

## The Child's Contact with Grandparents

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## ARTICLE

# The Child's Contact with Grandparents

prof. M. Holdgaard\*

*"My grandfather has a super cool machine. A typewriter! And do you know what? What he writes come out on paper just like that – without a printer!"<sup>1</sup>*

Quotation from a six-year-old boy in an interview on his relationship with his grandparents

## 1. Introduction

Grandparents hand down their experiences, knowledge, traditions and values to their grandchildren. As a high level of grandparental involvement may play an important role in a child's well-being, legal protection of that family relation may be in the best interest of a given child.

This introductory article frames two other articles that analyze the developments and challenges that are found in domestic and international law when dealing with the issue of contact between grandparents and grandchildren in societies with changing family structures and norms. These three articles – including this one – create a thematic map in this journal.

The two articles are the outcome of a conference held in Denmark in 2019 on the topic Grandparents in Families: Law, Practices and Policies. Both articles were first presented at the Second Annual Conference of the research centre, Family Law, Practices and Policies (FamLaPP) at Aalborg University, Denmark.<sup>2</sup>

The articles are written by the professors Kirsten Sandberg, *Grandparents' and Grandchildren's Right to Contact with their Grandchildren under the European Conven-*

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1 Translation of a Danish quotation from a six-year-old Danish boy in an interview on his relationship with his grandparents. ("Min bedstefar har en super sej maskine. En skrivemaskine! Og ved du hvad? Det han skriver, det kommer ud på papir, helt uden printer!"). Ældre Forum, *Ældre som bedsteforældre – bedsteforældres rolle i børn udvikling og sociale indskoling* (In English: *Seniors as grandparents – the role of grandparents in the development and socialisation of children*), Ældre Forum 2005, p. 18.

2 The workshop was funded by NOS-HS – the joint committee for Nordic research councils in the humanities and social sciences. FamLaPP is headed by Marianne Holdgaard, Professor of family and inheritance law at Aalborg University. The FamLaPP center as well as the conferences were established in close cooperation with Dr Terje Stordalen, Professor of Hebrew Bible/Old Testament Studies, University of Oslo, and Ph.D. Bettina Lemann Kristiansen, Professor, University of Aarhus, Denmark for which I am very grateful. Both are members of the steering committee.

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*tion on Human Rights*, and Jordi Ribot Igualada, *Enhanced Statutory Contact Rights for Grandparents under Spanish and Catalan Laws: A Critical View*.<sup>3</sup>

It can be argued that there often is continuing interaction between family law, the more general cultural norms in society on the perception of what constitutes a family and how family life should be, and actual family practices and structures. This is certainly relevant to have in mind when addressing the legal protection of the familial relationship between grandparents and grandchildren.<sup>4</sup> This is also illustrated in the two articles identified above.<sup>5</sup>

## 2. Changing Family Practices and Law

The understanding at the outset of this article on what qualifies as a “real” family in terms of the regulation of the family structure within family law is the nuclear family, the (married) couple with joint children – also in regard to the legal regulation of contact rights. A lack of legal regulation offering protection impacts individuals in other family relations or structures – for example, grandparents and grandchildren.

There are many reasons why a family structure may be different from the traditional nuclear family. One reason could be the death of one parent, or the parents’ divorce and then, perhaps, re-partner. Many people are, themselves, the child of, or the parent or partner in a non-nuclear family. This can include grandparents who themselves might be in a second marriage.

The societal changes in family practices and family structures do often have an impact on the relationship between grandparents and grandchildren. An important aspect of grandparents being utilized more as informal caregivers for their grandchildren is the increasing number of divorces and cohabiting couples with children splitting up.

A common continuation at the end of the relationship between parents is that the parents who have split up will establish their new families when re-partnering. The children will be part of these two new households and have a different family structure, which includes both households.

New family structures created through the breakdown of the nuclear family are reflected in the following examples: where both spouses have children of different marriages, families with yours and/or mine and joint children, single parents raising siblings in cooperation with the other parent – who might have remarried (per-

3 Special thanks goes to Professor Jens M. Scherpe, Cambridge University, Honorary Professor at Aalborg University, who came up with the topic, and to Professor Nancy E. Dowd, University of Florida, Distinguished Visiting Professor at the Department of Law, Faculty of Social Sciences, Aalborg University who brought in Dr. Clare Huntington, Fordham University, Joseph M. McLaughlin, Professor of Law, as well as Teresa Drake, University of Florida, Director, Intimate Partner Violence Assistance Clinic for to participate in the conference. Both Nancy Dowd and Jens Scherpe are on the advisory board at FamLaPP.

