



Swedish legal system did not protect minor girl whose stepfather attempted covertly to film her naked

In today's Grand Chamber judgment in the case of [Söderman v. Sweden](#) (application no. 5786/08), which is final¹, the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.

The case concerned the attempted covert filming of a 14-year old girl by her stepfather while she was naked, and her complaint that the Swedish legal system, which at the time did not prohibit filming without someone's consent, had not protected her against the violation of her personal integrity.

The Court found that Swedish law in force at the time had not ensured protection of Ms Söderman's right to respect for private life – whether by providing a criminal or a civil remedy – in a manner that complied with the Convention. The act committed by her stepfather had violated her integrity and had been aggravated by the fact that she was a minor, that the incident took place in her home, and that the offender was a person whom she was entitled and expected to trust.

Principal facts

The applicant, Eliza Söderman, is a Swedish national who was born in 1987 and lives in Ludvika (Sweden).

In 2002, when she was 14 years old, she discovered that her stepfather had attempted to secretly film her naked by hiding a video camera in the bathroom, which was in recording mode and directed towards the part of the room where she would undress to take a shower. Immediately afterwards the film was burned by her mother without anyone having seen it.

Ms Söderman's mother reported the incident to the police about two years later. The stepfather was prosecuted for sexual molestation, and Ms Söderman submitted a compensation claim for violation of her personal integrity, to be joined to the criminal proceedings. In 2006, the stepfather, who admitted to having tried to film her with a hidden camera, was convicted of sexual molestation by the first instance court and ordered to pay damages. He was acquitted on appeal in 2007. The appeal court found that although his motive had been to film the girl for a sexual purpose, the act could not be covered by the provision on sexual molestation as he had not intended for her to find out about the filming. The court pointed out that there was no general prohibition in Swedish law against filming an individual without his or her consent. While the act in question was a violation of the girl's personal integrity, the stepfather could not be held criminally responsible for the isolated act of filming her without her knowledge. The appeal court also noted that the stepfather's act might have theoretically constituted attempted child pornography, but such a charge had not been brought, and therefore the court could not examine whether he could be held responsible for that crime. The cassation appeal was dismissed by the Supreme Court in December 2007.

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

Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private life) of the European Convention on Human Rights, Ms Söderman complained that Sweden had failed to comply with its obligation to provide her with remedies – whether criminal or civil – against her stepfather’s violation of her personal integrity by secretly filming her.

The application was lodged with the European Court of Human Rights on 21 January 2008. In its Chamber judgment of 21 June 2012, the Court held, by a majority, that there had been no violation of Article 8. On 19 November 2012, the case was referred to the Grand Chamber at Ms Söderman’s request. A Grand Chamber hearing took place in public in the Human Rights Building, Strasbourg, on 3 April 2013. Written comments were received from the Human Rights Centre of Ghent University, which had been granted leave to intervene as a third party in the procedure before the Grand Chamber.

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

Josep **Casadevall** (Andorra), *President*,
Guido **Raimondi** (Italy),
Ineta **Ziemele** (Latvia),
Isabelle **Berro-Lefèvre** (Monaco),
Corneliu **Bîrsan** (Romania),
Boštjan M. **Zupančič** (Slovenia),
Mirjana **Lazarova Trajkovska** (“The former Yugoslav Republic of Macedonia”),
Ledi **Bianku** (Albania),
Zdravka **Kalaydjieva** (Bulgaria),
Kristina **Pardalos** (San Marino),
Julia **Laffranque** (Estonia),
Paulo **Pinto de Albuquerque** (Portugal),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),
Helen **Keller** (Switzerland),
Helena **Jäderblom** (Sweden),
Johannes **Silvis** (the Netherlands),

and also Erik **Fribergh**, *Registrar*.

