



Icelandic courts' removal of custody was in children's best interests as they were at risk, despite father's sexual-abuse acquittal

In today's **Chamber** judgment¹ in the case of [A and Others v. Iceland](#) (application nos. 25133/20 and 31856/20) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned a couple's loss of custody of their two children following accusations of sexual abuse. The accusations were against the father, who was prosecuted, but ultimately acquitted.

The Court found in particular that the decision to deprive the applicant parents of custody had not been based on an evaluation of the father's guilt, but on the children's best interests. The decision had moreover been informed by a large number of reports, assessments and witness statements – many obtained after the criminal proceedings concerning the alleged abuse – indicating that the couple lacked parenting skills, that the children feared their father and clearly wished to remain, together, with their foster parents.

In any event, the mother retained contact rights and, unlike an adoption, the decision was not irreversible, and could be reviewed.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicants, Mr A, Ms B, Ms X, and Mr Y, are Icelandic nationals who were born in 1976, 1979, 2008 and 2011 respectively. A and B are the parents of X and Y.

In 2015 X's school contacted the childcare authorities because she had confided in a teacher about domestic violence and worries about her mother and brother. She had also drawn a picture, showing how her father had petted her and her brother on their "private parts".

The case was immediately reported to the police and, in 2017, Mr A was charged with sexual offences against X and Y. He was acquitted the same year as the courts found the allegations had not been proven beyond reasonable doubt.

Despite the acquittal, Mr A and Ms B eventually had custody of their children removed in 2020.

The final decision was taken by the Supreme Court, and was based on a large number of reports, assessments and witness statements. It gave considerable weight to a report of 2018 by a court-appointed psychologist who had found that the couple lacked parenting skills, that they were unable to provide the children with a sense of security and well-being, and that the children clearly wished to remain with their foster parents. As concerned Mr A in particular, the court found that both children had a severe fear of him, and that their health and development were at risk in his care.

The children have been in continuous foster care since 2016 and have limited contact with their mother. The father is not allowed contact. After initial temporary foster care with the mother's

1. 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.

consent, less restrictive measures were attempted in 2015 when the children were returned to the mother (the father having moved out), with various forms of support being provided, including counselling. The children were however subsequently placed in foster care when care workers expressed concern that the mother was letting the father have contact with them.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, the applicants complained about the loss of custody of their children. They alleged in particular that the measures taken by the childcare authorities had been excessive and had been detrimental for the family's relationship.

The applications were lodged with the European Court of Human Rights on 19 June 2020 and 13 July 2020.

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

Georges Ravarani (Luxembourg), *President*,
Georgios A. Serghides (Cyprus),
Robert Spano (Iceland),
Darian Pavli (Albania),
Anja Seibert-Fohr (Germany),
Andreas Zünd (Switzerland),
Frédéric Krenç (Belgium),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

First, the Court pointed out that the high standard of proof ("beyond reasonable doubt") required for a criminal conviction did not apply in the case of child protection. The authorities' assessment had to involve an evaluation of the children's best interests and not criminal guilt.

Indeed, the decision to deprive the applicant parents of custody had been based on such interests, taking into account a large number of reports, in particular the psychologist's report of 2018, assessments and witness statements – many obtained after the criminal proceedings concerning the alleged abuse. The parents did not seek a reassessment of the 2018 report, which was supported by other expert reports.

New reports in 2019 and 2020 from the children's social workers, their school and hospital, as well as the childcare authorities had also been adduced as evidence before the Supreme Court.

Furthermore, the authorities had explored the possibility of less restrictive measures prior to deprivation of custody.

The Court therefore accepted that the authorities had acted with sufficient diligence, both as concerned the initial childcare measures as well as the subsequent custody proceedings, taken as a whole. The proceedings had moreover been accompanied by sufficient procedural safeguards; the parents had each been represented by counsel and a social worker had been appointed to speak on behalf of the children.

In any event, the mother still had contact rights and, unlike an adoption, the decision was not irreversible, and could be reviewed every 12 months at the request of the parents or the children. As concerned the father, the Court considered that the national authorities had been entitled to take the view that he should not have contact rights, bearing in mind the Supreme Court's findings that both children feared him and that their health and development were at risk in his care.

The Court concluded that the authorities had acted within their discretion (“margin of appreciation”) when balancing the competing interests in such a very complex situation and finding that it had been necessary to deprive the parents of custody.

There had therefore been no violation of Article 8 as concerned the applicant parents’ right to respect for their family life.

The Court found that the applicant mother did not have standing to complain on behalf of her children, there being a clear conflict of interest, and rejected these complaints as inadmissible.

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.