

CASE – MOOT COURT COMPETITION 2024

BACKGROUND FACTS

The APPLICANTS are Frieda Storm, a twenty-year-old woman, and her four-year-old daughter Helga Storm. They are both citizens and residents of FREELANDIA. They also belong to the HURRA people – a minority population within FREELANDIA whose status as a national minority has been acknowledged by the Freelandian government in national legislation.

FREELANDIA is a member of the European Union and has signed and ratified the European Convention on Human Rights (ECHR) and all its protocols. It currently sits on the United Nations Human Rights Council and is a state party to most of the major UN treaties, including the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In the last ten years, FREELANDIA has experienced a surge of criminal activity, especially within the HURRA community. Between 2018-2023 there were on average 45 shootings a year, most of them related to the growing illegal drug trade within the nation. The number of young people dying from drug related overdoses has also increased exponentially. Furthermore, there has been concern that organized criminals have infiltrated the welfare system in Freelandia and are using public funds and offices to further their criminal activities. The HURRA people have been particularly affected by the violence and crime, partially since many of them reside within socioeconomically disadvantaged areas. Studies conducted by the Freelandian National Council for Crime Prevention have also shown that the organized criminals believed to be responsible for a great number of the shootings and drug trafficking are well equipped and exercise caution to avoid prosecution. This has made it more difficult for the law enforcement agencies to apprehend those responsible for the violence, which has led to a need for the government to introduce new legislation increasing Freelandian police's mandate to use secret and preventative surveillance.

Furthermore, the government has faced significant struggle in combating biased attitudes toward the HURRA people from the majority population and hate crimes against members of the group have increased since the spike in drug-related violent crime. Due to the adversity faced by the HURRA people, a sense of mistrust toward the national authorities has also grown within the community.

CIRCUMSTANCES OF THE CASE

Frieda Storm, age 20, is a citizen of Freelandia and member of the Hurra people. Frieda grew up in a family and a tight-knit community who greatly valued their heritage. She also attended a private school that taught the pupils Hurrian – the language of the Hurra peoples – and thus had limited exposure to the culture and language of the Freelandian majority population.

Frieda had her first child when she was 16 years old. She subsequently decided to drop out of school and instead supported herself and her daughter Helga through working at the local

supermarket in her hometown. Helga's father never took interest in caring for Helga, and Frieda received sole custody of Helga from birth. Frieda always cherished her daughter, but often worried she might not be able to provide the best life for her. The financial struggles Frieda had to endure as a single teenage mother put a strain on her mental health, and she began suffering from depression and anxiety as a result of her hardships.

However, when she turned 18, she met Karl. Karl, also a member of the Hurra people, was a regular at the local supermarket where Frieda worked. When he came in for the third time in a single day, Frieda began suspecting he might be frequenting the store for another reason than their great prices on strawberries. Karl and Frieda soon became a couple and after a while Karl moved in with her and Helga. For a few months, it seemed like Frieda's life might finally be falling into place.

Unfortunately, after a violent shooting outside Frieda and Karl's apartment in 2022, everything changed. Karl started coming home late, and sometimes not coming home at all. He began acting erratic and seemed angry and distracted. Finally, Frieda asked him what was wrong. He admitted to her that he had started selling narcotics for a local criminal organization. He claimed he only started to save up money so that he, Frieda, and Helga would be able to move out of their dangerous neighbourhood. Frieda was appalled, but after assurances from Karl that he would never let anything happen to them and that he would quit as soon as he had the money, she calmed down. "It is not like the government has ever helped us. If you think about it, it is really their fault we have to take matters into our own hands," she declared.

To combat the increased drug violence in Freelandia, Freelandian legislators passed a new law allowing the police to conduct secret surveillance of their own nationals pre-emptively. Since the surveillance can be granted by a prosecutor with the aim of preventing criminal activity, the police do not need to have reasonable suspicion to conduct a surveillance operation. If there are any factual circumstances indicating that the information is of particular importance for preventing, deterring, or detecting criminal activities, surveillance can be granted. The police are also allowed to share information obtained via surveillance for a purpose other than crime prevention if they deem it appropriate. The relevant articles of the legislation are as follows:

§ 2 of the Intelligence Surveillance Act

Data may be collected if the circumstances are such that the measure is of particular importance for preventing, deterring, or detecting criminal activities. Applications for pre-emptive surveillance must be granted by a prosecutor. The surveillance may not continue for longer than is necessary and may not exceed one month from the date of the decision.

