



Shortcomings in decision-making process to remove a mother's parental authority and allow adoption of her eldest son

In today's **Grand Chamber** judgment¹ in the case of **Strand Lobben and Others v. Norway** (application no. 37283/13) the European Court of Human Rights held, by 13 votes to four, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights in respect of both applicants, a mother and her son.

The case concerned the domestic authorities' decision to remove a mother's parental authority and let foster parents adopt her son.

The Court found in particular that the main reason for the authorities' actions had been the mother's inability to care properly for her son, in particular in view of his special needs as a vulnerable child.

However, that reasoning had been based on limited evidence as the contact sessions between mother and son after his placement in foster care had been few and far between and the psychologists' reports out-dated. In addition, a review of his vulnerability had contained barely any analysis and no explanation as to how he could continue to be vulnerable despite having been in care since he was three weeks' old.

Overall, the domestic authorities had not attempted to carry out a genuine balancing exercise between the interests of the child and his biological family or taken into consideration developments in the mother's family life, namely she had in the meantime married and had a second child.

Principal facts

The applicants are T. Strand Lobben, born in 1986, and her son, X. They are Norwegian.

X is T. Strand Lobben's first child. He was born in September 2008. After difficulties when she was pregnant, Ms Strand Lobben turned to the child welfare authorities for guidance and had accepted an offer to stay at a family centre for an evaluation during the first months of the child's life.

However, a month after the birth she decided to leave the centre. The authorities took the baby into immediate compulsory care and placed him in a foster home on an emergency basis as the centre's staff had concerns about whether the baby had been receiving enough food to survive.

The child remained in foster care for the next three years until the social welfare authorities authorised the foster parents to adopt him in December 2011.

As concerned the foster care, the domestic courts decided in 2010 that it would not be in the child's best interests to discontinue public care given his special care needs and the fundamental limitations in the mother's parenting skills. In particular, the appeal court took the view that foster care would be long-term, and that contact sessions, which were not intended to pave the way for a return of X to his biological mother, could not take place more than four times a year.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In 2011 the County Social Welfare board, comprised of a jurist, a psychologist and a layperson, decided to remove the mother's parental authority and authorise adoption. The board heard 21 witnesses over three days and the mother was present and represented by counsel. The board concluded that adoption would be in the child's best interest.

The mother appealed to the courts and a hearing was held in 2012. She was again present and had legal representation during the three days of witnesses being heard by a professional judge, a psychologist and a layperson. While the courts found that her situation had improved in some areas – she had married and had another child in 2011 – she had not shown an improvement in empathising with or understanding her son, who was psychologically vulnerable and was in need of a lot of quiet, security and support.

The courts notably took account of the three years of contact sessions, during which the child had not bonded psychologically with his biological mother and had even been "inconsolable" afterwards, and the security that his fosters parents, whom he regarded as his parents, could provide in the years ahead.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 12 April 2013.

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, the applicants complained about the domestic authorities' decision to remove Ms Strand Lobben's parental authority and let X's foster parents adopt him.

In its Chamber [judgment](#) of 30 November 2017, the European Court held, by four votes to three, that there had been no violation of Article 8 of the Convention in respect of Ms Strand Lobben and her first son, X.

The Chamber was satisfied that there had been exceptional circumstances to justify authorising the foster parents' adoption of the child. Overall, the domestic authorities, faced with the difficult and sensitive task of balancing conflicting interests in a complex case, had been motivated by the overriding requirement to do what was in the child's best interests, especially in the light of his special care needs.

On 9 April 2018 the Grand Chamber Panel accepted the applicants' request that the case be referred to the Grand Chamber.

X's adoptive parents, the Czech Republic, Denmark, Belgium, Slovakia, Bulgaria, Italy and the United Kingdom were granted leave to intervene in the written proceedings as third parties, as were the following organisations: Alliance Defending Freedom International, the Associazione italiana dei magistrati per i minorenni e per la famiglia, and the AIRE Centre.

