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It would be convenient to posit that, where the State is expected to intervene in private relationships to *protect* a right, there would be a limit to any such intervention, which is its duty to *respect* any conflicting right. That was, after all, the position of the European Court of Human Rights in *Osman v. the United Kingdom*, the 1998 case where the Court had to address the question whether the British police had done enough to protect the Osman family from the threatening behaviour of Mr Paget-Lewis, a high school teacher of Ahmed Ali Osman. But does this priority of the duty to respect over the duty to protect always lead to satisfactory outcomes? Consider the case of *E. and Others v. the United Kingdom* (/c4x/LouvainX/Louv2.01x/asset/_Materials__Duty_to_Protect_and_conflicting_rights_-_E_and_Others_Final_.pdf).

Help

READING E AND OTHERS V. THE UK - EXERCISE (2/2 points)

Please consider the following questions relating to the case of *E. and Others v. the United Kingdom*:

1. The United Kingdom argued before the Court that "in the light of knowledge and practice at the time the fact that [W.H., the companion of the mother of the applicants] 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". Is this a strong argument, in your view? Which of the following statements is correct:

- ☐ The responsibility of the British social services is to be assessed on the basis of the information available to them at the relevant time;
- ☐ The responsibility of the British social services is to be assessed on the basis of the information they could have obtained, if they had acted with the required due diligence to seek to know more about the conduct of W.H.;
- ☒ The responsibility of the British social services is to be assessed on the basis of the information they could have obtained, if they had acted with the required due diligence to seek to know more about the conduct of W.H., with due regard however with the right to respect for private and family life of both W.H. and the other members of the household; ✓
- ☐ The responsibility of the British social services is to be assessed on the basis of the information they were provided by the victims of abuse, who should have stepped forward earlier.

2. The violation by the UK authorities of Article 3 of the European Convention on Human Rights for failure to protect the applicants from abuse by W.H. because of an insufficiently close monitoring of the household can be established

The duty to protect v. the duty to respect - Re...

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- ☐ if it is shown with certainty that, by monitoring more closely the situation of the household, the social services would have been able to prevent the abuse;
- ☒ if it is shown that a closer monitoring of the situation of the household by the social services would have had a real prospect of allowing them to prevent the abuse; ✓
- ☐ if it is shown that, by monitoring more closely the situation of the household, the social services could potentially have done more to prevent the abuse, though whether they would have succeeded in preventing it may be highly uncertain.

Check

Hide Answer(s)



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