



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

## FIFTH SECTION

### DECISION

Application no. 68996/13  
Christer JOHANSSON and others  
against Sweden

The European Court of Human Rights (Fifth Section), sitting on 6 January 2015 as a Chamber composed of:

Mark Villiger, *President*,  
Angelika Nußberger,  
Boštjan M. Zupančič,  
Vincent A. De Gaetano,  
André Potocki,  
Helena Jäderblom,  
Aleš Pejchal, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having regard to the above application lodged on 22 October 2013,  
Having deliberated, decides as follows:

## THE FACTS

1. The first applicant, Mr Christer Johansson, is a Swedish national born in 1969 and the second applicant, Ms Annie Johansson, is an Indian national born in 1971. They are residing in Sweden. They were represented before the Court by Ms R. Harrold-Claesson, a lawyer practising in Olofstorp, Sweden, and Mr R. Kiska, a lawyer practising Vienna, Austria.

### **A. The circumstances of the case**

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

3. The applicants are a married couple who have a son, X, born in 2001. On 24 June 2009, the Social Council (*Socialnämnden*) of the Region Gotland decided to take X into immediate compulsory public care and the

decision was implemented the following day. Initially, the applicants were prohibited from having any contact with X but this prohibition was later revoked.

4. This decision was followed by an application by the Social Council to the County Administrative Court (*förvaltningsrätten*) of the County of Gotland for compulsory public care of X, which was granted 13 August 2009. The court found that there were psychological and physical care deficiencies in the applicants' care of X, resulting in his health and development being at risk.

5. The applicants appealed to the Administrative Court of Appeal (*kammarrätten*) in Stockholm which upheld the lower court's judgment in full. On 27 January 2010 the Supreme Administrative Court (*Högsta förvaltningsdomstolen*) refused leave to appeal.

6. By decision of 21 December 2009, which was upheld by the Social Council on 12 January 2010, the applicants' right to contact X was again limited. The applicants were granted a supervised visit with X, for one hour every fifth week, and a supervised telephone call, for fifteen minutes every two weeks. E-mails and letters from the applicants were also forwarded to X. The applicants were specifically instructed not to discuss the legal process with X, but did not comply with this instruction.

7. On 27 January 2010, the applicants requested the Social Council to revoke the decision to keep X in compulsory public care. On 12 May 2010, the Social Council rejected the request. The decision was appealed against to the County Administrative Court in Stockholm which, on 21 September 2010, found that X was still in need of care and so upheld the Social Council's decision.

8. On 21 January 2011, the first applicant was convicted by the District Court (*tingsrätten*) of Gotland of minor narcotics offences and unlawful deprivation of liberty (*olaga frihetsberövande*) after having abducted X by force. Probation (*skyddstillsyn*) was ordered, combined with the obligation to undergo therapeutic treatment and two months' imprisonment, which he had already served in pre-trial detention. The judgment was later upheld by the Svea Court of Appeal (*hovrätten*).

9. On 8 March 2011, as a consequence of the conviction, the Prosecution Authority (*Åklagarmyndigheten*) issued a restraining order against the first applicant vis-à-vis X, initially for one year but later extended up to and including 2 March 2013.

10. On 1 July 2011, upon appeal by the applicants, the Administrative Court of Appeal upheld the lower court's judgment to keep X in public care. It took into consideration the first applicant's conviction as well as the restraining order. It further considered that, on 26 November 2010, the Social Council had decided to ban all visits and contact between the applicants and X. One, or both, of them had published or provided for publication on the internet confidential information regarding X. The court

concluded that the applicants' ability to care for X had not improved but rather worsened.

11. On 12 January 2011, the Social Council requested the District Court to transfer legal custody (*vårdnad*) of X from the applicants to a specially-appointed guardian (*särskilt förordnad vårdnadshavare*). It based its request on the information obtained during the previous proceedings and submitted that, due to the first applicant's abduction of X, there was a long-term need to limit the applicants' contact with their son. X was also found to have a need for long-term care. The Social Council further claimed that as long as the applicants had custody of X, it was not possible to keep information regarding him confidential from them and so prevent such information being published on the internet. Considering the complexity of the matter and the applicants' behaviour towards the social workers, it was not considered possible to transfer custody to X's foster home parents or a social worker in the near future. Instead, a third party was suggested.

