

Approach of the European Court of Human Rights in Delineating the Concept of the Best Interests of the Child in Relation to the Right to Family Life in Asylum Procedures (Original Research)

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Extended Abstract

1. Introduction

The present article examines the European Court of Human Rights' (ECtHR) approach in defining the "best interests of the child" within asylum procedures, particularly concerning the right to family life (Article 8 ECHR). Against the backdrop of migration crises from conflicts in Syria, Afghanistan, and Ukraine – where over 30% of EU asylum applicants are children – the research explores how the ECtHR reconciles states' border control imperatives with children's fundamental rights under the European Convention on Human Rights (ECHR) and the UN Convention on the Rights of the Child (CRC).

2. Research Gap and Objective

Despite the codification of the "best interests" principle (CRC Article 3), its objective definition and consistent application in asylum contexts remain contested. States exhibit divergent interpretations, leading to discriminatory practices and inadequate protection for vulnerable groups like unaccompanied minors. This study addresses the aforementioned gap by analyzing how the ECtHR's jurisprudence clarifies the principle's operationalization within Article 8 of the ECHR, aiming to establish a coherent legal standard for balancing child welfare against State interests.

3. Methodology

The research employs a qualitative legal analysis of landmark ECtHR

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judgments (e.g., *Biao v Denmark*, *Popov v France*, *Mugenzi v France*). It utilizes doctrinal analysis to extract key interpretive principles and comparative case study methods to identify jurisprudential trends and inconsistencies in applying the "best interests" standard within asylum-related family life disputes.

4. Key Findings

The ECtHR institutionalizes the child's best interests through a "fair balance test" under Article 8, anchored in three core principles:

Non-Discrimination: Prohibiting distinctions based on ethnicity, residency status, or marriage timing (e.g., *Biao*, *Hode and Abdi*).

Necessity: Requiring direct assessment of harm to a child's wellbeing and justifying restrictions only for "pressing social needs" (e.g., *Popov vs. Asim Hasanali*).

Proportionality: Requiring State measures to be the least harmful and proportionate to risks (e.g., *Mugenzi* rejecting unscientific age assessments; *Rodrigues da Silva* rejecting economic justifications overriding family life).

5. Contribution to the Field

This research provides a systematic framework of the ECtHR's evolving "best interests" doctrine within asylum law. It demonstrates how the Court transforms an abstract principle into actionable legal criteria (non-discrimination, necessity, proportionality), thereby filling a critical gap in understanding the practical enforcement of children's rights at the intersection of international human rights law and migration governance.

6. Implications and Applications

The findings necessitate concrete reforms in terms of policy, practice, legal advocacy, and international cooperation. Reforms in terms of policy could be the development of EU-wide guidelines for assessing child-specific vulnerabilities (age, trauma, origin-country risks). With respect to practice modifications specialized training for asylum authorities and independent monitoring of reception conditions are required. And from the perspective of legal advocacy strengthened reliance on ECtHR precedents to challenge discriminatory national policies is necessary. With regard to International Cooperation, enhanced collaboration to combat trafficking and improve origin-country conditions leads to reducing push factors is of great significance.

7. Conclusion

The ECtHR has significantly advanced the operationalization of the child's best interests in asylum contexts through its Article 8 jurisprudence. However, persistent challenges – including definitional ambiguity, policy disparities among states, and conflicts between public order and child welfare – hinder consistent implementation. Realizing this principle requires prioritizing refugee

children as rights-bearing individuals through harmonized EU policies, capacity building, and robust monitoring. This shift from border-centric to dignity-centric approaches is essential for the future of rights-based international migration law.

Keywords

European Court of Human Rights, the best interests of the child, Asylum Procedures, the right to family life

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