



## Austrian Courts did not deal quickly enough with foster parents' request to visit child they had fostered

In today's Chamber judgment in the case [Kopf and Liberda v. Austria](#) (application no. 1598/06), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**A violation of Article 8 (right to protection of private and family life)** of the European Convention on Human Rights.

The case concerned the complaint by former foster parents about not being able to have contact with the child they had fostered.

### Principal facts

The applicants, Anna Kopf and Viktor Liberda, are Austrian nationals who were born in 1953 and 1943 respectively and live in Vienna.

In December 1997 they became the foster parents of a two-year old child, F., after F. was rescued from his mother's apartment which she had set on fire under the influence of drugs. Ms Kopf and Mr Liberda tried to obtain custody of the child and ultimately adopt him.

In the meantime, F.'s mother recovered and was granted provisional custody of her son in October 2001. Ms Kopf and Mr Liberda asked the Vienna courts, in December 2001, to grant them visiting rights in respect of F. Almost three years later, in November 2004, the district court rejected their request finding that failure to authorise contacts between them and the child did not endanger F.'s well-being.

The applicants appealed, unsuccessfully. The Vienna courts concluded that F. had developed a close and positive relationship with his mother. While the applicants had a genuine concern for his well-being, putting him back in contact with them would place him in a situation of divided loyalties, which was not in his best interests.

### Complaints, procedure and composition of the Court

Relying in particular on Article 8, the applicants complained that their right to family life was breached as a result of not allowing them access to their former foster child.

The application was lodged with the European Court of Human Rights on 22 December 2005.

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<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

Judgment was given by a Chamber of seven, composed as follows:

Nina **Vajić** (Croatia), *President*,  
 Elisabeth **Steiner** (Austria),  
 Khanlar **Hajiyev** (Azerbaijan),  
 Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),  
 Julia **Laffranque** (Estonia),  
 Linos-Alexandre **Sicilianos** (Greece),  
 Erik **Møse** (Norway), *Judges*,

and also Søren **Nielsen**, *Section Registrar*.

## Decision of the Court

The applicants had been F.'s foster parents for almost four years. They had developed emotional links with him and were genuinely concerned about his well-being. However, as F. had been living with his biological mother for over three years after the period he had spent with his foster parents, and they had not had any contact with the child during that time, it had been in F.'s best interests not to allow them to visit him. The Court concluded that the Austrian courts, at the time of taking their decisions, had struck a fair balance between the competing interests of the child and his former foster parents.

However, the Austrian courts had ultimately decided at the end of proceedings which had lasted more than three-and-a-half years. While the case had been somewhat complex, no satisfactory explanation had been given for the slow progress of the proceedings and for the fact that, on two occasions, they had come to a stand-still. The district court had concluded that, if the decisions had been taken earlier, there would have been good reasons for granting the applicants' request for visiting rights.

Consequently, the Court found that the Austrian courts had not examined sufficiently rapidly Ms Kopf's and Mr Liberda's request for the right to visit their former foster child, in violation of Article 8.

## Just satisfaction (Article 41)

The Court held that Austria was to pay the applicants 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 for costs and expenses.

*The judgment is available only in English.*

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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.