12. On 19 December 2011, the District Court rejected the interim request to appoint a specially-appointed guardian for X and, on 13 June 2012, it rejected the request finally. It took into account the reasons given by the Social Council but also noted that compulsory public care should only be used when it was absolutely necessary and that the aim was that it should cease as soon as was possible. Considering that the applicants had requested the administrative courts to repeal the compulsory care, it could thus not be concluded that a reunion was impossible. Friends and family of the applicants had furthermore stated that they were able to care for their son. In the court's view, a decision to transfer custody would most likely render the applicants even more angry and frustrated which would rather increase the risk of their interfering in X's care. In conclusion, it found that it was not in X's best interest to transfer custody from his parents.

13. The Social Council appealed against the judgment to the Court of Appeal. It submitted a psychiatric evaluation of X, dated 9 August 2012, and performed by a chief physician specialised in child psychology and a psychologist specialised in clinical psychology with focus on neuropsychology. The evaluation stated, *inter alia*, that X had had nightmares for about one year after his father had abducted him, that he had described the situation to be the worst thing that ever had happened to him, that he had found information about himself and his father on the internet which had made him afraid, that he did not want to live with his parents and that he was found to have a great need to be able to develop in peace and quiet in his foster home. The chief physician was also called as a witness. The Court of Appeal granted leave to appeal.

14. The applicants requested the appellate court to order an additional psychological assessment of X, requested disclosure of certain documents and asked for a number of new witnesses to be heard. Their requests were rejected by the Court of Appeal as it found no reason to order an additional

psychological assessment of X and since the new evidence produced by the applicants, as well as the requested documents, aimed to prove circumstances that were not relevant to the case.

15. On 10 December 2012, the Court of Appeal, after having held an oral hearing, reversed the lower court's judgment and transferred custody of X from the applicants to a specially-appointed guardian. It took into account Article 8 of the Convention and also noted that the possibility to transfer the custody of a child from his or her parents should be used restrictively. However, it found that the applicants had failed in their care of X, both physical and psychological. It specifically pointed to the fact that X had not been allowed to go to school and had been kept isolated from children of his own age. It further considered the applicants' actions after X had been taken into compulsory public care, in particular the first applicant's abduction of X and the publication of confidential information on the internet. The court found it clear that the applicants, if they had the possibility, would interfere with X's care. They were also found to be in denial about their failings in providing X with proper care as well as concerning the results of X's psychiatric evaluations. The appellate court concluded that the situation was such that custody should be transferred, even taking into consideration the applicants' right to family life under Article 8 of the Convention. It further found that, considering the applicants' behaviour, it would be an unreasonable burden to place on the foster home parents to require them to deal with questions regarding the applicants' contact with X. It therefore considered that the best solution was to appoint an experienced family law advocate as X's specially-appointed guardian.

16. One of the three legally qualified judges dissented and considered that it was not in X's best interest to transfer custody from his parents.

17. The applicants appealed to the Supreme Court (*Högsta domstolen*), maintaining their claims and adding, *inter alia*, that one of the three legally qualified judges had been biased since he had been working at the County Administrative Court at the time when the question of compulsory public care had been decided.

18. On 25 April 2013, the Supreme Court refused leave to appeal.

## **B. Relevant domestic law**

19. It follows from Chapter 6, section 1, of the Parental Code (*föräldrabalken*, 1949:381, hereafter the "Code") that all children have a right to care, security and a good upbringing. They shall be treated with respect for their person and individuality and may not be subject to corporal punishment or other degrading treatment.

20. A child is under the custody either of both parents or one of them, unless a court has transferred custody to one or two specially-appointed guardians (Chapter 6, section 2 (1), of the Code). Anyone who has custody

of a child is responsible for the child's personal circumstances and for ensuring that the child's needs under Chapter 6, section 1, are satisfied. The guardian is also responsible for the child having the supervision needed due to the child's age, development and other circumstances, and should ensure that the child is adequately provided for and receives adequate education (Chapter 6, section 2 (2), of the Code).

