



## Sweden did not fail to protect 14-year old girl after her stepfather attempted to film her naked

In today's Chamber judgment in the case of [E.S. v. Sweden](#) (application no. 5786/08), which is not final<sup>1</sup>, the European Court of Human Rights held, by a majority, that there had been:

**no violation of Article 8 (right to private life)** of the European Convention on Human Rights.

The case concerned a complaint that the Swedish legal system, which does not prohibit filming without someone's consent, had not provided the applicant any protection against her stepfather's violation of her personal integrity by attempting to secretly film her naked when she was 14 years old.

The Court found that, at least in theory, the applicant's stepfather could have been convicted under the Penal Code either for child molestation or for attempted child pornography. In addition, Sweden had adopted a proposal criminalising certain aspects of illicit filming. Therefore, the Swedish system was not deficient to an extent of being incompatible with the Convention requirements.

### Principal facts

The applicant, E. S., 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 hidden a video camera in the laundry basket in the bathroom, which was in recording mode and directed towards the spot where she normally undressed.

E.S.'s mother reported the incident to the police about two years later and the stepfather was prosecuted for sexual molestation. The district court found that he had had a sexual intent when filming his stepdaughter nude, despite there being no film as it was burnt by the mother after she discovered the incident.

The stepfather was convicted of sexual molestation by the first instance court. He was finally acquitted on appeal. The appeal court concluded that while his motive had been to film the girl for a sexual purpose, filming someone was not a crime in itself as in Swedish law there was no general prohibition 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. His appeal on cassation was dismissed.

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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)

## Complaints, procedure and composition of the Court

Relying in particular on Article 8, E.S. complained that Sweden had failed to comply with its obligations to provide her with remedies with which to challenge her stepfather secretly filming her.

The application was lodged with the European Court of Human Rights on 21 January 2008.

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

Dean **Spielmann** (Luxembourg), *President*,  
Elisabet **Fura** (Sweden),  
Karel **Jungwiert** (the Czech Republic),  
Mark **Villiger** (Liechtenstein),  
Ann **Power-Forde** (Ireland),  
Ganna **Yudkivska** (Ukraine),  
André **Potocki** (France),

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Right to private life (Article 8)

The Court recalled that, under the European Convention, States were not only expected to do no harm, but they were also obliged to act in order to protect. That included the sphere of relations between individuals themselves.

While States enjoyed in principle a wide discretion as to what measures to take in order to ensure respect for private life, putting in place effective criminal law provisions was required to deter people from harming others, especially when the most intimate aspects of people's private lives were concerned. At the same time, only significant flaws in law and practice would result in a breach of Article 8 of the Convention.

The Court was satisfied that, although Swedish law contained no provision about covert filming, laws were in place which could, at least in theory, cover acts such as the one in this case. Thus, following the incident and its reporting to the police, a criminal investigation had been opened. The matter had been examined by courts of three levels of jurisdiction before which the girl had been legally represented and in a position to claim damages. The first instance court had convicted E.S.'s stepfather and the second instance court had acquitted him.

Furthermore, the court of appeal, in its judgment acquitting the stepfather of sexual molestation, had pointed out that his acts, at least theoretically, might have represented the crime of attempted child pornography under the Penal Code. The Court concluded that, at the relevant time, E.S. could have been practically and effectively protected under the Penal Code, as the stepfather could have been convicted either for child molestation or for attempted child pornography.

In addition, the Court recalled that its task was not to review legislation in the abstract. Instead, it had to confine itself to examining issues raised by the cases brought before it. It then considered whether, in the present case, the absence of a provision in the Penal Code on attempted covert filming was a significant flaw in Swedish legislation. It then noted that Sweden had taken active steps in order to combat the general problem of illicit or covert filming of individuals by issuing a proposal to criminalise certain acts of such filming in situations where the act violated personal integrity.

In the light of the above, and having regard to the fact that at the relevant time the stepfather's act was in theory covered by the Penal Code's provisions concerning sexual molestation and attempted child pornography, the Court concluded that there were no significant flaws in Swedish legislation and practice that could amount to a breach of Sweden's positive obligations under Article 8.

There had, therefore, been no violation of Article 8.

## Separate opinion

Judges Spielmann, Villiger and Power-Forde expressed a joint dissenting opinion, the text of which is annexed to the judgment.

*The judgment is available only in English.*

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