Decision of the Court

Article 8

The Court underlined that Ms Söderman had not complained about the effectiveness of the criminal investigation carried out by the Swedish authorities. Moreover, there was no evidence that they had failed to comply with their obligation to conduct an effective prosecution. The question before the Court was whether, in the circumstances of the case, Sweden had had an adequate legal framework to protect Ms Söderman against the actions of her stepfather, in compliance with its obligations under Article 8.

As regards the possibility that the stepfather’s act could have constituted attempted child pornography under the penal code – referred to by the appeal court in Ms Söderman’s case – the Court was not convinced that the act had been covered by that offence. In its submissions to the Court, the Swedish Government had acknowledged that there was no information that the prosecutor had considered indicting the stepfather with that crime. Instead, the Government had enumerated a number of reasons why the prosecutor might have decided not to do so; in particular

difficulties in providing sufficient evidence to show that there had been a “pornographic” picture. Ms Söderman had submitted that even if the film – which had been destroyed – had still existed, the material would hardly have qualified as pornographic. The Court observed that the term “pornographic picture” was not defined in the Swedish penal code and that the preparatory works on the provision on child pornography underlined that its intention was not to criminalise all pictures of naked children.

The Court then considered the question of whether the provision on the offence of sexual molestation under the penal code – which penalised in particular exposure in an offensive manner and indecent behaviour by word or deed – had provided Ms Söderman with the protection required by Article 8. The Court observed that the appeal court in her case had found that the stepfather could not be held criminally responsible for the isolated act of filming her without her knowledge. Under Swedish law in force at the time, as interpreted by the case-law of the Swedish courts, it had thus been a requirement for the offence of sexual molestation to be made out that the offender intended for the victim to find out about it or that the offender was indifferent to the risk of the victim finding out. However, that requirement had not been fulfilled in Ms Söderman’s case. The Court agreed with Ms Söderman that it was not on account of a lack of evidence that the stepfather had been acquitted of sexual molestation, but rather because, at the time, his act could not have constituted sexual molestation. The provision on sexual molestation was since amended, in April 2005. While it was not clear whether the amended provision could be applied to covert filming, it sufficed to conclude that the provision as worded before April 2005 could not have legally covered the act in question and thus had not protected Ms Söderman against the lack of respect for her private life.

The gaps in protection of her rights under Article 8 had not been remedied by any other provision of criminal law at the time. Indeed the absence of a provision covering the isolated act of covert or non-consensual filming of photographing had long been a matter of concern in Sweden. New legislation, designed to cover an act such as the one in Ms Söderman’s case, was recently adopted and entered into force in July 2013.

As regards possible civil-law remedies available to Ms Söderman, the Court noted that when acquitting the stepfather, the appeal court had also dismissed her civil claim for damages. As pointed out by the Swedish Government, under the code of judicial procedure, when a civil claim was joined to a prosecution, the courts’ finding on the question of criminal liability was binding for the decision on the civil claim. There were moreover no other grounds on which Ms Söderman could have relied in support of her claim for damages. In particular, her counsel could not have been expected to invoke negligence, as the stepfather had not claimed that he had left the camera in recording mode in the bathroom by accident. Finally, the Court was not persuaded that the Swedish courts could have awarded her compensation on the basis of finding a breach of the Convention alone.

In conclusion, the Court was not satisfied that the relevant Swedish law, as in force at the time, had ensured protection of Ms Söderman’s right to respect for private life in a manner that complied with the State’s obligations under Article 8. The act committed by her stepfather had violated her integrity and had been aggravated by the fact that she was a minor, that the incident took place in her home, and that the offender was a person whom she was entitled and expected to trust. Accordingly, there had been a violation of Article 8.

[Just satisfaction \(Article 41\)](#)

The court held that Sweden was to pay Ms Söderman 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 29,700 in respect of costs and expenses.

Separate opinions

Judge Kalaydjieva expressed a dissenting opinion and Judge Pinto de Albuquerque expressed a concurring opinion. These separate opinions are annexed to the judgment.

The judgment is available in English and in 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.