

Re M (Petition to European Commission of Human Rights)

[1997] 1 FLR 755

22/08/1996

Barristers

Henry Setright KC
Michael Sternberg OBE KC

Court

Family Division

Facts

Following a decision in wardship proceedings, confirmed by the Court of Appeal, that a Zulu boy should be returned to his natural parents in South Africa, the white South African woman who had cared for the boy in England and wished to adopt him applied to the Family Division for directions as to whether or not leave was required for a petition to the European Commission of Human Rights on behalf of the ward under Art 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950. It was submitted by the applicant that leave was not required, and alternatively that if it was it should be granted. Her submissions were supported by the Attorney-General but opposed by the Official Solicitor and the natural parents.

Held

Held -

(1) Despite the limited powers of the Commission, particularly the absence of any power bearing directly on the life of the boy, and despite the fact that neither the Convention nor the judgments of the Commission formed any part of English law, nevertheless the UK Parliament had by clear implication abrogated the jurisdiction of the English court to fetter the exercise of the right to petition under Art 25. The commitment of the UK Government to the Convention, its ratification by Parliament and the approval of the European Commission and Court of Human Rights (Immunities and Privileges) Order 1970, specifically para 5 of that Order, were inconsistent with the existence of any continuing requirement that a ward of the English court should obtain the leave of that court before initiating proceedings before the Commission.

(2) If leave were necessary it should be granted, in recognition of the commitment of the UK Government to the Convention, notwithstanding that the continuation of proceedings could not be in the interests of the boy, because this was not a procedure for deciding the future welfare of the boy, and not a matter in which his interests were paramount.

(3) While recognising that the matter should be one for the Commission, in the court's opinion it would not be appropriate for the petition on behalf of the boy to be brought by the applicant. The Official

Solicitor should decide whether such a petition should be brought and if so should bring it on the boy's behalf.

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