§ 15 of the Intelligence Surveillance Act

The police may determine that information obtained during the collection of data in accordance with the Intelligence Surveillance Act may be used for a purpose other than the basis on which the authorisation was granted.

In the fall of 2022, three patrol officers noticed Karl hanging out in the local town square with known leaders of a criminal organisation believed to be responsible for the last five shootings in the area. Having had major challenges in gathering evidence to prosecute the higher-ups in the organization, the police hoped that they might be able to use Karl to get to them. The police decided not to apprehend Karl but instead requested a surveillance order, which was granted. They secretly set up a wiretap on his mobile phone in order to gain access to his text

messages, in accordance with § 2 of the Intelligence Surveillance Act. After 24 hours of surveillance the police found out that Frieda lived with Karl and subsequently decided to place a wiretap on her mobile phone as well. The reasoning for the decision was partially motivated by several recent studies from the Freelandian National Council for Crime Prevention showing that members of organized crime networks often recruit their girlfriends or sisters to aid in drug trafficking because women are less likely to be suspected of criminal activity.

During the fall of 2022, Frieda became pregnant. The pregnancy had not been planned, but still, Frieda was elated. Another opportunity to bring a new life into the world! Frieda immediately told Karl who rejoiced as well. “Soon I will have the money we need to get out of here,” Karl stated and hugged her tight. “Everything will be okay.”

At the local police station, Officer Gregg looked over the recent data received from the wiretap of Frieda’s mobile phone while drinking his morning coffee. The police had collected multiple interactions between Karl and known affiliates of a criminal organization which they believed could substantiate their suspicions any day. As he read the most recent message, he almost choked on his lukewarm americano. “They’re planning to bring another child into this chaos?” Before becoming a police officer, Officer Gregg had helped his brother through a severe cocaine addiction, and he knew more than well that addicts and criminals were no suitable parents for a toddler, much less a newborn. “I have to do something about this,” he thought, suddenly remembering the new law allowing him to share additional information acquired through secret surveillance with administrative authorities if he deemed appropriate. He knew that the police would have to close the wiretap after a month and was grateful that this information had come to light before it was too late. Officer Gregg immediately prepared the paperwork and made a call to the Social Services.

Linda – a social worker in Freelandia – picked up Officer Gregg’s phone call. She was informed that the police had suspicions that illegal drug activity was being conducted in or around Frieda and Karl’s home and that one – or both – of them might have an ongoing drug problem. Officer Gregg stated, however, that this information was highly sensitive and therefore could not be shared with the individuals concerned or in public documents. The information was to be considered classified in accordance with the Freelandian Public Access to Information and Secrecy Act. Linda complied and assured Officer Gregg that she would not share this information with inappropriate actors. After the call, Linda felt deeply concerned for the wellbeing of Frieda’s daughter and unborn child. To assure the best interests of both children, she immediately began investigating the circumstances of their upbringing. Her concerns only increased when she saw that they lived in a neighbourhood well-known to authorities for its high rates of drug use and violence, including the recent shootings.

Two days later, Frieda received an invitation to a meeting with Linda, whose office was located in Freetown, the capital of Freelandia. Frieda lived approximately three hours away from the capital, but she understood that she had to comply with the summons. Concerned that she had to take a day off work to attend the appointment, she wondered why they hadn’t scheduled her visit at her local Social Security office. “Typical Freelandians. They never think of us,” she thought begrudgingly as she walked to the train station. She also felt a small knot in her stomach form – she hadn’t done anything wrong had she? As the train hurtled toward the capital, Frieda thought about the lack of care for the Hurra people shown by the Freelandian authorities. Could she really trust a government who never seemed to take her best interests into account?

When Frieda arrived, she was immediately escorted into a small room by a quite rude secretary. “Just wait here,” the secretary stated and left her alone in the cold room. Since Frieda had grown up in a quite closed community, she had never learned Freelandian fluently. Of course, she could understand the broad strokes, but suddenly became nervous she might not fully comprehend the social worker without a translator. She wondered if she should have mentioned that to the Social Services before arriving, or if it was their responsibility to make sure she could understand everything perfectly. However, before she could finish her thought, Linda entered the room.

