



Placement and adoption order for the children of a woman living in precarious conditions was in breach of Article 8 of the Convention

In today's **Chamber** judgment¹ in the case of [Soares de Melo v. Portugal](#) (application no. 72850/14) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned an order for seven of Ms Soares de Melo's children to be taken into care with a view to their adoption, and its enforcement in respect of six of them.

The Court found in particular that the measures taken by the courts in ordering the placement of Ms Soares de Melo's children with a view to their adoption had not struck a fair balance between the interests at stake, given that Ms Soares de Melo had been deprived of parental rights and all contact with her children; her refusal to undergo sterilisation by means of tubal ligation had formed one of the grounds for that decision; and she had had no effective involvement in the decision-making process. The Court therefore considered that the placement order had not been appropriate to the legitimate aim pursued or necessary in a democratic society, bearing in mind the absence of any violent conduct, the existence of strong emotional ties and the failure of social services to address Ms Soares de Melo's material deprivation as a mother having to raise a large number of children almost unaided.

The Court also held that the authorities should reconsider Ms Soares de Melo's situation with a view to taking appropriate measures in the children's best interests, and decided that the interim measures indicated to the Government under Rule 39 of the Rules of Court should remain applicable until this judgment became final.

Principal facts

The applicant, Lílíana Sallete Soares de Melo, is a Cape Verdean national who was born in 1977 and lives in Algueirão-Mem Martins (Portugal).

In 2005 the family situation of Ms Soares de Melo, the mother of ten children born between 1993 and 2011, was reported to the Sintra Child and Youth Protection Commission (CPCJ), on the grounds that she was unemployed and that the children's father was polygamous and frequently absent from the family home.

On 4 January 2007 the CPCJ signed a protection agreement with Ms Soares de Melo and her husband, which was approved by a court. The agreement stipulated that Ms Soares de Melo was to retain custody of her minor children but was required to provide for them, to look after their education and health and to seek employment; the father was to continue providing financial support for the children's basic needs.

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.

As there was no improvement in the family situation, the CPCJ initiated a procedure for the promotion and protection of the rights of children and young people at risk. On 26 September 2007 the case was referred to the public prosecutor's office, which applied to institute child protection proceedings, on the grounds that Ms Soares de Melo did not live in adequate physical conditions and was neglecting her children. The family was placed under observation by the court's social services team. Subsequently, after social services had noted that the family's circumstances were still precarious, the team of social workers inserted additional clauses in the protection agreement, in particular requiring the father to return to employment and the mother to prove that she was preparing to undergo sterilisation. However, as Ms Soares de Melo and her husband did not abide by their undertakings, the court gave a judgment on 25 May 2012 in which it held, among other things, that seven of the children should be taken into care with a view to adoption and that Ms Soares de Melo and her husband should be deprived of parental responsibility and denied all contact with the children. Among the reasons for its decision, the court noted that the father was permanently absent and that Ms Soares de Melo, who was incapable of performing her role as the mother, had persistently refused to undergo sterilisation. On 8 June 2012 six of the children were taken into care; the seventh child was not present at the family home when the others were removed.

The decision was upheld by a single judge, and subsequently by a panel of three judges on appeal, and an appeal on points of law by Ms Soares de Melo was rejected. Her subsequent appeal to the Constitutional Court is currently pending. On 19 November 2014 she applied to the Court for an interim measure under Rule 39 of the Rules of Court, seeking a right of contact with her children. The Court granted her request. Since 15 March 2015 Ms Soares de Melo has visited her children once a week in the three separate institutions in which they are housed.

Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private and family life), Ms Soares de Melo complained about the implementation of the placement order with a view to the adoption of seven of her children and the prohibition of her access to them following the judgment of the Lisbon North-East/Sintra Family Court. In that connection she submitted that she had lodged various unsuccessful applications and appeals and complained that the courts had based their decisions on the fact that she had not honoured her family-planning undertakings.

The application was lodged with the European Court of Human Rights on 5 December 2014.

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

András **Sajó** (Hungary), *President*,
Vincent A. **de Gaetano** (Malta),
Boštjan M. **Zupančič** (Slovenia),
Nona **Tsotsoria** (Georgia),
Paulo **Pinto de Albuquerque** (Portugal),
Krzysztof **Wojtyczek** (Poland),
Iulia Antoanella **Motoc** (Romania),

and also Françoise **Elens-Passos**, *Section Registrar*.

