate, by providing a minimum framework for personal religious practices. The Court considers that it follows that, while the impugned measure constitutes an infringement of the applicant's rights under Article 9 of the Convention, that infringement is minor and must, in any event, be regarded as indispensable to ensure that the applicant's rights are reconciled with the rights of others, in this case above all with those of her children but also those of their father. As noted at the outset, the Court recalls that the children were very young and had no discernment enabling them to compare the respective educational choices of their two parents. Moreover, the national courts did not make a value judgment on the respective convictions of the parents, merely noting that they were opposed in the conflictual context of a separation". (p. 16)

"Moreover, while in Hoffmann the Court found a violation of Articles 14 and 8 combined, it had based its finding on the fact that, for essentially religious reasons, the Supreme Court, overturning the decisions of the subordinate courts, had withdrawn parental authority from the mother and entrusted it to the father.

However, in the present case, as has been said, parental authority was joint and, subject to the father's right of access, the children resided with the applicant. The two cases are clearly distinguishable, also from this point of view. The sole purpose of this decision was thus to preserve the children's free choice by taking into account their father's educational views. In the Court's view, these decisions of the domestic courts were taken without any debate, and hence without any value judgment on the applicant's ideological conceptions and practices (see, a contrario, the Hoffmann, cited above, § 33, and Palau-Martinez, cited above, §§ 37 et seq. judgments)." (pp. 17-18)

Main legal texts quoted in the decision:

European Convention on Human Rights and Fundamental Freedoms

Articles 8, 9, 10, 11 and 14

Cases cited in the decision:

- Antunes Rocha v. Portugal, App. no. 64330/01, 31 May 2005
  ECLI:CE:ECHR:2005:0531JUD006433001
- Bronda v. Italy, App. no. 22430/93, 09 June 1998
  ECLI:CE:ECHR:1998:0609JUD002243093
- Brualla Gómez de la Torre v. Spain, App. no 26737/95, 19 December 1997
  ECLI:CE:ECHR:1997:1219JUD002673795
- Edificaciones March Gallego S.A. v Spain, App. no. 28028/95,
  19 February 1998
  ECLI:CE:ECHR:1998:0219JUD002802895
- Elsholz v. Germany [GC], App. no. 25735/94, 13 July 2000

  ECLI:CE:ECHR:2000:0713JUD002573594
- Hoffmann v. Austria, App. no. 12875/87, 23 June 1993
  ECLI:CE:ECHR:1993:0623JUD001287587

- Palau-Martinez v. France, App. no. 64927/01, 16 December 2003 ECLI:CE:ECHR:2003:1216JUD006492701
- W. v. the United Kingdom, App. no. 9749/82, 08 July 1987 ECLI:CE:ECHR:1987:0708JUD000974982
- Malone v. the United Kingdom, App. no. 8691/79, 02 August 1984 ECLI:CE:ECHR:1984:0802JUD000869179
- T.P. et K.M. v the UK [GC], App. no. 28945/95, 10 May 2001 ECLI:CE:ECHR:2001:0510JUD002894595
- Yousef v. the Netherlands, App. no. 33711/96, 05 November 2002 ECLI:CE:ECHR:2002:1105JUD003371196

Commentary

Post-separation Arrangements and Parental Religious Beliefs: The Appearance of Article 9

This judgment brings back to our attention the (often perceived as difficult) relationship between the child's best interests and a parent's freedom of religion, which lies also at the centre of previous and future case law of the Court in the domain of post-separation arrangements. In *FL v France*, however, the Court reaches an outcome different from previous cases. In *Hoffmann v Austria* (1993) (CUREDI002AU001) and *Palau Martinez v France* (2003) (CUREDI002FR002), the Court had considered the decision to transfer residence rights to the other parent on the sole ground of the applicant's religious beliefs in violation of Article 8 in conjunction with 14. In *Palau Martinez*, the Court had also expressed the need for an *in concreto* assessment of the child's best interests in order to make residence determinations after parental separation. In the case at hand, the Court seems to implicitly follow the same line of reasoning, but eventually declares the application inadmissible, arguing that domestic courts had imposed restrictions on the mother's residence rights in order to pursue the children's best interests.

Apart from the outcome, this case differs from both *Hoffmann v Austria* and *Palau Martinez v France* in two other ways. First, *F.L. v France* does not arise from the

transferral of residence rights from one parent to the other due to the former's religious belief. Here, the complaint lodged by the children's mother concerned the more specific issue of restrictions upon her own residence rights, and therefore a less severe measure. Second, in the case at hand, the Court takes the time to examine the applicant's complaint under Article 9. The separate analysis of claims related to Article 9 is quite exceptional in this context, where the Court tends to centre its review on Article 8, thus generally side-stepping the "religious" dimension of the dispute. In *Hoffmann*, after ruling that a distinction based essentially on a difference in religion alone could not be regarded as acceptable and thus amounted to a breach of Article 8 in conjunction with 14, the Court held that no separate issue arose under Article 9 – neither alone nor in conjunction with Article 14 – as the factual circumstances relied on for the purpose of Article 9 were the same as those at the root of the Article 8 complaint. The same approach can be detected in *Palau-Martinez v France* and, if we take a forward-looking approach, also in decisions and judgments issued after the present one, for instance in *Deschomets v France* (CUREDI002FR003). The Court's focus on Article 9 constitutes therefore a distinguishing feature of *F.L. v France.*

In assessing the compatibility of the French courts' decision with Article 9, the Court insisted on two points. First, it underlined that the restrictions complained of by the applicant realized the children's best interests. A second relevant factor was the fact that domestic courts had abstained from any value judgment in respect of the applicant's religious beliefs. This might be the legacy of *Hoffmann v Austria*, where domestic rulings had been found problematic exactly because of the tone used by domestic courts. Contesting the validity of normative judgments on a parent's religion as justifications for placing restrictions on their residence rights contributes to the Court's anti-stereotyping efforts. Yet, it remains doubtful whether the above exhausts the Court's role *vis-à-vis* religious and cultural diversity. The Court's reasoning in *F.L. v France* does make the religious dimension of the case visible and deems it worthy of a separate analysis. Therefore, unlike *Hoffmann* and *Palau-Martinez*, the Court does not unravel the religiously embedded issue at stake by examining it only through a (more) neutral framework, i.e., Article 8. Yet, paradoxically, the Court seems to appreciate the

neutral stance of the domestic courts when dealing with the case. Hence, although addressed, freedom of religion emerges from the Court's decision in *F.L. v France* more as a framing rather than a substantive issue.

Literature related to the main issue(s) at stake:

General legal literature on the topic that may not be directly connected with the case:

- Jonker, Merel, Mariëtte van den Hoven, and Wendy Schrama. 2016. "Religion and Culture in Family & Law". *Utrecht Law Review* 12 (2): 1–6.
- Tigchelaar, Jet and Merel Jonker. 2016. "How Is a Judicial Decision Made in Parental Religious Disputes? An Analysis of Determining Factors in Dutch and European Court of Human Rights Case Law". *Utrecht Law Review* 12 (2): 24–40.

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