“I have to say I have some grave concerns,” Linda began. She then continued explaining that the Social Services had received information that had led them to believe that Helga’s health and development were at great risk of being harmed if she were to remain in the care of Frieda and Karl. Furthermore, she added, “If you decide to keep that new baby, we might have to take care of that one too.” Frieda was shocked. Linda then continued, “Would you consent to administrative care for your child?” Frieda did not know what to say. “You do not want us to take your kids?” Linda reiterated. Frieda just shook her head – of course not. Linda took this response to mean that Frieda declined to consent to voluntary care measures. If Frieda had said yes to Linda’s first question, she would have had an opportunity to consent to voluntary treatment, a form of agency involvement in which the child may remain in the home while the parents agree to participate in various services designed to protect the child’s interests. Unfortunately, the language barrier meant that Frieda did not understand that this was an option.

Linda then cited § 2 of the Freelandian Childcare Act (see below) and declared that the Social Services were well within their rights to take custody of her children if they believed the parents could not provide adequate care for them.

2 § of the Child Welfare Act

Placement in the care of the Social Services Agency shall be ordered if there is a significant risk that the minor’s health or development will be harmed due to physical or mental abuse, improper exploitation, inadequate care, or any other condition in the home.

“For us to feel safe leaving Helga in your care, you have to prove that you are prepared to make some serious changes,” Linda said as she looked disapprovingly at Frieda’s stomach. “I mean, if you can’t even care for one, how are you supposed to care for two?” She then began asking Frieda questions about drugs– if she had ever used illegal narcotics, if Karl did, if she knew of people who did. This made Frieda extremely nervous. She had tried a few different drugs some years ago, in what she thought of as her ‘wild days’ before having Helga – but had never touched them since then, so what did that matter now? She also did not want to say anything that could get Karl in trouble. As she tried to think of a good way to respond, she saw Linda grow impatient. “Yes – but a long time ago,” she began, then saw Linda start typing on her computer. “Before Helga’s birth!” she tried to explain. Linda stared at her: “While you were pregnant?” “No!” cried Frieda “It was a long time ago!”

Linda just continued to take notes. “If you want to keep Helga safe, you need to be honest with me. We have reason to believe she is exposed to drug use. What are you doing to protect her?” Frieda was astonished, but also afraid that maybe Helga had seen Karl do something. She could not think of a good response except to repeat “We do not have drugs in our home. Helga is safe, we love her.” Before Frieda was allowed to leave the room, Linda gave her a pamphlet with the contact information to an abortion clinic and said, “We’ll talk soon.”

After the meeting, Frieda felt like she might throw up. What had just happened? Could they really take her children? Could she lose Helga if she decided to keep her baby? Could she lose both? She could feel her anxiety increasing as she boarded the train. What was she going to do? How the social worker even knew she was pregnant she did not reflect upon until she came home. She also realized she hadn't really said anything during the meeting – she had been too confused and afraid to question Linda's statements. But that night she wondered what information the agency had received and from whom. The next morning, Frieda went into Helga's room. She looked at her beautiful daughter sleeping and realized that she would do anything to keep her. Even if that meant giving up her opportunity for a new family, nothing was more important than Helga. She picked up the pamphlet she had received from the social worker the day before. "This is the only way I can prove to them I deserve to keep my daughter," she thought in despair, and dialed the number.

Since Frieda was already in the eighth week of her pregnancy, she received an immediate appointment at the abortion clinic. After signing a written consent form, she swallowed the large pink pill given to her by the nurse. As the cramps in her stomach began, Frieda closed her eyes and thought of Helga. "I am so sorry, but this is the only way," she whispered over and over. She got to stay at the clinic for a few hours, until they were able to conclude that everything had gone well. Even though the doctors assured her she was physically fine, Frieda felt awful. The only thing keeping her together was the thought that at least now she would be able to keep her daughter.

When she came home, however, she immediately knew something was wrong. Helga's shoes were gone. In the kitchen, she found Karl – crying. "They took her," he said. "There was nothing I could do." Unbeknownst to Frieda and Karl, the police had decided to open two separate preliminary investigations on them, one based on drug trafficking and one regarding complicity in drug trafficking. The information gathered through the preventative secret surveillance had given the police sufficient grounds to suspect that Karl was storing narcotics in their home. Following the decision to open the preliminary investigations, the prosecutor responsible for the investigation decided to permit additional surveillance to gather further evidence.