21. What is in the best interest of the child shall always be decisive in decisions regarding custody, residence and contact (*umgänge*) (Chapter 6, section 2a (1), of the Code).

22. If a parent, in his or her care of his or her child, abuses or neglects or in any other way fails in taking care of the child in such a way that would lead to a permanent risk for the child's health or development, the court shall remove the right of custody (Chapter 6, section 7 (1) of the Code). If the child is under both parents' custody and what is stated in paragraph 1 applies only to one of them, custody shall be entrusted to the other parent. If that parent also fails in taking care of the child, the court shall transfer the custody to one or two specially-appointed guardians (Chapter 6, section 7 (2), of the Code).

23. When custody of a child has been transferred to one or two specially-appointed guardians, the court may, upon request by one or both parents or the Social Council, transfer it to one or both parents (Chapter 6, section 10 of the Code).

## COMPLAINTS

24. The applicants complained that transferring custody of X to a specially-appointed guardian was in violation of their right to family life under Article 8 of the Convention since it was neither in accordance with the law nor in pursuit of a legitimate aim or necessary in a democratic society. The decision effectively severed their remaining link to X. The applicants further complained under Article 6 of the Convention that they had not received a fair trial since they had not been allowed to call new witnesses before the Court of Appeal, their request for certain documents had been refused, one of the Court of Appeal judges had been the Chief Judge (*chefsrådman*) at the County Administrative Court at the time when that court had handled the case regarding compulsory public care of X, and the Supreme Court had not communicated all documents in the matter with the applicants' lawyer.

## THE LAW

### A. The applicants' complaint under Article 8 of the Convention

25. The applicants complained under Article 8 of the Convention that the decision to remove their right of custody of X and transfer it to a specially-appointed guardian violated their right to family life. This provision reads:

“1. Everyone has the right to respect for his private and family life, .....

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

26. The Court notes at the outset that the present application only concerns the transfer of custody of X to a specially-appointed guardian. Complaints relating to the compulsory public care order of X in 2009 were declared inadmissible by a Single Judge on 22 March 2012 (application no. 44415/10).

27. The Court finds that the transfer of custody interfered with the applicants' right to respect for their family life under Article 8 of the Convention. Any such interference will constitute a violation of Article 8 unless it is “in accordance with the law”, pursued an aim or aims that are legitimate under paragraph 2 of this provision and can be regarded as “necessary in a democratic society”.

28. Even though the applicants did not deny that the authorities had acted in accordance with the domestic law, they claimed that the measures taken were not “in accordance with the law” within the meaning of Article 8 since the law itself conferred too much discretion on the authorities. The Court does not agree. It considers the relevant sections in the Parental Code sufficiently clear and precise for its application to be foreseeable and thus finds that the interference in question was “in accordance with the law”.

29. The applicants also complained that the aim of the measure was not legitimate. However, the Court finds it clear that the challenged measure pursued the legitimate aim of protecting the rights of others, namely those of X.

30. As regards the question of whether the interference was “necessary in a democratic society”, the Court reiterates that it requires consideration of whether, in the light of the case as a whole, the reasons adduced to justify the measure were “relevant and sufficient” and whether the decision-making process was fair and afforded due respect to the applicants' rights under Article 8 of the Convention (see, among other authorities, *Gnahoré*

v. *France*, no. 40031/98, § 50 *in fine*, ECHR 2000-IX and *Haase v. Germany*, no. 11057/02, § 89, ECHR 2004-III).

31. In considering the reasons adduced to justify the measures, and in assessing the decision-making process, the Court will give due account to the fact that the national authorities had the benefit of direct contact with all of the persons concerned. It is not the Court's task to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody issues (compare, among many other authorities, *Haase v. Germany*, cited above, § 89). The Court reiterates that the authorities enjoy a wide margin of appreciation when assessing the necessity of taking a child into care. A stricter scrutiny is called for, however, in respect of any further limitations, such as restrictions placed by those authorities on parental rights and access (see, for example, *Johansen v. Norway*, 7 August 1996, § 64, *Reports of Judgments and Decisions* 1996-III; *Elsholz v. Germany* [GC], no. 25735/94, § 49, ECHR 2000-VIII; and *M.D. and Others v. Malta*, no. 64791/10, § 71, 17 July 2012).

