

ABC (Appellant) v Principal Reporter and another (Respondents) (Scotland); In the matter of XY (Appellant) (Scotland) [2020] UKSC 26

The issues considered

The two appellants in this joint appeal sought to challenge the operation of the statutory framework conferring the status of “relevant persons”, which grants procedural rights in Scotland’s children’s hearing process. These include the right to access to relevant documents before a hearing, to not accept grounds for referral, to legal representation and the right to appeal a panel’s decision. This status is usually given to those with parental responsibilities.

ABC, a 16-year-old, sought to be deemed a relevant person in respect of his younger brother, DEF, who was made subject to a Compulsory Supervision Order (‘CSO’). This status was rejected, although ABC was allowed to express his views at later hearings.

XY, a 24-year-old, sought to be deemed a relevant person in relation to his three younger sisters, the eldest of which did not want him to be a relevant person in her case. XY was denied the status of relevant person both through the children’s hearing as well as on appeal.

The fundamental question in both appeals was whether the Children’s Hearings (Scotland) Act 2011 and subordinate legislation sufficiently provides siblings with decision-making opportunities without deeming them to be relevant persons. If not, the issue is whether this constituted a violation of the appellants rights under Article 8 ECHR.

The court decision

Whilst recognising the important role siblings play in a child’s life, the Court denied the appeal.

In terms of Article 8, the Court considered the relevant Strasbourg jurisprudence. The Court noted that the right to respect for family life is not limited to vertical marriage-based relationships and can encompass other family ties per pursuant to *Nazarenko v Russia*,¹ and cited *Akin v Turkey*² when highlighting how denial of sufficient contact with siblings can amount to a violation of Article 8 [28]. However, the court also cited the case of *Boyle v United Kingdom*,³ where the denial of contact would not necessarily amount to a violation of Article 8 so long as the restriction of access does not deny a reasonable opportunity to maintain the relationship. Therefore, there was scope for refusing the appeal on Article 8 grounds.

The Court went on to consider the operation of 2011 Act, and the adjustments made to the applicable procedures in light of the two appeals. Various statutory provisions and recommended practices already support the role of siblings in the children’s hearing system. For example, it is now practice for notices of hearings to be given to siblings deemed to be sufficiently mature [32]. The 2011 Act also grants the chairing member of the children’s hearing discretion to allow a person to attend if it is necessary to the matter being considered.⁴ Reporters overseeing the hearing system are advised to invite siblings where they have an ongoing relationship with the child and are sufficiently mature.⁵ The principal reporter also has the power to request information on the child’s family context.⁶

¹ *Nazarenko v Russia* (2019) 69 EHRR 6, para 56.

² *Akin v Turkey* (Application No 4694/03) (unreported) 6 April 2010.

³ *Boyle v United Kingdom* (1995) 19 EHRR 179, para 46.

⁴ Children’s Hearings (Scotland) Act 2011 s78(2)(a).

⁵ Scottish Children’s Reporter Administration Practice Directive (2019), Direction 3, para. 9.2.

⁶ Children’s Hearings (Scotland) Act 2011 s66(4).

The Court noted that there were a range of measures in place supporting the Article 8 rights of family members which should be sufficient if conducted practically and sensibly [41].

The issue of the right to obtain the status of relevant person primarily fell on the interpretation of the Courts' earlier judgement in *Principal Reporter v K*,⁷ which broadened the definition of relevant person⁸ to include those "who appears to have established family life with the child with which the decision of a children's hearing may interfere"⁹. However, the court noted that a non-contextual approach to this definition would be too broad, allowing anyone who established a family life with the child to be a relevant person [44]. This provision was designed to apply primarily to unmarried fathers and others with a similar significant involvement in a child's upbringing [45]. The Court also noted the substantial access a relevant person has to documents covering a range of private matters concerning the child, underscoring its caution in denying an automatic right to such information [48].

However, the Court identified shortcomings in the children's hearing system, highlighting a need for individual enquiries into a child's relationship with their siblings when considering a CSO [52]. Moreover, the Court considered it necessary that public authorities be aware of the Article 8 interests of siblings and other family members with similar connections to the child, and that such individuals should be informed of the nature of the proceedings and their respective rights [53].

Significance

The cases of ABC and XY exposed the deficiencies of the children's hearing system in respect of siblings. Although not successful on the appeal itself, the challenges encouraged a more robust practice. Although siblings do not share the same rights a parent or similar figure would, they are now involved to a more reasonable degree in the children's hearing system when compared to the system's introduction in 2011, for example by notifying sufficiently mature siblings¹⁰ and emphasising the maintenance of sibling relationships.¹¹ In terms of precedent, the appeals of ABC and XY lead the Court to more narrowly define the scope of *Principal Reporter v K* by emphasising the need for a context-based approach when considering who is deemed a relevant person.

The range of measures the court deemed sufficient to protect siblings' interests remains a rather confusing mixture of statute, secondary legislation, and practice guides. The result is a lack of clarity. There may be an increase in subsequent judicial reviews in order to drive the point home and tighten the procedural rights and considerations relevant to siblings.

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⁷ *Principal Reporter v K* [2010] UKSC 56.

⁸ Children (Scotland) Act 1995, s93(2)(b)(c).

⁹ *Principal Reporter v K* [2010] UKSC 56, para. 69.

¹⁰ *ABC v Principal Reporter and another; In the matter of XY* [2020] UKSC 26, para. 32.

¹¹ Children's Hearing Practice and Procedure Manual (2019), paras 8.26-8.27.