The Social Services had decided to issue an immediate order of compulsory care for Helga after receiving information from the police regarding the preliminary investigation and additional evidence regarding Helga's home life. In Freelandia, the Social Services can decide to issue such an order if they deem there to be an immediate threat to the child's health or development, or if their investigation could be compromised by having to wait for a court order. Karl showed Frieda a copy of the Social Service's investigation and administrative decision. The agency's decision stated that the Social Services deemed Helga's home environment unsuitable for a child of her age and that they found there to be a significant risk that her health and development would be impaired if she remained in the care of Frieda and Karl. Apparently, they had interviewed Helga at kindergarten, and she had said something about Karl often being angry and yelling a lot. Furthermore, they wrote that Frieda had been uncooperative during the investigation. The report stated that Frieda had admitted to prior drug use, and that she had declined to consent to voluntary care for the child and not provided the agency with an acceptable plan for ensuring Helga's safety in the home. A large section of the report referred to the agency's concerns about Helga's safety in the home, noting that she was in a "potentially hazardous home environment" due to her parents' lifestyle. Frieda and Karl did not understand this, especially considering that no one from the agency had ever been in their home prior to that day. At the bottom of the page, Frieda could see that the report cited additional information which could not be disclosed due to the confidentiality of an ongoing preliminary investigation.

The following four weeks were a nightmare. The Social Services declined to inform Frieda and Karl of where Helga had been placed but did say that there would be a court hearing in a month to review the agency's placement decision. They also instructed both Frieda and Karl to undergo a drug test, saying that they had concerns about drug use in the home. This scared Frieda very much. She feared that the agency had somehow learned about Karl's involvement with the drug gang – but he had never been arrested or even stopped by the police, so how could they know? She became increasingly paranoid, feeling that the agency had taken over her life and that she had no control over her situation. Frieda went to the drug testing centre at the police station, where she hesitantly signed a form agreeing to provide a urine sample for testing. When she received the results showing that she had tested negative for all illicit substances, she assumed that that was it. However, Linda, who had also received copies of Frieda's test results, scared her by sending an e-mail saying, "You could stop testing, but you might want to wait until the court hearing. It would look bad for you if you didn't continue testing weekly." Not knowing what was really permitted or not, Frieda just kept going to the tests every week, even though she found it humiliating and unnecessary. Her tests continued to be negative.

These events rekindled Frieda's mental health issues, and she was diagnosed with depression due to the traumatic abortion, the loss of her child, and the uncertainty of the ongoing investigation. Having to do weekly drug tests made her feel like a criminal. During the weeks leading up to the court hearing, Frieda could not sleep, barely ate, and had to apply for sick leave from work.

Finally, it came time to go to court. The Social Services informed Frieda that she would be appointed a legal representative to assist her with the legal proceedings. Frieda had a chance to meet with her public attorney a day before the court hearing. She told her attorney why she felt the Social Services agency's investigative report was wrong, explaining that she had been cooperative with the agency. She had just been so scared that she hadn't known what to say, especially because the conversation had been in Freelandian. She noted that her drug tests had come back negative, yet Linda had said she should continue testing every week. Here, the lawyer pointed out that after she had tested negative the first time, she was not under any obligation to continue testing. Linda's email was a recommendation, not a legal order. Although Frieda was glad to stop, she also felt even more upset that she had continued to do so apparently unnecessarily, as going to the test centre was time-consuming, it cost money for transportation, and – most of all – being ordered to urinate in a cup felt shameful and invasive.

She also pointed out the sections of the reports that talked about the unsafe home environment, saying that she did not know what that meant and that the report seemed to be referring to some secret information. The attorney was equally confused by this and filed a request with the agency to obtain further details. Social Services responded that they had received the information from another government agency, but that due to confidentiality regulations, they could not disclose the source of the information. Frieda's lawyer then filed a request with the Freelandian Public Access to Information and Secrecy Agency. This was equally unsuccessful as they received a short response stating that the agency did not have any information regarding Frieda. The attorney informed her that she would do what she could to get Helga back, and notified the court that Frieda would need a translator present at the hearing, for which she was thankful.

Unfortunately for Frieda, the court's decision was a disappointment. They decided to uphold the decision of mandatory care for Helga based on the Social Services investigation. The court did note that it was unfortunate that it did not have access to all of the information

contained in the investigation. However, without being able to independently evaluate the information, it had no choice but to accept the agency's reports and safety concerns at face value. The court's decision also referred to part of the report that noted that Frieda had admitted to drug use, although it also noted that Frieda's drug tests had produced negative results. It ultimately determined that remaining in mandatory care was in the best interest of the child. Frieda was devastated but took some comfort in the fact that the court at least had decided to inform her that Helga had been placed in a family home in Freetown. The family did not belong to the Hurra people, and Frieda wondered if Helga might have trouble understanding them since they had primarily spoken Hurrian at home. "They seem nice at least," Frieda thought, trying to console herself. She had been informed that the foster family consisted of two parents, one older daughter and a family dog. "She always wanted a dog," Frieda remembered. Still, she vowed to do all that she could to get her daughter back.