4 M. Jappens and J.V. Bavel, ‘Regional family norms and childcare by grandparents in Europe’, *Demographic Research* 2012 vol. 27, article 4, p. 86-87, p. 90, 93-95 and p. 111-113.

5 See K. Glaser, D.J. Price, G.D. Gessa, E. Ribe, R. Stuchbury, and A. Tinger, ‘Grandparenting in Europe: family policy and grandparents’ role in providing childcare’, *Grandparents Plus* 2013, p. 14, 57-60, 77-79.

haps a same-sex marriage). However, this is of course not an exhaustive list of new family structures created by the breakdown of the nuclear family.

Some more examples that might have an impact on the relationship between grandparents and grandchildren are seen in blended families – for instance, where a mother has children from two previous relationships, marriages or cohabiting couples, and her partner or spouse might not have any children at all. Similarly, a single parent might have children from three previous relationships and perhaps is partnering in a “couples living apart together” scenario. The split up of rainbow families – including more than one same-sex couple, for example two married men raising a child with the child's birth mother (sharing households or not).

Such new family structures may generate the need for more help from grandparents as in the instance of a single mother who works a full-time job and would benefit greatly from her parents' help.<sup>6</sup>

In several of these examples the children's families include three or four parental figures, for instance two biological parents and one or two bonus-parents/stepparents. These types of situations present a potential risk of conflicts within the family when a child's family includes stepparents, and perhaps stepchildren or half-siblings. Grandparents can be alive and wish to maintain close bonds in all of the situations stated in the previous paragraphs. In some of the above-mentioned situations that could possibly have potential conflicts, the grandparents might be motivated to seek contact with their grandchildren, who are under-age.

Some statistics can provide an interesting perspective on the practices of family life. For an example of family practices in a Nordic country, one can look to Denmark to see that grandparents are an important provider of informal childcare – which to some extent is due to a high number of divorces. Denmark and Danish law on the matter will be used as a case in this article.

Roughly 50% of all married couples in Denmark divorce. The number of divorces is higher for spouses with joint children under the age of 18 than the number divorces of spouses without joint children. More than one third of married couples with joint children divorce before the youngest child turns eighteen, and the most frequent occurrence is when the youngest child is five.<sup>7</sup> The number of cohabiting couples with children who split up is more than twice as much.<sup>8</sup> As a consequence, the number of children living in two different households is relatively high.

Statistically speaking, 50% of grandparents between 60 and 62 years, and 20% of grandparents over the age of 74 regularly take care of their grandchildren.<sup>9</sup> The average grandparent is around 70 years of age and has two grandchildren under 18.

6 See for instance, V. Timonen, M. Doyle, and C. O'Dwyer, 'The Role of Grandparents' in Divorced and Separated Families', *School of Social Work and Social Policy* 2009, p. 174-180, and M. Jappens, *et al.* 2012, p. 87.

7 Danmarks Statistik, *Fald i skilsmisser blandt par med og uden børn*, available at [www.dst.dk/da/Statistik/nyt/NytHtml?cid=30085](http://www.dst.dk/da/Statistik/nyt/NytHtml?cid=30085) (last accessed: 22 November 2020).

8 Danmarks Statistik 'Børn og deres familier', p. 62.

9 Ældre Forum, *Ældre som bedsteforældre – bedsteforældres rolle i børns udvikling og sociale indskoling* 2005, p. 6-8. Denmark has a very high level of grandparents that provide grandparental childcare when seen in a European context; see K. Glaser, *et al.* 2013, p. 11 and 13.

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Half of these grandchildren live less than ten kilometers from the nearest grandparent, and the average distance is 8 kilometers.<sup>10</sup>

### 3. Grandparents and Bonus-Grandparents

Blended families – for example, yours, and/or mine, and our common children – provide an example of how it can be difficult timewise to juggle the various situations that might come up. Hence, some children will have not only two sets of grandparents, but four – including biological as well as bonus/step-grandparents. In some instances, the number is even higher, for instance if a father has children with three consecutive spouses. The concept of bonus-grandparents is used here as the word invokes a positive connotation of the relationship between a grandparent and grandchild. In Denmark, for example, the use of the term “bonus parent” has a positive association whereas the term “step-parent” is a more factual description. An illustration of this is where a father’s mother-in-law is the one *bonus*-grandparent among the other (bonus-)grandparents that has the time, energy and opportunity because she lives very close by, and, therefore, also on a short notice has the ability to take care of her grandchildren, if any, as well as her bonus-grandchild.