Decision of the Court

Article 8 (right to respect for private and family life)

In view of Ms Soares de Melo's precarious circumstances, the Court observed that the main accusations levelled at her were that she was unable to provide her children with adequate living conditions and that she had neglected them. The Court noted in this connection that Ms Soares de

Melo's circumstances were especially fragile, given that she had ten children to look after and lived on a monthly family allowance of 393 euros (EUR). However, it observed that the authorities had not made any attempt to compensate for such insufficiencies by means of additional financial support, in particular to meet the family's basic needs in terms of food, electricity and running water, or to cover childcare costs so that Ms Soares de Melo could take up paid employment. On the contrary, the social services had expected Ms Soares de Melo to submit a formal application explaining her needs, despite the fact that they themselves had already noted and reported those needs. Accordingly, the Court considered that the authorities should first have taken practical steps to allow the children to live with their mother before it had placed them in care with a view to adoption, especially as no signs of violent conduct, mistreatment or sexual abuse had been noted, the parents had not been found to have any health concerns or mental disturbance and the Family Court had observed a particularly strong emotional bond between Ms Soares de Melo and her children.

With regard to Ms Soares de Melo's undertaking to be sterilised, the Court considered that the insertion of this additional clause in the protection agreement was a particularly serious matter. It took the view that social services could have recommended contraceptive methods of a less intrusive nature to address the lack of any family-planning efforts. The Court also noted that Ms Soares de Melo had ultimately refused to undergo the operation and that this refusal had clearly been held against her. In the Court's view, recourse to a sterilisation procedure should never be a condition for retaining parental rights.

Concerning the prohibition of all contact between Ms Soares de Melo and her children, the Court reiterated that additional restrictions were not justified under Article 8 of the Convention unless the family had proved particularly unfit to look after the child, which was not the case here in view of the absence of any signs of violent conduct or abuse *vis-à-vis* the children. The Court also observed that Ms Soares de Melo had been deprived of all contact rights even though her children were between 7 months and 10 years old, and that the children had been placed in three different institutions, making it difficult to maintain ties between the brothers and sisters and breaking up not only the family but also the siblings as a unit. In the Court's view, this was contrary to the children's best interests.

With regard to the decision-making process, the Court observed that the domestic courts had not ordered an independent psychological expert report to assess Ms Soares de Melo's maturity and child-raising ability, or any psychological assessment of the children despite the fact that the elder daughters played a crucial role in bringing up their younger siblings, to the extent that they acted as role models to them. It also noted that the Court of Appeal, sitting with a single judge, had not considered the material submitted by Ms Soares de Melo in support of her appeal, and that when a panel of three judges of the same court had reviewed the case, it had reproduced the single judge's decision verbatim by simply copying and pasting it, which did not constitute an effective review. Lastly, Ms Soares de Melo had not been represented by counsel in the Family Court, since this was not compulsory. On account of the complexity of the proceedings and their extremely serious implications, the Court found that additional precautions should have been taken to ensure not only that Ms Soares de Melo understood what was at stake in the proceedings but also that she could take part effectively in them. The Court further noted that from the time she had had legal representation, Ms Soares de Melo had taken her case to the highest authorities to obtain access to her children; such sustained procedural activity contrasted, in the Court's view, with the approach she had adopted before the Family Court.

The Court therefore considered that the order for seven of Ms Soares de Melo's children to be taken into care with a view to their adoption, and its enforcement in respect of six of them, had not been appropriate to the legitimate aim pursued or necessary in a democratic society. It found that the measures taken by the courts in ordering the children's placement in care with a view to adoption and depriving Ms Soares de Melo of her parental rights had not struck a fair balance between the interests at stake, given that the courts had not envisaged any other less restrictive measures, such

as placement in a foster family or children's home, and had not done everything possible to preserve personal relations and restore the family unit if and when appropriate. It therefore found a violation of Article 8 of the Convention.

Rule 39 of the Rules of Court (interim measures)

The Court decided that the interim measures indicated to the Government under Rule 39 should remain applicable until this judgment became final.

Article 41 (just satisfaction)

The Court held that Portugal was to pay Ms Soares de Melo 15,000 euros in respect of non-pecuniary damage.

Separate opinion

Judge Sajó expressed a concurring opinion, which is annexed to the judgment.

The judgment is available only 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.