Due to Frieda's anxiety and depression, and her distrust of the Social Services after their actions, she failed to comply with most of their requirements to participate in family training. She felt anxious even just seeing the Social Services logo on the letters she would receive every six months notifying her the decision of mandatory care remained. She felt devastated. After a few months, Frieda also lost her job at the supermarket because of her declining mental health.

However, one day, a year and a half later, Karl received a phone call. "You must be so relieved you're not a suspect anymore!" his friend, who also had been involved with the criminal organization, said. At first Karl was confused – suspected of what? But then his friend explained that he had been interrogated by the police who had informed him that he, Karl, and some of their other friends were targeted in their investigation of the criminal network. Apparently, though, the police had decided to drop the preliminary investigation due to a lack of evidence. Frieda wondered if the police had said something to the Social Services agency – maybe that was the reason for their concerns? Although this thought was discomforting, she also finally felt a sense of hope. Now, maybe, they would decide to give Helga back to her. The Social Services still insisted that Helga should remain in foster care, but this time Frieda appealed with the help of a new attorney. This time would be different – she was sure of it. The new attorney, who had experience with cases of drug-related police surveillance, helped her gain knowledge of the secret surveillance that had been carried out by the police, after submitting a new request to the Freelandian Commission on Security and Integrity Protection. "So that is how they knew about everything," Frieda realized. Frieda also told the new attorney about the abortion, who informed her that the Social Services did not have the right to demand that she go through with such a medical intervention. He asked if she had any evidence of coercion, but Frieda could not remember. She only knew that she had felt forced, but had she been, really? They had decided to take her daughter anyway. Frieda tried not to think about it too much, instead, she focused on the appeal.

Still, the administrative and appeals court both found that the compulsory care should remain. Even if the suspicions of illegal activity in the home no longer could be corroborated, the court found that Frieda's mental health concerns, her failure to comply with the agency's requirements to participate in family training, Karl's anger issues, their lack of economic stability, and the strong bond Helga had formed to her foster family during the past year and a half all supported the conclusion that remaining in the foster family's care would be in the best interest of the child. The Supreme Administrative Court did not issue a leave of appeal. Frieda's attorney, however, did not accept this decision. "We have to take your case to the European Court of Human Rights." Thus, with the help of her attorney, Frieda drafted an application to the ECtHR on January 25, 2024.

THE CASE

As a last resort, the Applicants turn to the European Court of Human Rights, claiming that their rights under the Convention have been violated by Freelandia.

Frieda argues that the state seriously violated her rights through their conduct. The police had secretly surveyed her phone without sufficient cause, and furthermore they had shared information not pertaining to the criminal investigation with the Social Services agency. She had not been given access to legal representation or a translator when she met with the Social Services agency and could therefore not adequately protect her interests during the investigation. Additionally, the fact that vital information from the investigation was not disclosed to her, her legal representative, or the court, impaired her ability to argue her case. Moreover, she argued that she had been coerced into performing an unwanted abortion by the social services. The fact that the criminal investigation went on for a year and a half, affecting the Social Services agency's assessment of Frieda, also led to her suffering extensive psychological damage and lessened her ability to regain custody of her daughter. Lastly, but perhaps most importantly, the state had taken her daughter away from her without sufficient grounds for their decision.

Moreover, Helga's rights under the European Convention of Human Rights have also been violated due to her being involuntarily removed from her home without sufficient legal grounds.

Freelandia denies that it has committed any violations, arguing that the state has the right to commit children to mandatory care if necessary to protect the wellbeing of the child. They also stated that the applicant's procedural rights had been sufficiently protected through the appointment of two public attorneys assigned to assist her with the legal proceedings. Additionally, having an abortion in Freelandia always requires obtaining written consent from the patient, which in this case was given – from a mentally sound adult. Furthermore, the state argues that the secret surveillance conducted had been carried out in accordance with national laws and was proportionate in relation to the exceptional spike in criminal activity which had affected Freelandia in the recent years. Freelandia maintains that they do their best to accommodate the need of all their citizens, but that this requires careful consideration of everyone's best interests.

The Applicant maintains that her and her child's rights have been violated, both on substantive and procedural grounds. All domestic remedies have been exhausted, and the Applicants now turn to the European Court of Human Rights. The application was lodged with the European Court of Human Rights on January 25, 2024, and on March 30, 2024, the Court declared the case admissible, without prejudging the merits of the case.