



## The Court finds several Convention violations on account of manifest deficiencies in the follow-up by the authorities of a child placed in foster care

In today's **Chamber judgment**<sup>1</sup> in the case of [Loste v. France](#) (application no. 59227/12) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 13 (right to an effective remedy)** taken in conjunction with Articles 3 and 9 of the European Convention on Human Rights,

**a violation of Article 3 (prohibition of inhuman or degrading treatment), and**

**a violation of Article 9 (freedom of thought, conscience and religion).**

The case concerned an applicant who complained of failings by the child welfare service (ASE) regarding the follow-up of her placement with a foster family at the age of five. In support of her application she argued that the ASE had not protected her against the sexual abuse to which she had been subjected from 1976 to 1988 by her foster father. She also complained of the failure by the family, who were Jehovah's Witnesses, to comply with the undertaking they had given in the form of a religious neutrality clause.

The Court noted at the outset that the administrative courts had dismissed the applicant's action for damages against the *département* of Tarn-et-Garonne on the basis of the four-year limitation rule. In that regard the Court held, in the very specific circumstances of the present case, that the domestic courts had displayed excessive formalism, the effects of which were incompatible with the right to an effective remedy. There had therefore been a violation of Article 13 of the Convention taken in conjunction with Articles 3 and 9.

The Court also observed that the competent authorities had not put in place the preventive measures provided for by the legislation in force at the relevant time in order to detect a risk of ill-treatment. It found that the lack of regular follow-up by the ASE, combined with a lack of communication and cooperation between the competent authorities, should be considered to have significantly influenced the course of events. It concluded that the national authorities, firstly, had failed in their obligation to protect the applicant against the ill-treatment to which she was subjected while in foster care and, secondly, had not taken the measures required of them in order to ensure observance of the religious neutrality clause. There had therefore been a violation of the substantive aspect of Article 3 and also of Article 9 of the Convention.

### Principal facts

The applicant, France Loste, is a French national who was born in 1971.

In 1976, aged five, the applicant was placed by a juvenile judge in the care of the child welfare service (ASE). Between 1976 and 1991 she was placed with a foster family (Y.B., a nursery school assistant, and her husband M.B.). The foster parents gave an undertaking to the ASE that in caring for the applicant they would take "the necessary steps to achieve the objectives identified by the

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](http://www.coe.int/t/dghl/monitoring/execution).

child welfare service”, respect the applicant’s political, philosophical and religious views and those of her birth family, and facilitate the authorised employees of the ASE in overseeing observance of the conditions set out in the foster care agreement. However, shortly after being placed with the family in 1976, the applicant – according to the allegations made in her statements during the criminal proceedings, which were partly admitted by M.B. – became the victim of sexual abuse. Furthermore, although her birth family were Muslims, the applicant was raised in the faith practised by the members of her foster family, who were Jehovah’s Witnesses and who took her with them to meetings of the congregation and to preaching activities. On 9 September 1988, at the age of 17, the applicant was involved in a serious road-traffic accident. While she was in hospital the foster family wrote to the hospital requesting that she should not be given any blood products.

The foster care arrangement was nevertheless maintained until the applicant reached the age of majority.

In a letter of 16 November 1998 to the *département’s* health and social affairs directorate (DDASS), the applicant requested permission to consult her case file. On 22 January 1999 the ASE informed her that she could consult the file *in situ*, which she did on 24 February 1999.

In 1999 the applicant lodged a complaint with the public prosecutor. After a decision was taken not to prosecute, she lodged a further complaint together with a civil-party application, following which it was established that she had been subjected to sexual abuse by her foster father, M.B. However, the case was not sent for trial owing to the rules on limitation periods for criminal offences applicable at the relevant time.

In 2004 the applicant brought a first set of administrative proceedings against the State. The first-instance court ordered the State to pay her 22,000 euros in compensation, but that judgment was set aside by the Bordeaux Administrative Court of Appeal. The Court of Appeal found that, at the relevant time, the ASE had been acting in the name and on behalf of the *département* and that the State could therefore not be held liable for any negligence that may have been committed.