An additional form of a *de facto* grandparent – extra bonus-grandparent – will also emerge, when, for example, the child’s maternal grandfather has died young and the child’s grandmother has remarried before her grandchild is born.<sup>11</sup> In that case, both the grandmother and her husband, *i.e.*, the grandchild’s bonus-grandfather will often be, in the eyes of the child, her grandparents even without considering the biological aspect of their relationship. Consequently, many children end up with more “grandparents” than their biological grandparents.

Therefore, grandparents might also find themselves in the role of a bonus-grandparent through various family structures where their child does not have biological children but, instead, has bonus-stepchildren. A daughter who marries late in life and has no children of her own and marries a widower with four children is a case in point.

The grandchildren and grandparents – with the generation in between noted as the “sandwich parents” – is the setup here in this article and Spain and Denmark (as an example of the Nordic countries) are the scene. The sandwich parents are the ones that need to facilitate the contact between grandparents and grandchildren.

Due to the changing practices and changing social norms in society, one could argue that the legal protection of grandparents maintaining contact with their grandchildren will become an important legal topic<sup>12</sup> in domestic law and academic discussions in the coming years – a hot topic already as Kirsten Sandberg points out

10 Danmarks Statistik (English: Statistic Denmark), ‘Børn og deres familier’, (In English: *Children and their families*), 2018, p. 8, available at <https://www.dst.dk/da/Statistik/Publikationer/VisPub?cid=31407>, (last accessed: 22 November 2020).

11 It can even happen that the child’s parents have split up (for instance when the child was very young) and both parents have re-partnered as have the biological grandparents..

12 See for instance, K. Glaser, *et al.* 2013, p. 10 and 18.

in her article. Further, this assumption is based on the content of the two above-mentioned articles and the issues dealt with in this introductory article.

#### 4. The Role of Grandparents – Today

In everyday life most children in the Nordic countries are surrounded by many more caregivers than just their legal parents, siblings and grandparents. Children are placed in daycare, kindergartens and schools with whom the parents have an existing agreement outlining the scope and limits of the (pre)school's provision for the care of their children, for instance, who is allowed to pick up the children and when.

But there are also possible informal care givers such as older siblings, grandparents, neighbours, parents to the child's friends, friends of the parents as well as aunts and uncles. The scope and obligations of those types of informal caregivers might not need to be formalized and, yet, these caregivers may make a myriad of small, daily decisions on behalf of the child and the parents – such as what and how to eat, where to play, what to wear, how to behave, or when to go to bed. These individuals, through everyday caregiving, may become significant role models for the child.

Structural differences and cultural factors both play a role in the variations in child-care practices involving the grandparents in Europe. But a considerable share of grandparents throughout the continent undeniably do provide childcare for their grandchildren.<sup>13</sup> As for informal childcare, grandparents as a group are arguably by far the most important providers throughout Europe.<sup>14</sup>

Often, grandparents may not only be the most frequent caregivers, but grandparents also have a socializing role in regard to their grandchildren – possibly in a continued relationship from when the child is born until the grandparent is no longer able to fulfil that role. Grandparents have always handed down their experiences, knowledge, traditions and values to grandchildren – and they still do.<sup>15</sup> Studies have shown how a high level of grandparental involvement plays a vital role in a child's wellbeing.<sup>16</sup>

That is indeed also the case in southern European countries. In his article, Professor Jordi Ribot highlights that the social role of grandparents permeates the enhancing of their statutory rights as a class of relatives and the court practice dealing with contact with grandchildren. As the following quotation from a case before the Supreme Court of Justice of Catalonia shows, the courts are convinced that:

13 See, M. Jappens, *et al.* 2012, p. 86-87, 93-94 and p. 111-113. See also K. Glaser, *et al.* 2013, p. 18.

14 See, M. Jappens, *et al.* 2012, p. 111.

15 See also, P. Viguer, *et al.*, 'Grandparent-Grandchild Relationships from the Children's Perspective: Shared Activities and Socialization', *The Spanish Journal of Psychology*, 2010 vol. 13, no. 2, p. 709-711. See also, *Ældre Forum* 2005, p. 6-8.