A Grand Chamber hearing was held on 17 October 2018.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,
 Guido **Raimondi** (Italy),
 Robert **Spano** (Iceland),
 Vincent A. **De Gaetano** (Malta),
 Jon Fridrik **Kjølbro** (Denmark),
 Ganna **Yudkivska** (Ukraine),
 Egidijus **Kūris** (Lithuania),
 Carlo **Ranzoni** (Liechtenstein),
 Armen **Harutyunyan** (Armenia),
 Georges **Ravarani** (Luxembourg),

Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),
Pauliine Koskelo (Finland),
Péter Paczolay (Hungary),
Lado Chanturia (Georgia),
Gilberto Felici (San Marino) and,
Dag Bugge Nordén (Norway), *ad hoc Judge*,

and also Søren Prebensen, *Deputy Grand Chamber Registrar*.

Decision of the Court

The Court found that the decisions taken in the proceedings to remove parental authority and authorise X's adoption, starting in April 2011 and ending in October 2012, had unequivocally interfered with the applicants' right to respect for their family life.

That interference had been in accordance with the law, namely the Child Welfare Act, and had been justified by the "protection of health or morals" and the "rights and freedoms" of X.

However, in the process leading to the withdrawal of parental responsibility and to the consent to adoption, the domestic authorities had not attempted to carry out a genuine balancing exercise between the interests of the child and his biological family and had never seriously contemplated their being reunited.

The Court noted in particular that the decisions had largely been based on a finding that the mother would not be able to provide X with proper care. In the Court's view, there had been shortcomings in that decision-making process.

Firstly, the decisions had been taken in a context of little contact between the applicants. The contact sessions, often held in a child-welfare services office in the presence of the foster mother and a supervisor, had not been particularly conducive to the applicants bonding. Little had been done to try out alternative arrangements. Indeed, the courts had stated that the contact sessions were to maintain contact so that X would be familiar with his roots, but there was never any question of a relationship being established in view of a possible return to the care of his biological mother. Therefore there had been limited evidence from which to draw clear conclusions as to the biological mother's caring skills.

Furthermore, in the procedure leading to the decisions of 2012, no new reports had been ordered to examine the biological mother's capacity to provide care for X, despite the fact that in the meantime she had married and had another child. In making their decisions, the courts had regard to evidence given by two psychologists who had been commissioned as experts and drawn up reports during the prior proceedings on foster care in 2010, but those experts had not carried out any examinations since. Only one of those reports had been based on actual observation of contact sessions, and then only on two occasions.

Lastly, although the courts had paid particular attention to X's special needs as a vulnerable child when assessing Ms Strand Lobben's ability to care for him, they had not actually reviewed his vulnerability in any great detail. They had provided barely any analysis as to the nature of his vulnerability, beyond a brief description of his being easily stressed and in need of quiet, security and support. Nor had they provided any information on how he had remained vulnerable despite being in foster care since he was three weeks old.

Against that background, the Court considered that the decision-making process had not been conducted so as to ensure that all the views and interests of the applicants had duly been taken into

account. It was thus not satisfied that the procedure had been accompanied by safeguards that were commensurate with the gravity of the interference and the seriousness of the interests at stake.

There had thus been a violation of Article 8 of the Convention in respect of both applicants.

Just satisfaction (Article 41)

The Court held, by sixteen votes to one, that the finding of a violation constituted sufficient just satisfaction for the non-pecuniary damage sustained by X. It further held, by thirteen votes to four, that Norway was to pay the child's mother 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 9,350 in respect of costs and expenses.

Separate opinions

Judges Kjølbros, Poláčková, Koskelo and Bugge Nordén expressed a joint dissenting opinion. Judges Koskelo and Bugge Nordén expressed a further joint dissenting opinion. Judges Ranzoni, Yudkivska, Kūris, Harutyunyan, Paczolay and Chanturia expressed a joint concurring opinion, while Judge Kūris also expressed a separate concurring opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.