In 2007 the applicant brought a fresh action in the administrative courts, this time against the *département*. The action was dismissed on the grounds that the four-year limitation period prescribed by the Act of 31 December 1968 had expired, as the administrative courts had set the summer of 1994 as the starting-point of the period for lodging an application. The courts found that the applicant, who had been 23 at the time, had confided in members of the Jehovah’s Witnesses and had broken off all relations with her foster family at that point. She had therefore freed herself from the control of her sectarian environment and had been in a position to assess the harmful consequences of the alleged failings by the *département*. In the domestic courts’ view, as the first day of the period allowed for bringing an action had been 1 January of the following year (that is, 1 January 1995), the limitation period had expired on 31 December 1998.

## Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair hearing) and 13 (right to an effective remedy), the applicant alleged that she had not had an effective remedy by which to obtain a determination of the ASE’s liability, on account of the unduly restrictive or even erroneous application by the administrative courts of the statutes of limitation. The Court decided to examine this complaint from the standpoint of Article 13 taken in conjunction with Articles 3 and 9 of the Convention.

Under Article 3 (prohibition of inhuman or degrading treatment), she contended that the ASE had not protected her against the sexual abuse to which she had been subjected in her foster family.

Relying on Article 9 (freedom of thought, conscience and religion), she complained that the authorities had not taken the necessary steps to ensure observance by her foster family of the religious neutrality clause.

The application was lodged with the European Court of Human Rights on 3 September 2012.

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

Síofra O’Leary (Ireland), *President*,  
Lado Chanturia (Georgia),  
Ivana Jelić (Montenegro),  
Arnfinn Bårdsen (Norway),  
Mattias Guyomar (France),  
Kateřina Šimáčková (the Czech Republic),  
Mykola Gnatovskyy (Ukraine),

and also Victor Soloveytchik, *Section Registrar*.

## Decision of the Court

### [Article 13 taken in conjunction with Articles 3 and 9: complaint concerning the application of the four-year limitation period](#)

The Court noted that a remedy had existed before the administrative courts by which to establish liability on the part of the *département* of Tarn-et-Garonne, but that the applicant had been unable to exercise it owing to the application of the four-year limitation period by the domestic courts, which had found that the applicant had four years (from 1 January 1995 to 31 December 1998) in which to bring an action for damages.

The Court found that the national courts had applied the relevant procedural requirement in a manner which prevented the applicant’s action from being examined on the merits. It held that the national courts, ruling between 2010 and 2012 with all the relevant information concerning the criminal and administrative proceedings brought by the applicant at their disposal, could have taken into consideration the fact that the applicant had not had access to the documents in her foster care file revealing the alleged failings by the national authorities until 24 February 1999. From that date onwards the applicant had had “sufficient information” enabling her to demonstrate that the damage she had suffered was attributable to the administrative authorities and to bring an action for compensation.

In the Court’s view, the compensatory remedy used by the applicant had been rendered ineffective by the way in which the administrative courts had applied the rules concerning the four-year limitation period, without considering – in accordance with section 3 of the Act of 31 December 1968 – from what date onwards the applicant had had sufficient evidence to demonstrate the alleged failings of the national authorities and could thus bring an effective action to establish their liability. The Court held, in the very specific circumstances of the present case, that the domestic courts had displayed excessive formalism, the effects of which were incompatible with the right to an effective remedy. **There had therefore been a violation of Article 13 of the Convention taken in conjunction with Articles 3 and 9.**

### [Article 3: complaint concerning the sexual abuse allegations](#)

The Court noted that, from the beginning of her placement in foster care, the applicant had been in a particularly vulnerable situation on account, firstly, of her very young age (five years old at the time of her placement) and, secondly, of the fact that she was a child left without parental care. Against that background, the sexual abuse to which she had been subjected over several years, as emerging from the criminal proceedings and only partly contested by M.B., was sufficiently severe to come within the scope of Article 3 of the Convention.

The Court observed that at the relevant time the legislative framework in force had been apt to protect children in care against serious harm by individuals in a given case, since it was accompanied by a number of measures and mechanisms for preventing and detecting the risks of ill-treatment in foster families.

However, with regard to the implementation of those prevention and detection measures and mechanisms, the Court noted that only six inspection visits had been carried out over the relevant period of almost twelve years. The fact that the first visit to the foster family's home had taken place almost eleven months after the placement of the applicant, who had been five years of age when the foster care arrangement began, suggested that no action had been taken to check on the applicant's situation at the very beginning of her period in foster care, although this had been a particularly sensitive and crucial time for her. Moreover, the subsequent visits had not been carried out on a regular basis, having taken place in 1977 and 1978 and not again until 1981 (two and a half years later), and in 1982 and 1983 and not again until 1998 (over five years later).