16 Oxford University, Research Impact, Grandparents Contribute to Children's Wellbeing, available at [www.ox.ac.uk/research/research-impact/grandparents-contribute-childrens-wellbeing](http://www.ox.ac.uk/research/research-impact/grandparents-contribute-childrens-wellbeing), (summarizing the following: "Research at the University of Oxford has shown how grandparents play a vital role in children's wellbeing and the results have been informing UK family policy").

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“... grandparents, in today’s society, play an important role in socialising their grandchildren. Affective relations, blood bonds, conveying life experiences and the interest in the transmission of ideas and beliefs today, do constitute a personal and cultural heritage of undisputable value for those who are beginning their life journey.”

Grandparents – most often grandmothers – are given that opportunity as important providers of childcare for preschool children and schoolchildren, for instance, by helping parents in picking grandchildren up from school and caring for them during school holidays and when the child is ill.<sup>17</sup> The need for help from a grandparent will increase, for example, when both the child’s parents work, potentially more than full-time, pursuing their careers and/or the parents prioritize a social life of their own.<sup>18</sup>

In fact, the argument has been made that due to recent societal changes grandparents are assuming an increasingly important role in families. As a result of, for instance, the prolonged life duration of people in general, more children will experience a family life with grandparents and, perhaps, also great-grandparents.<sup>19</sup>

“With changing family patterns, increased life expectancy, growing numbers of dual-worker households and higher rates of family breakdown, grandparents are now playing an increasing role in their grandchildren’s lives.”<sup>20</sup>

## 5. Grandparents in Potentially Vulnerable Situations

On the one hand, there might be more of a need for practical help from a grandparent as an important informal caregiver which in itself could result in a closer relationship between grandparent and grandchild.

On the other hand, if, for example, the grandparents on the maternal and/or paternal side have split up and found new partners, that, in itself, creates a situation where bonus-grandparents become part of the new family structure. If, for instance, both parents and grandparents re-partner just once, the child will have eight grandparents and eight bonus/step-grandparents as part of the child’s family. The risk of conflict when the parties – which in this example includes four sets of (bonus-)grandparents – have different styles in raising children (including disagreements on education, appropriate behaviour, cooperation and interaction) is high. An illustrative example of this is the decision to include or exclude some

17 G. Ochiltree, ‘Australian Institute of Family Studies’, *The Changing Role of Grandparents*, 2006, AFRC Briefing, November 2006, no. 2. See also, ZERO TO THREE, *Grandparents as Caregivers: By the Numbers*, available at <https://www.zerotothree.org/resources/1979-grandparents-as-caregivers-by-the-numbers> (dealing with California and other western US states).

18 K. Glaser, *et al.* 2013, p.111.

19 K. Glaser, *et al.* 2013, p. 10.

20 Oxford University, *Grandparents Contribute to Children’s Wellbeing*, available at [www.ox.ac.uk/research/research-impact/grandparents-contribute-childrens-wellbeing](http://www.ox.ac.uk/research/research-impact/grandparents-contribute-childrens-wellbeing), (last accessed: 22 November 2020).



grandparents when planning Christmas or the summer holidays without considering the closeness of the child's grandparent.

Some statistics on the number of divorces from Denmark are presented in section 2: around 50% of all married couples in Denmark divorce. As illustrated in section 3 there are many situations where a child has a variety of number of grandparents and bonus-grandparents when a child's parents split up – married or unmarried – and re-partner, for instance if a father has children with three consecutive spouses. If one combines these numbers and situations, it becomes clear that this is not just theory.

After divorces or after partners split up, grandparents, therefore, potentially, run the risk of losing contact or having less contact than they had previously been accustomed to.

The risk of losing contact with a grandparent will also occur when a “sandwich parent” dies leaving a small child with the child's other parent which is more common than one might think.<sup>21</sup> The child would often have grandparents – who just lost their child – that will be eager to maintain contact with their grandchild. But these grandparents risk having less contact or lose contact with their grandchild, (probably most often) if the child's other parent re-partner. The grandparents might, for instance, be met with expectations from the surviving parent (and/or the new partner) that they cannot fulfil.

