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Five Israeli Dads Call Custody Practice 'Institutionalized Torture'

June 5th, 2011 by Robert Franklin, Esq.

In 2007, the United Nations Human Rights Council "adopted new complaint procedures aimed at addressing "consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances."

Now five Israeli fathers have taken them at their word. As [this article](#) tells us, the men have filed complaints with the United Nations Human Rights Council about Israel's treatment of fathers in child custody matters (*Jerusalem Post*, 6/2/11).

I wrote a piece recently about one Israeli dad, a journalist, who likened his treatment at the hands of his ex-wife and the courts to a horrific incident of terrorism he'd covered years before. The fathers who filed the complaint with the UNHRC call it "institutionalized torture."

Bombast? Maybe so, but of course if reasoned discourse solved the problem, it would have been solved long ago. Fathers in many parts of the world know that.

Still, in Israel, things seem to be far worse than in, say the United States. Indeed, that's all the Israeli men are asking for - to bring Israel's family law into line with that of nations such as the U.S., Canada, England, etc.

To me that's far too modest an aspiration, because fathers' rights to a relationship with their children are astonishingly limited and hard to enforce here. But if nothing else, the desire of the Israeli dads to be treated not well, but only as well as dads elsewhere, speaks volumes about Israeli law and court practice.

A closer look reveals a scandal. First, the Tender Years doctrine is still in force in Israel. Under it, any child under the age of six is automatically given to the mother.

Fathers supposedly have rights of access, but only if the mother approves. So any mother for any reason can for all times separate a child from its father by fiat.

That of course is possible in the U.S., but it usually takes some effort, including lying, secretiveness and the willingness to violate the law for an American mom to keep fathers out of their children's lives. In Israel, it's official; a word from the mother and he's out of the picture.

But Israel has inserted yet another institutional barrier against fathers who want a relationship with their kids - the social worker. Apparently, even when a mother agrees to visitation by the dad, social workers are delegated by courts to decide how much, when and under what circumstances fathers can see their children and children can see their fathers.

This last group the five fathers filing the petition call "personal criminal Probation Officers' that cancel visitations at whim."

One of the dads added:

"We hope that this will change the law in Israel and I will be able to see my son," commented Daniel Zer, a father who has not seen his son for more than two years.

"A lot of divorced fathers are in this position and they have to rely on the mercy of social workers to see their son or daughter."

Among those divorced fathers who are forced to beg the indulgence of a despised ex as well as that of an indifferent or even hostile social worker are some 200 divorced Israeli fathers who have committed suicide in the recent past. Israel's Coalition for Children and Families is currently investigating their cases preliminary to reporting to the U.N.

So what the five Israeli dads want is to simply have it as good as dads do in the U.S. As I said, that's a modest goal.

Where they seek to break new ground though is in their attack on the best interests of the child standard that places the burden of proof on fathers to show that they're good enough to have minimal visitation.

What should happen is that father contact with children be presumed to be in the child's best interests and that anyone seeking to separate him from his child have the burden of proof to show he's unfit. The same of course should apply to mothers and anyone seeking to deny a child access to maternal care.

Recently, MK Yulia Shamolov Berkovich (Kadima) sponsored two conferences in parliament addressing "equality of the sexes" and a petition ("Adam Zer, a minor v. Ministry of Welfare") was submitted to the High Court of Justice by Daniel Zer, who said the practice of forcing men to prove it is in the best interest of the child to see the father violates basic and natural human rights.

The United States Supreme Court has gotten very close to saying that biological parents have rights to children that states may not infringe upon absent a showing of unfitness. That as much as requires state law to place the burden of proof on anyone seeking to deny a father a relationship with his child to show a reason (unfitness) why he shouldn't have one.

And, as I've reported earlier, the Supreme Court of Kentucky has called the rights of biological parents "inherent, equitable" rights. That comes close to saying they don't stem from the Constitution or any other act of government. It seems to say that the rights of biological parents arise simply from the fact of their biological parentage. That too would place the burden of proof squarely on anyone seeking to deprive a biological parent of a child.

Likewise, UN conventions establish the right to a family life as a fundamental human right.

If all that means nothing, then current laws and practices in the United States, Israel and elsewhere make a certain sense. On the other hand, if they mean something, then the practice of giving fathers the most minimal contact with their children after divorce and then refusing to enforce even that begins to look like a violation of international law itself.

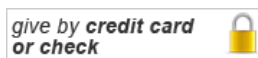
And that is what the five Israeli dads are asserting. It's not only that existing practices deny children the love, caring, protection and guidance of their fathers; it's not only that those practices have been shown time and again to harm children. It's also that those practices violate treaty obligations that the various countries have voluntarily accepted.

And that of course is a war worth fighting.

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