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Irishman loses custody case in Luxembourg:

An unmarried Irish father whose partner took their three children to the UK without his consent has lost a case in Europe's highest court over his custody rights.

In a landmark ruling, the European Court of Justice decided the man's rights under the EU Charter of Fundamental Rights were not breached when his partner removed the children to England, simply because he did not have time to secure custody rights through the Irish courts.

Although unmarried fathers are not automatically granted custody rights in Ireland, the court ruled, their rights under EU law were not infringed because they still had the right to go to court to secure custody.

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The court ruled that a key article of the Charter of Fundamental Rights was not therefore infringed since Irish custody laws did not infringe the father's rights.

Furthermore, the woman's right to take her children to another member state was enshrined in the EU's freedom of movement laws.

The father, an Irish national, was named as J McB while his British partner was referred to as LE.

The couple had lived together for more than 10 years and from November 2008 lived with their three children in Ireland.

The children were born in 2000, 2002 and 2007.

The court heard that the mother had left the family home with the children to live in a women's refuge on 11 July 2009, before flying with them to the UK two weeks later.

Ten days before she left Ireland, the father attempted to gain custody through an Irish court, but since the application had not been served on the mother before her departure he was, under Irish law, unable to secure custody.

In November 2009 Mr McB sought the return of his children through an English court order, but was told he needed a declaration from the Irish courts that their removal was wrongful.

In December Mr McB made that application to the High Court, but the application was dismissed in April 2010 on the basis that he had no rights of custody when the children left Ireland, so their removal was not considered 'wrongful.'

The father then brought the case to the Irish Supreme Court, which in turn asked the European Court of Justice in Luxembourg to ascertain if the removal of the children breached Article 7 of the EU Charter of Fundamental Rights, which deals with respect for private and family life.

The Luxembourg court decided that the question of custody rights - which might determine whether a removal was wrongful - was decided by national courts.

Under an EU regulation, which addresses cases where children are removed from one member state to another, the question of whether such a removal is wrongful is governed by the custody laws where the child or children resided before their removal.

The court referred to a similar case taken by a French father to the European Court of Human Rights in Strasbourg.

On that occasion the Strasbourg court found that the man's human rights had not been infringed.

In today's ruling the Court of Justice in Luxembourg also acknowledged that the scope of the European Convention on Human Rights extended to how the EU Charter of Fundamental Rights be applied.

The EU Charter of Fundamental Rights was enshrined in EU law in the recently passed Lisbon Treaty, and this was the first challenge involving the charter at the Court of Justice.

The Charter is only applied where EU law is concerned - on this occasion the EU regulation on the parental removal of children from one member state to another.

The European Convention on Human Rights came into force in 1953 after it was established by the Council of Europe, a democracy and human rights organisation made up of 47 members and established in 1949.

It is a separate organisation from the EU, but under EU law the Charter of Fundamental Rights derives much of its legal weight from the European Convention on Human Rights.