An illustration of this would be where a grandparents' daughter has died leaving them a granddaughter whose father remarries within a short time and who has two boys with his new wife. The maternal grandparents and their biological grandchild might already have a very close relationship which could include weekend sleepovers, contact twice a week and spending the holidays together. The two younger boys in this situation will have two sets of grandparents and one set of bonus-grandparents. These three children will grow up together in an environment that includes three sets of (bonus-)grandparents. The connection between the children and their grandparents may often be due to the biological link but not always. If the father and his new wife stay together, a possible situation that could arise is the “sandwich” couple refusing to allow the girl to have contact with her maternal grandparents because they perceive the girl is being spoiled or that the grandparents do not treat their biological and non-bio grandchildren alike.

In the case where a child has a close, well-functioning and giving relationship with her grandparents, it will often be in the best interest of the child to continue having contact with the grandparents, even if one or both parents disagree and regardless of whether the child's parents are still together or not.

## 6. Legal Rights

At first glance, there may seem little reason for society to regulate the practices of grandparents as providers of non-formalized childcare or to protect the rights of

21 Almost 1% of children in Denmark at the age of 10 has lost one or both parents, and 2,7% of children at the age of 16 has lost one or both parents. Danmarks Statistik 'Børn og deres familier', p. 45 and 60.



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children in these relationships. It could be argued, however, that if the grandparent-grandchild relationship is somehow hindered – for example, the grandparent is no longer allowed by the parents to continue close contact with their grandchild – a law should be in place to protect the relationship if the situation calls for that.

In other words, this could be described as a discussion of whether grandparents should move from a role as an informal caregiver towards a legally recognized caregiver with contact rights, and whether this should be based on kin or de facto family life. Several reasons, therefore, demonstrate that new interest in the relationship between grandparents and grandchildren has arisen.<sup>22</sup>

The fact that the Court of Justice of the European Union has ruled on the matter in 2018 will probably assist that somewhat but will also promote awareness on the matter. The case concerned whether the notion of “the right to access” included the right to access to grandchildren by grandparents:

“In today’s judgment, the Court of Justice begins by stating that the notion of ‘rights of access’ within the meaning of the Brussels IIa Regulation<sup>23</sup> must be interpreted autonomously. After pointing out that that regulation covers all decisions on parental responsibility and that rights of access are identified as a priority, the Court notes that the EU legislature chose not to provide for any limitation of the range of persons who may exercise parental responsibility or hold rights of access. Thus, according to the Court, the notion of rights of access refers not only to the rights of access of parents to their child, but also to *the rights of access of other persons with whom it is important for the child to maintain a personal relationship, among others, the child’s grandparents*”.<sup>24</sup> (my emphasis)

It is significant to further note that there has to be an existing personal relationship of importance. Here it seems important to recognize that not only are the child’s biological grandparents mentioned, but also other important relationships that the child has, for instance, bonus-grandparents.

Parents have the duty to take care of and provide for their children. They, thus, have a corresponding right to make the relevant decisions in order to honour this obligation. Grandparents who are informal caregivers have an implicit duty to take care of the children while in their care and they have a right to make the relevant decisions – in accordance with the parents’ wishes – in order to perform the task. If grandparents have a legal right to contact with their grandchildren, the sandwich parents have a corresponding duty. If the grandparents do have legal rights, this

22 This is discussed by J. Herring, ‘Family law and older people in a European perspective’, European Family Law, in: J.M. Scherpe (ed.), *Family Law in a European Perspective*, Edward Elgar Publishing 2016 vol. III, p. 358-360.

23 Council Regulation (EC) No 2201/2003 (27 November 2003) (concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1)).

24 Court of Justice of the European Union, press release, No 78/18 Luxembourg, 31 May 2018 Judgment in Case C-335/17 Valcheva v Babanarakis; available at <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-05/cp180078en.pdf>.

corresponding duty entails that the parents have to facilitate the grandparent's rights to access when it is in the best interest of the child.

## 7. The Variations of Legal Regulation

In some jurisdictions family law legislation specifically regulates grandparents' rights regarding personal contact with the grandchildren while other jurisdictions do not.<sup>25</sup> When no specific regulation exists, the law might allow contact with relatives or a more generally described group of persons that are emotionally connected with the child. This could include grandparents. The administrative authority or the court in both instances would be given the discretionary power to decide if contact should be granted.

The rights of grandparents to have contact with their grandchildren is to be considered within the cultural context. The diversity within the European countries can vary greatly both in regard to actual practices as well as legislation and case law.<sup>26</sup> For instance, Spanish law and Danish law – an example of a Nordic country – are very different on the rights of a grandparent to have contact with their grandchildren.