The Court also noted that the inspection reports had been rather succinct and formal. There was nothing to indicate that the ASE employees had had regular one-to-one conversations with the applicant on their premises, although the report of 19 July 1978 had mentioned the fact that she seemed nervous and that she was repeating her first year of school, during a period that appeared to coincide with the first episodes of sexual assault admitted by M.B. In the Court's view, those signs should have led to particular attention being focused on the applicant's situation, and certainly not to a wait of two and a half years after the visit of 19 July 1978 before another home visit or one-to-one meeting was arranged.

Furthermore, the Government did not provide any documentary evidence of contact between the ASE and the headteachers of the schools attended by the applicant. Moreover, following the entry into force of legislation making it a requirement as of 7 September 1984 to send an annual situation report to the juvenile judge, only two welfare reports had been prepared, more than two years apart, in 1986 and 1988. Thus, there did not appear to have been any regular or proper follow-up of the applicant's situation by the ASE.

The Court took the view that the national authorities had not put in place the preventive measures provided for by the legislation in force in order to detect a risk of ill-treatment. Had those measures actually been implemented, the ASE employees would have been able to establish a relationship of trust with the applicant and give her the attention she deserved. Those measures would have been especially decisive given that in 1985 the applicant, who was 14 at the time, had confided in a member of the Jehovah's Witnesses congregation about the sexual abuse to which M.B. was subjecting her within the foster family. The Court noted that during the same period no home visits had been arranged by the ASE, from 23 February 1983 until 18 May 1988, a period of five years. The Government could not rely on the argument that they could not have been aware that the applicant was being subjected to sexual abuse since she had never made any complaint to the ASE concerning her foster family, as there had been manifest deficiencies in the regular follow-up of the applicant imposed by the statutory provisions in force at the time.

In those circumstances the Court found that the lack of regular follow-up by the ASE, combined with a lack of communication and cooperation between the competent authorities, should be considered to have significantly influenced the course of events. It added that implementing the applicable rules under domestic law so as to afford protection to the applicant would not have imposed an excessive burden on the competent authorities. The Court concluded that, in the specific circumstances of the present case, the French authorities had failed in their obligation to protect the applicant against the ill-treatment to which she was subjected by M.B. while in foster care. **There had therefore been a violation of the substantive aspect of Article 3 of the Convention.**

### Article 9: complaint concerning failure to comply with the religious neutrality clause

The Court observed that the applicant, when she was placed with the foster family, had not been a member of the Jehovah's Witnesses and had become one as a result of growing up in a household whose members belonged to that congregation.

The Government argued that the ASE had been unaware that Mr and Mrs B. and their children were Jehovah's Witnesses. While there was no evidence that the ASE had possessed that information at the time of the applicant's placement, the Court noted that the on-site inspection prior to the applicant's placement, and especially the home visits and conversations with the applicant that were a statutory requirement throughout the placement, should have enabled the ASE to be informed about the foster family's religious practices, to take the necessary action to remind the foster parents of their duty of neutrality, and, if appropriate, to move the applicant to a different foster family.

In any event, the ASE had been informed of those practices at the latest in September 1988, by the doctor in the emergency department where the applicant had been taken following her serious road-traffic accident of 9 September 1988. On that occasion the foster family, in breach of their duty of neutrality, had written to the hospital requesting, on the grounds of their religious beliefs, that the applicant should not receive any blood products.

The evidence in the case file showed that the social worker responsible for overseeing the foster care arrangement during that period had not followed up on this information. The Court observed, firstly, that the social worker had not spoken to the applicant about her upbringing, the foster family's religious practices or her religious conversion, and, secondly, that she had not mentioned the information in question in the welfare report drawn up a month after the incident, on 21 November 1988. Furthermore, there was no evidence that the ASE had subsequently informed the juvenile judge of the situation, in particular before the latter took his decision on 13 December 1988 to maintain the foster care arrangement with the same family until 11 February 1991.

Consequently, the Court considered that the national authorities had not taken the measures required of them, pursuant to their specific positive obligations in the present case, to ensure that the foster family observed the religious neutrality clause in which they had undertaken to respect the religious views of the applicant and of her birth family. **There had therefore been a violation of Article 9 of the Convention.**

### Just satisfaction (Article 41)

The Court held that France was to pay the applicant 55,000 euros (EUR) in respect of non-pecuniary damage.

*The judgment is available only in French.*

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