



**INTERNATIONAL HUMAN RIGHTS**  
**LouvainX online course - prof. Olivier De Schutter**

**READING MATERIAL**  
**related to: section 4, sub-section 2: The duty to protect and conflicting rights**

**European Court of Human Rights (2<sup>nd</sup> sect.), *E. and Others v. the United Kingdom* (Appl. no. 33218/96), judgment of 26 November 2002:**

[The four applicants, E., H., L. and T., born between 1960 and 1965, are the sons and daughters of a woman who cohabited with W.H. after the death of their father in 1965. The family were known to the social services of Dumfries and Galloway Regional Council (designated in the judgment as ‘the local authority’). They were principally concerned from 1970 onwards in relation to the mother’s severe financial difficulties. In 1977, W.H. was arrested by the police and charged with indecently assaulting two of the applicants. He entered a guilty plea concerning those charges. The pleas were accepted by the prosecution and the case proceeded on the basis that W.H. had committed one act of indecency against E. between 20 October 1972 and 31 August 1976, and two acts of indecency against L. between 1 January 1975 and 7 January 1977. W.H., however, was not detained pending sentence. Instead, he returned to live at the applicants’ home. He was then sentenced two years’ probation, and the understanding was that he was not permitted to live in the family home due to the nature of the offences. Only in 1988 did the applicants report a history of sexual abuse by W.H. in the family. In 1992, the four applicants brought proceedings against the local authority seeking damages on the basis that the local authority had failed to carry out its statutory duties, in particular, that W.H. had breached his probation order by residing at the family home and that the social services had, or ought to have, known this and had failed to report the breach to the court or to take the children into care. They agreed however to the dismissal of their action, in the light of the case-law of the House of Lords in *X. and Others v. Bedfordshire County Council* ([1995] 3AER 353). Three of the applicants did receive a compensation from the Criminal Injuries Compensation Board.]

88. Article 3 enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment. The obligation on High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals (see *A. v. the United Kingdom* judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2699, § 22). These measures should provide effective protection, in particular, of children and other vulnerable persons, and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (*mutatis mutandis*, *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, § 116).

Thus a failure, over four and a half years, to protect children from serious neglect and abuse of which the local authority were aware disclosed a breach of Article 3 of the Convention in the case of *Z. and Others v. the United Kingdom* ([GC] no. 29392/95, ECHR 2001-V, §§ 74-75).

89. The Court recalls that the four applicants allege that they suffered sexual and physical abuse from W.H. over a long period of time. There is no doubt that the treatment described [...] falls within the scope of Article 3 of the Convention as inhuman and degrading treatment. [...]

92. The question therefore arises whether the local authority (acting through its Social Work Department) was, or ought to have been, aware that the applicants were suffering or at risk of abuse and, if so, whether they took the steps reasonably available to them to protect them from that abuse.

93. The parties appear agreed that it is the period after January 1977 which is in issue [...]. The parties do disagree whether the authorities should have been aware of the abuse that continued thereafter.

94. The Court recalls that until T. made disclosures of sexual abuse to her social worker in 1988 there is no indication that any of the children in the house made any complaint about W.H.'s ongoing assaults after January 1977. The Government take the view that there was nothing to alert the social workers that he continued to be a risk and that in the light of knowledge and practice at the time the fact that he had been found in the family home after the conviction in January 1977 would not have been regarded as any significant cause for alarm or have provided sufficient ground for action against him.

95. However, the Court notes that the Government accept that even if it was not a formal condition of his probation it would have been understood that W.H. was no longer permitted to reside in the applicant's home. [The Court lists a number of factors which seem to converge to illustrate the dangerous character of W.H., who had been charged with a series of serious sexual offences against two children of the family indicating a background of repetitive offending].

96. The Court is satisfied that from these elements that the social services should have been aware that the situation in the family disclosed a history of past sexual and physical abuse from W.H. and that, notwithstanding the probation order, he was continuing to have close contact with the family, including the children. [...]

97. Yet the social services failed to take steps which would have enabled them to discover the exact extent of the problem and, potentially, to prevent further abuse taking place. The Government have accepted that after the initial disclosures the social services should have worked with both E. and L. who had shown significant distress at the situation at home which could have led to further understanding of family dynamics; and, most importantly, that the social services should have referred L. to the Reporter of the Children's Hearing, which could have led to a supervision requirement over one or more of the children who had been living with a known and convicted offender.

98. In addition, the Government have accepted that more should have been done to investigate the possible breach by W.H. of the probation order, that there was a consistent failure to place the full and relevant details of the family situation before the Sheriff's Court or Children's Hearing when the applicant children were the subject of a specific examination in the context of offending and truancy [...], and that there was no effective co-operation or exchange of information between the school authorities which were attempting to deal with a persistent truancy problem and the social services who had access to the information about the wider family situation and history. It is also not apparent that E.'s disclosures at the hospital in December 1976 were passed to the social services or that, if they were, they led to any response.

99. The Court recalls that the Government argued that notwithstanding any acknowledged shortcomings it has not been shown that matters would have turned out any

differently, in other words, that fuller co-operation and communication between the authorities under the duty to protect the applicants and closer monitoring and supervision of the family would not necessarily have either uncovered the abuse or prevented it. The test under Article 3 however does not require it to be shown that “but for” the failing or omission of the public authority ill-treatment would not have happened. A failure to take reasonably available measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State.

100. The Court is satisfied that the pattern of lack of investigation, communication and co-operation by the relevant authorities disclosed in this case must be regarded as having had a significant influence on the course of events and that proper and effective management of their responsibilities might, judged reasonably, have been expected to avoid, or at least, minimise the risk or the damage suffered.