### a. *Spanish and Danish Law*

In his article Ribot extensively analyzes the development in Spanish (and Catalan) legislation and case law on grandparents' rights to have contact with their grandchildren and the further development in case law regarding this topic. Family law establishes the right for the grandparent to seek contact explicitly in situations where the child's parents are divorced, when one parent dies, but also in the situation where the grandparents are denied contact by both parents who are living together. Case law clearly shows the understanding that the grandparents are a part of the grandchild's legal family and – to a rather broad extent – does allow contact between the grandparents and their grandchildren.

In comparison, it is very difficult for grandparents to gain contact rights to grandchildren in Danish family law.<sup>27</sup> The Danish Act on Parental Responsibility does not refer specifically to grandparents' rights to maintain contact with their grandchildren. However, it does describe an unspecific group of persons that can apply for

25 See on UK, The Family Law Co., What Are Grandparents Rights? *available at* [www.thefamilylawco.co.uk/information/what-are-grandparents-rights/](http://www.thefamilylawco.co.uk/information/what-are-grandparents-rights/); see also Justice Family Lawyers, Grandparent Rights, on Australian law, *available at* <https://justicefamilylawyers.com.au/family-law/child-custody/grandparents-rights/>, and Very Well Family, 'Grandparent Visitation Rights by State', *available at* [www.verywellfamily.com/grandparent-visitation-rights-state-by-state-1695938](http://www.verywellfamily.com/grandparent-visitation-rights-state-by-state-1695938) (with a list of the laws regulation grandparents' visitation rights in the US state by state).

26 C. Velente, 'Affective and Financial Solidarity: Grandparents' Rights and Duties', in: F. Hugues (ed.), *Solidarity Between Generations*, Bruylant Publisher 2013, p. 423ff. See also, K. Glaser, *et al.*, 2013, p. 6-7.

27 From a comparative point of view in regard to western and eastern European countries, see G.K. Stanic, 'Personal relationship between the child and his/her grandparents in comparative family law', in: F. Hugues (ed.), *Solidarity Between Generations*, Bruylant Publisher 2013, p. 407ff.

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contact. This unspecific group is broadly defined as “the child’s closest relatives that the child is attached to”, cf. section 20, paragraph 1 and 2.<sup>28</sup>

While that definition may sound very broad, the situations in which grandparents (or others) can apply are very limited. Grandparents, who might be in competition with other close relatives of the child, can apply for contact in two limited situations. The first situation is when one of the child’s parents is deceased (section 20 para. 1). The second situation is when the child has had very little contact with the parent with whom the child does not live (section 20 para. 2).

The law requires that the grandparent must be closely related in both situations, cf. “the child’s closest relatives”. Presumably, a reason to allow contact with biological grandparents would be based on the right to identity. Further, the child and the grandparent must already have an established connection, cf. “that the child is attached to”. There is no assumption that it is in the best interest of the child to have contact with grandparents.

The provision is not limited to biological relatives, and it is possible for both grandparents from the paternal and maternal lineage to apply for contact. If the mother of the child is dead, for instance, all of the child’s grandparents can apply for contact if the father refuses to allow interaction between the grandparents and the grandchild. Further, this should open up a path for bonus-grandparents as well as previous bonus-parents to compete with biological grandparents.

However, if the parents are both alive and refuse the child to have contact with his or her maternal, paternal or bonus-grandparents, the family law regulation does not grant the child and grandparents a legal right to gain contact. Hence, in Denmark it falls within the scope of the parents’ parental responsibility, whereas in Spain it is presumed to be in the best interest of the child. Nevertheless, one could, for example, imagine that a teenager in Denmark would want to keep contact with the grandparents he loves and has been very close with since childhood despite his parents and grandparents being in conflict with one another regarding a different issue which results in a parent’s refusal to allow contact between the grandchild and the grandparent. This could, for instance, be a situation where the grandparents supported their grandson’s decision on a self-disclosure of his sexual orientation or his gender identity.

#### *b. The Concept of Family*

The understanding on what qualifies as a “real” family in terms of the regulation and legal protection of the family structures within Danish family law is, similarly to family law in other Nordic countries, the (married) couple in a nuclear family. Thus, lack of or lesser legal protections tends to affect members of other family structures. Thereby, the understanding of grandparents as family members prioritized to that of other close relationships is not present in family law on contact rights. This is in contrast to Spanish and Catalan laws.