32. Turning to the present case, the Court agrees with the applicants that the measure of transferring custody of X from the parents to a third party was severe. However, when deciding whether or not the measure violated the applicants' rights under Article 8 of the Convention, the Court has to balance the interest of the applicants in keeping custody of X against the interests of X in having a secure and stable environment in which to develop. In doing so, the Court attaches particular importance to the best interests of the child which, depending on their nature and seriousness, may override those of the applicants. In essence, it is the best interest of the child that is of crucial importance (*Johansen v. Norway*, cited above, §§ 64 and 78).

33. In this respect, the Court would like to highlight the following from the assessments and findings of the Court of Appeal. X was taken into public care since both his physical and psychological care were found to be inadequate. After this decision, the first applicant abducted X and confidential and sensitive information about X was published on the internet. The applicants further continued to discuss the compulsory public care proceedings with X during their contact with him. It was thus clear to the Court of Appeal that the applicants, if they had the possibility, would continue to interfere with X's care. They were also found to be in denial about their care deficiencies and the results of their son's psychiatric evaluations. Furthermore, according to the latest psychiatric care evaluation, dated 9 August 2012, X needed to develop in peace in his foster home, which was found to be a safe environment for him where his fundamental needs for care and support were met. X had also been very clear that he did not want to meet his parents or even talk about them. The Court of Appeal further considered the applicants' right to family life under Article 8 of the

Convention but still found it necessary to transfer custody of X to a specially-appointed guardian.

34. Moreover, the Court notes that the Court of Appeal took into consideration the conflict between the applicants and the social authorities and the applicants' behaviour and found that it would not be appropriate to appoint one of the Social Council employees as specially-appointed guardian and that, moreover, it would be too burdensome for the foster home parents to have custody of X transferred to them. Instead, it found that the best solution for everyone involved, including the applicants, was to appoint a well-experienced family law advocate as X's specially-appointed guardian. The Court thus considers that the Court of Appeal, as regards the choice of guardian, found a solution that, in the circumstances, appears to be the best for everyone involved in order to facilitate contact between X and the applicants.

35. The Court further observes that when the Court of Appeal examined the case, it had access to the findings of the proceedings regarding compulsory public care and contact rights, including psychiatric evaluations of X, the last dated 9 August 2012, as well as the outcome of the criminal proceedings against the first applicant and the ensuing restraining order against him vis-à-vis X. The decision to transfer custody was furthermore taken by a court, after an oral hearing where the applicants were represented by legal counsel of their choice. The judgment could also be appealed against to the Supreme Court, and the applicants did appeal. The situation thus differs from that in *T. v. the Czech Republic*, no. 19315/11, § 129, 17 July 2014, where a violation was found, based *inter alia* on the fact that the applicants were prevented from judicial review. Moreover, contrary to the situation in *M.D. and Others v. Malta* (cited above), in the present case the Social Council or the applicants have the possibility to request a court to transfer the custody back to the parents if it is considered to be in the best interest of the child (see above paragraph 23).

36. In these circumstances the Court finds that the domestic authorities, in their balancing of X's right to stability and security in his life against the applicants' interest in keeping custody of X, have not exceeded their margin of appreciation.

37. Consequently, this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4.

## **B. The applicants' other complaints**

38. The applicants further complained under Article 6 of the Convention that they had not received a fair trial since they had not been allowed to call new witnesses before the Court of Appeal, their request for certain documents had been refused, one of the Court of Appeal judges had been



the Chief Judge at the County Administrative Court at the time when that court had handled the case regarding compulsory public care of X, and the Supreme Court had not communicated all documents in the matter to the applicants' lawyer.

39. The Court has examined the applicants' complaints as they have been submitted. However, in the light of all the material in its possession, and in so far as the criteria set out in Article 35 § 1 of the Convention have been complied with and the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

40. It follows that these complaints must also be rejected as being manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court by a majority

*Declares* the application inadmissible.

Done in English and notified in writing on 29 January 2015.

Claudia Westerdiek  
Registrar

Mark Villiger  
President