



European Court clarifies what constitutes “family life” between adults under the Convention

The cases [Kumari v. the Netherlands](#) (application no. 44051/20) and [Martinez Alvarado v. the Netherlands](#) (application no. 4470/21) concerned complaints about refusals to grant family reunification.

In both cases the European Court of Human Rights reiterated that there could be no family life between parents and their adult children or adult siblings unless they could demonstrate “additional elements of dependence, involving more than normal emotional ties”. It clarified that the Court’s dependency test required an individualised review of the relationship at issue, and other relevant circumstances. The additional elements could be related to health, financial or material dependence and would often be the result of a combination of those elements.

It found that **Ms Kumari** had failed to show that she was dependent on her son, a Dutch citizen; their relationship did not therefore amount to “family life” within the meaning of the Convention. She had mainly cited health issues commonly associated with old age, which were not of such seriousness that she had been in need of constant care and support, and the Court found that there were no reasons she could not get by on the medical care and support available to her India. It **declared, by a majority, the application inadmissible**. The decision is final.

Mr Martinez Alvarado, on the other hand, who had an intellectual disability which meant that he functioned at the level of an 8-year-old child, had convincingly shown that he totally relied on the care and support in his daily life of his four sisters, who all lived in the Netherlands. He had been cared for by his parents in Peru until their deaths in 2015 after which he had been taken to the Netherlands by his eldest sister. Their relationship did amount to “family life” under the Convention and the Court found his case admissible.

It went on to hold, unanimously, in today’s **Chamber judgment**¹ in Mr Martinez Alvarado’s case that there had been a **violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights. It found that the national authorities had erred in focusing primarily on the fact that his sisters had not been involved in his daily care prior to their parents’ deaths. Nor had it been established that there were viable alternatives for people with mental disabilities in Peru who tended to be cared for by relatives. They had therefore carried out their analysis in a manner which was not consistent with the principles outlined in the Convention.

Principal facts

The applicant in the first case, Usha Kumari, is an Indian national who was born in 1964 and lives in Patna (India).

In 2015 she applied for a provisional residence visa in the Netherlands so that she could live with her son, who is a long-term resident and a Dutch citizen. She argued that her son and his spouse needed her support to cope with the recent death of their prematurely born daughter.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

She subsequently added in the domestic proceedings that her health was deteriorating and she was dependent on her son. She submitted doctors' statements attesting to her poor health, which included hypertension, osteoarthritis, depression and impaired vision.

The applicant in the second case, Wilder Liborio Martinez Alvarado, is a Peruvian national who was born in 1978. He has an intellectual disability, which means he functions at the level of an 8-year-old child, and is looked after in the Netherlands by his four sisters, who are long-term residents of the Netherlands and/or Dutch citizens.

He was cared for by his parents in Peru until their deaths in 2015 after which he was taken to the Netherlands by his eldest sister. He applied for a residence permit in 2017, arguing that he was fully dependent on his sisters for his daily care.

In both cases the migration authorities and ultimately the courts – in 2019 and 2020, respectively – dismissed the applications. The authorities, essentially, were not convinced that there were additional factors of dependence, other than normal emotional ties, between the applicants, who are adults, and their son / sisters. They therefore found that the applicants had not shown that their relationship had amounted to “family life” within the meaning of the European Convention.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) of the European Convention, both applicants complained that not allowing them to reside with their son/sisters had been contrary to their right to respect for family life. They notably argued that they had shown that they were dependent on their son/sisters and that their relationships should thus have come under the protection of Article 8 of the Convention.

The applications were lodged with the European Court of Human Rights on 23 September 2020 and 6 January 2021, respectively.

Each ruling was given by a Chamber of seven judges, composed as follows:

Ioannis **Ktistakis** (Greece), *President*,
 Peeter **Roosma** (Estonia),
 Jolien **Schukking** (the Netherlands),
 Georgios A. **Serghides** (Cyprus),
 Darian **Pavli** (Albania),
 Andreas **Zünd** (Switzerland),
 Oddný Mjöll **Arnardóttir** (Iceland),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Firstly, in both cases the Court clarified its guiding principles on what constituted a “family life”. It reiterated that family life under Article 8 was normally limited to the core family and that there could be no family life between parents and adult children or adult siblings unless they could demonstrate “additional elements of dependence, involving more than normal emotional ties”.

The additional elements of dependency would often be the result of a combination of factors, for example related to health, financial or material dependence. The Court provided case-law examples by way of further clarification.

The Court's dependency test thus required an individualised review of the relationship at issue, and other relevant circumstances.

The assessment of whether a relationship between adult family members constituted "family life" should be based on the situation up to when the request for family reunification became final.

Kumari case

The Court found that the facts and circumstances of Ms Kumari's relationship with her son had not shown any such additional dependence at the relevant time.

As concerned the applicant's son, there was no evidence which would suggest that his post-traumatic stress disorder after the death of his daughter had been so severe as to entirely incapacitate him. Indeed, he had been steadily employed in the Netherlands and able to function in his everyday life – together with his spouse and sons – also at times when his mother had not been temporarily visiting him in the Netherlands.

Similarly, Ms Kumari had not shown that she had been in need of constant care and support from her son. Her alleged dependence stemmed from various health issues linked to old age. There were no reasons she could not get by on the medical care in India and by support from her daughter, housekeeper, neighbours and friends. Her son could continue to provide financial assistance from abroad.

The Court concluded that Ms Kumari's relationship with her son had not constituted "family life" within the meaning of the Article 8, and rejected her application as inadmissible.

Martinez Alvarado case

The Court found, however, that the relationship between Mr Martinez Alvarado and his sisters had constituted "family life" within the meaning of the Convention at the relevant time.

In particular, there was no doubt that his disability incapacitated him to the extent that he had been compelled to rely on his sisters' care and support in his daily life since the death of his parents in 2015. The Court saw no reason for the domestic authorities to have primarily focussed their "family life" assessment on the fact that his sisters had not been involved in his daily care prior to 2015.

The Court considered that Mr Martinez Alvarado had not been required under Article 8 to demonstrate his exclusive dependency on his sisters. It also noted that he had substantiated that his brother, who lived in Peru, could not provide such care as he travelled frequently for work. The Government, on the other hand, had not convincingly shown that there were viable alternatives for people with mental disabilities in Peru who tended to be cared for by their family.

Lastly, the Court emphasised that, as argued in the domestic proceedings, Mr Martinez Alvarado's perception of society was very limited, that his immediate family circle constituted most of his world and that for people outside this circle his communication was often incomprehensible.

The Court concluded that "additional elements of dependency, other than normal emotional ties" had been shown to exist in Mr Martinez Alvarado's case and declared his complaint admissible.

It went on to point out that the national authorities' assessment of the case had been limited to analysing whether Article 8 was applicable (namely, whether family life had existed between the applicant and his sisters for the purposes of the Convention). That analysis had not been carried out in a manner consistent with the principles outlined in the Convention and the Court's case-law, in violation of Article 8.

Just satisfaction (Article 41)

The applicant did not submit a claim and the Court considered that there was therefore no call to make an award in respect of just satisfaction.

The rulings are available only in English.

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