28 LBK no. 1768 of 30/11/2020, Forældreansvarsloven (Act on Parental Responsibility) Section 20: “§ 20. Er en forælder eller begge forældre døde, eller er en forælder ukendt, kan der efter anmodning fastsættes samvær med barnets nærmeste pårørende, som det er knyttet til. Stk. 2. Er der ikke eller kun i yderst begrænset omfang samvær med den forælder, barnet ikke har bopæl hos, kan der efter anmodning fastsættes samvær med barnets nærmeste pårørende, som det er knyttet til.”

In his discussion Jordi Ribot very interestingly points to two particular problematic issues of these legal systems. Firstly, the legal presumption is that contact with grandchildren will be granted unless there are documented justified grounds not to do so. Secondly, grandparents have a right to have contact with their grandchildren. This also applies when the grandparents do not have established emotional bonds with their grandchildren. Further, by analyzing case law, Ribot calls attention to the problem that the best interest of a child, therefore, tends to be under-focused or even left out of consideration.

In his view, when deciding on the opinion of the parent(s) versus the desires of the grandparents, a decision on the best interest of a specific child should focus on assessing whether this child is actually suffering by being separated from its grandparents. Further, emphasis should be put on the benefits the child receives when maintaining contact with one's grandparents. Therefore, Ribot rejects automatic assumptions about the welfare of the child based on mere kinship and blood bonds. The starting point in family law legislation in both Spain and Denmark is thus not what is in the best interest of the child and it may not even be considered when deciding on a case. Under Danish law, only in very limited situations is the option of contact possible: when one of the child's parents is deceased, or when the child has had very little contact with the parent with whom the child does not live. Accordingly, the best interest of the child will be examined in these two situations only, but not if it would be in the best interest of the child to remain in contact with grandparents in other situations. The grandparents can apply for contact under Spanish law in all situations where the parents of the child refuse contact.

### *c. European Human Rights*

Under both Spanish and Danish law, the child's and grandparent's right to contact is a human rights issue and not addressing it puts their rights at stake.

These factors are pointed out by Professor Sandberg in her article when she analyzes case law from the European Court of Human Rights (ECtHR) on the European Convention on Human Rights (ECHR) Article 8 in order to determine the scope of protection of family life between grandparents and grandchildren. She shows that a right to protection of family life between grandparents and grandchildren in a given case requires that there are sufficiently close family ties between them. This can be achieved through having lived together or by having frequent contact. The grandparents have a right to maintain a normal grandparent-grandchild relationship in order for the continuation of family life which will be protected under Article 8 ECHR. However, the court underlines that contact normally takes place with the agreement of the person who has parental responsibility, thus, at the discretion of the child's parents.

The case law from the ECtHR at present is quite sparse and deals with rather diverse circumstances. When deciding on a violation of the grandparent's right to continue family life with the grandchild, an individual assessment of the best interest of the child has to be undertaken – including by the ECtHR. Sandberg is critical of certain decisions by the court that just generally mention the best interest of the child without explicitly offering the individual evaluation which is required by the Convention on the Rights of the Child, including the child's own view.

prof. M. Holdgaard

The articles by Sandberg and Ribot complement one another. Sandberg points to case law by the ECtHR that requires an established family relationship should exist already, as well as the need for an individual assessment of the best interest of the child – precisely the aspects that Ribot raises as points to discuss.

Both the ECHR and the Convention on the Rights of the Child establish minimum requirements that the State must follow in specific, concrete decisions. Nations that have ratified these conventions may of course grant grandchildren contact with the grandparents to a further extent than what is required by the ECHR. This is surely done in Spain. However, according to leading decisions by the ECtHR this should not happen in a concrete situation without due consideration and never at the expense of the best interest of the child. Neither in Spanish nor in Danish legislation does the best interest of the child seem to be the decisive factor.

## 8. Grandparents' Right to Contact Now

One must ask whether restrictive laws, like, for instance the Danish one, offer sufficient protection through their regulation of the rights and practices involved in the interaction between grandchildren and grandparents as informal providers of care in current society. If not, how, and on what level, should regulation and protection be offered? Grandparents' enhanced statutory rights may be of some help or, however, as shown by the experience of Spanish and Catalan laws, practice can end up disregarding the best interest of the children. How could one strike the right balance? And to what extent could and should the impact of case law from the ECtHR contribute in this regard?

This thematic map in the current issue begins to address these and related questions.

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