

REVIEW STATEMENT

Thesis topic: How can the ECtHR case-law on family migration be more consistent and fair?

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Study programme: International and European Law

(a) an assessment of the relevance of the dissertation to the study field

The present dissertation is interested in a topical issue, particularly in relation to the requirement of constant decision-making and predictability of the law, including legal certainty. It is relevant in particular in the field of family law and the protection of the rights of migrants or families, in the light of the events of recent weeks, it is, moreover, a highly topical subject also in terms of application practice. International law, the protection of human rights and countries' obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms, which take precedence over national laws, should be explicitly protected, and the topic presented and its treatment in the dissertation makes an important contribution to academic discourse, but also critically highlights the practice of application.

(b) comment on the problem-solving process, the methods used and the achievement of the stated objective

In the present work, the author has defined the problem, namely inconsistency and unfairness in the decision-making of the European Court of Human Rights, in issues related to the protection of the right to family life. The thesis is based on an analysis, but it does not state that it is ad 1) a qualitative analysis, ad 2) a comparative analysis, when in the methodological part she states that she will compare both the legislation and the case-law of the European Court of Human Rights and the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Court of Justice of the European Union and the provisions of the law of the European Union, as well as of the Convention on the Rights of the Child. The author states in the methodology section that this is traditional doctrinal research, but is it possible to conduct doctrinal research if the author herself formulates her question on the basis of an initial *de lege lata* assessment of the current state of the art that there are inconsistencies in the protection of the right to family life, with a particular focus on migrants and their families? Moreover, the purpose of doctrinal research is the scientific investigation of the applicable law and is relevant to administrative clarification of the meaning and content of the law, but not for recommendations for legal practice, which is, on the contrary, the object of normative legal research, since a normative legal research is usually known as a study of documents, utilizes a qualitative method in analyzing data, and using secondary data as the source, such as regulation, court decisions, books, legal theories, and doctrines. This approach is supported by the three consecutive main research objectives formulated by the author, namely: "to determine whether the inconsistent case law can be helped by the influence of EU regulations and the CJEU case-law; to find out whether the unequal

level of protection in different migration cases can be reduced by determining all cases under the same test and distinguishing cases based on family matters instead of migration status; to clarify whether the application of the best interests of the child can be more certain and predictable by examining the full range of relevant rights in the CRC and by providing guidance on which factors it would weigh more heavily in the balancing exercise.” Stated research objectives and questions are precise and provide author the space for the research.

As to the achievement of the stated objective, by the precise follow of the structure as mentioned in the methodology, the author had been able to deeply elaborate on the definition and application practice in relation to right to family life in three different but connected legal systems. I appreciate also the selection of cases as examples on the differentiation of right to family life application, which provides author sufficient basis for assessment and identification of factors of inconsistency and the final recommendations. I can conclude, that author had achieved the objectives as stated, she was able to determine inconsistency and its causes, especially in chapter 3.1.2.; as well as finding out the differentiation of dealing immigration cases and finally also to clarify and justify need of precise and more rigid definition of the best interest of the child, especially in relation to migration and migration control including the process of socialization and reunification of family (see chapter 3.3.2.).

(c) an opinion on the results of the dissertation and on the specific contribution of the author of the dissertation

The dissertation presents substantial findings, justified by concrete decisions, supporting the author's hypothesis of inconsistency of approach in the ECtHR's jurisprudence on the protection of the right to family life. I particularly appreciate the results achieved in relation to the identification of the factors that lead to these inconsistencies. The author's contribution to the development of international and human rights law in the European environment is very important, as research on the interconnection of two, in principle three, human rights protected in a multi-level system in the European environment has not been carried out to such an extent. Moreover, the precision of the author's treatment covers several aspects related to the protection of the right to family life in the context of the migratory flows that Europe has faced in the last decade, as well as the influx of un-accompanied minors who are subject to a special legal regime for the protection of children's rights, their right to family life and the safeguarding of the child's best interests. The identification of the problem with the application of the best interests of the child in decision-making and its comparison with the requirements of the Convention on the Rights of the Child allowed the author to define the framework within which the ECtHR should decide in order to balance the requirements of the Convention on the Rights of the Child, the Convention for the Protection of Human Rights and Fundamental Freedoms, and first and foremost the rights of the child in the difficult situation in which he/she has found himself/herself because of the escape from the home country. This I personally consider as the most valuable part of the thesis itself.

(d) other comments, in particular comments on the structure, clarity, formal requirements and language of the dissertation

The presented work is very well structured, the individual chapters are logically interconnected and at the same time create a space for understanding the interconnection of the multilevel system of protection of the right to family life, with a specific focus on the protection of these rights of migrants and with an emphasis on the rights of children, their best interest and the protection of migrant family. Author had fulfilled stated formal requirements for the dissertation thesis, it is written in good English, the flow of the text is readable and understandable. The stated arguments are well justified and the range of used sources confirms author's capability to work with different legal sources, including case law and contemporary literature. The critical approach based on the facts-finding allow her to assess the situation in relation to application of the right for family life in transparent and scientific way.

(e) a statement as to whether the submitted dissertation is recommended for defence

According to previous assessment on thesis, I recommend it for oral defence.

Conclusion

The author's own conclusions, which are partly presented after the individual chapters of the thesis, clarify the detailed elaboration of the topic. In the conclusion, the author summarizes the partial conclusions and reflects the chosen objectives of the thesis. The thesis itself, by its content and reference to a large number of sources, can thus be used not only for academic purposes, but also as a basis for applied practice or replicated research in similar areas of human rights protection, especially with regard to the precise theoretical definition, the legal regulation of the obligation to apply the principle of human rights protection, as well as the international context.

In her work, the author has fulfilled the stated objectives, rka demonstrated the ability to think analytically, to establish and subsequently verify hypotheses and to formulate her own scientific conclusions. From the formal point of view, the thesis meets the requirements for this type of work in its form and structure.

As part of the defence of her dissertation, the author could reflect on the question whether, in light of the principle of rule of law and legal certainty, as well as previous inconsistent decision-making, cases related to the protection of the right to family life should not be in the new context of migration flows always referred to the Grand Chamber of the ECtHR, to ensure the effective protection of the right to family life, including an assessment of compliance with the related obligations towards the European Union as well as the international community, with regard to the protection of the best interests of the child as well as the right to family reunification. To what extent do you consider such a solution feasible

and sustainable, taking into account the need to protect the right to family life as well as the existing burden of the ECHR?

**After a successful defence, I propose to award the candidate the degree of
philosophiae doctor - PhD.**

In Bratislava, 4th May 2022

A handwritten signature in blue ink, appearing to read 'Mokrá', with a long vertical stroke extending downwards from the left side.

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