



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BUCHLEITHER v. GERMANY

(Application no. 20106/13)

JUDGMENT

STRASBOURG

28 April 2016

FINAL

17/10/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Buchleither v. Germany,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Ganna Yudkivska, *President*,

Angelika Nußberger,

Khanlar Hajiyeu,

André Potocki,

Faris Vehabović,

Yonko Grozev,

Carlo Ranzoni, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 15 March 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 20106/13) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a German national, Mr Lucian Buchleither (“the applicant”), on 11 March 2013.

2. The applicant was represented by Mr G. Rixe, a lawyer practising in Bielefeld. The German Government (“the Government”) were represented by their Agent, Mr H.J. Behrens.

3. The applicant alleged that the indefinite suspension of contact between him and his daughter had violated his right to respect for his family life under Article 8 of the Convention.

4. On 27 May 2014 the complaint concerning the suspension of contact was communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE****A. Background to the case**

5. The applicant was born in 1965 and lives in Rastatt.

6. He has a daughter, H., born on 29 June 2003. He and the child's mother, who were not married, separated shortly after the birth. The child lives with her mother, who has sole parental authority.

7. Since the end of 2003, the parents have argued about contact. In April 2004, the applicant lodged his first request for contact with the Neustadt/Weinstraße Family Court. During a hearing in June 2004 the parents agreed to him having supervised contact, which took place until October 2004. On 8 December 2004 the parents reached a further agreement for supervised contact, which was approved by the Family Court.

8. On 21 February 2005 the applicant requested that the supervising Youth Office, which had refused to continue to be involved due to the parties' behaviour, be replaced by another child protection association. On 11 July 2005 the Family Court granted this request. By a letter of 21 October 2005, the appointed child protection association refused to act upon the Family Court's instructions because of the mother's behaviour.

9. On 28 October 2005 the applicant requested the Family Court to impose a coercive fine on the mother in order to enforce contact rights. On 17 May 2006 the parents agreed on a court-approved contact arrangement. On 18 September 2006 the Family Court, upon the applicant's request, appointed an access facilitator (*Umgangspfleger*). The order was subject to a time-limit expiring on 31 December 2006. Subsequently, the contact-arrangement was implemented in a more or less regular way.

10. On 8 May 2007 the applicant asked the court to extend contact, reappoint a custodian *ad litem* (*Verfahrenspfleger*) and impose a coercive fine on the mother. In reply, the mother requested that contact be suspended for two years. On 22 December 2008, after having again heard an expert, the Family Court suspended contact until 31 December 2009. The applicant's constitutional complaint (no. 2084/09) was to no avail.

B. Proceedings at issue

1. Interim proceedings

11. On 22 January 2010 the applicant requested an extension of contact following the end of the suspension period. After hearing the child in person, on 12 April 2010 the Family Court granted the applicant contact on a fortnightly basis. At the same time it gave specific directions about the contact and set out sanctions to be applied if the parents did not comply with the order. Contact did not take place.

12. On 2 September 2010, after having heard the child again, the Family Court, at the mother's request, suspended the applicant's contact until the conclusion of the main proceedings and rejected his requests for a coercive fine.

2. Main proceedings

13. On 15 April 2011 the Family Court heard both parents, the child and the child's custodian *ad litem*. Relying on the opinion of a psychiatrist, Dr B., submitted both in writing and explained orally, it granted the applicant contact of two hours every fortnight. It appointed a guardian, who was given specific directions as to how the child should be prepared for contact and how the meetings should be organised.

14. The mother appealed against this decision. The applicant pursued his request for contact and furthermore requested that the Zweibrücken Court of Appeal order the mother to supply regular information on the child's development.

15. The Court of Appeal obtained further written submissions from Dr B., who, with regard to the development, was now of the opinion that a suspension of the applicant's contact was, at the moment, the less damaging approach and therefore in the child's best interest. Contact with the applicant as such was not found to be damaging, but the circumstances of the conflict rendered a different solution at the moment impossible. As regards the parents' conflict, the expert pointed out that the applicant had agreed on mediation, but the mother refused such a procedure. He declined any possibility for the applicant to positively and actively arrange any contact at the moment. In her written submission to the Court of Appeal, the child's guardian expressed her view according to which, to prevent long-time damages of the child, a minimum contact with the applicant should be guaranteed in any event by allowing him to send letters and presents to the child.

16. On 19 October 2012 the Court of Appeal heard from the parents, the child's guardian, the child and Dr B., it rejected the applicant's request and suspended all contact between him and his daughter indefinitely, pursuant to Articles 1696 and 1684 § 4 of the Civil Code (see paragraphs 23 and 24 below).

17. The Court of Appeal observed at the outset that the court-approved contact agreement of 17 May 2006 was still valid. It considered, however, that contact had to be permanently suspended because ordering contact would affect the child's welfare. The court noted that the child had not had any contact with her father for four years, and that he had become a stranger to her. This had been confirmed, in particular, by the court-appointed expert. When heard in court, the child had clearly stated that she did not want to see her father. She only had limited, bad memories of him. The child, who appeared to have developed properly in relation to her age, had given the impression that she knew what was at stake and what she wanted. In spite of her young age, she had clearly and firmly expressed the desire to have her own wishes respected, suggesting that she would not accept being forced into doing something she did not want. The guardian submitted that he had not succeeded in breaking the child's aversion to her father.

According to him, the child had cried and left the room when he had started talking about her father.

18. The Court of Appeal considered that the child's attitude had been influenced by the loyalty she felt towards her mother, who continuously talked negatively about the father. The child felt obliged to feel the same way as her mother. She longed for the dispute between her parents to come to an end so that she would no longer be exposed to a conflict of loyalties. She saw rejecting her father as the only way to preserve at least her mother's love. Relying on the expert's findings, the Court of Appeal observed that the child was mature enough to make a conscious decision and be aware of its consequences. She found herself in a psychological dilemma caused by the communication troubles between her parents, without yet having developed post-traumatic stress disorder. On the one hand, the loss of contact with a parent generally led to a disturbance of psychological development which affected a child's welfare, but on the other, forced contact in the context of a continuing dispute between parents could also seriously affect the child.

19. The Court of Appeal noted that the expert, in his opinion submitted to the Family Court, had explained that contact with the father did not in itself jeopardise the child's welfare. However, the expert considered it necessary to prepare the parents by improving their communication before reinstating contact. The Family Court's decision had failed to take this "prerequisite" into account. The parents had not undertaken any steps in this direction. When heard in the Court of Appeal on 6 September 2012, the expert had clarified that if the parents did not change their way of communicating, which would necessitate at least some form of professional help such as mediation, it would cause more harm to attempt to reinstate contact than to exclude it altogether.

20. The Court of Appeal continued:

"Against the background of the parents' previous conduct both in and outside the courtroom, the [Court of Appeal's] chamber rules out the possibility that the parents will be able successfully to have recourse to mediation in the foreseeable future. As a mandatory result, the father cannot be granted access to H. at present (*derzeit*) and the only available option is to exclude [him] from contact. It is not possible to solve the child's dilemma by specifying the arrangements for contact ... or by appointing a custodian.

It is up to the mother to overcome her aversion to the father, and up to the father to learn that contact can only be reinstated through patience, restraint and understanding of both the mother's and child's feelings. It is furthermore not ruled out that the child, with advancing age and maturity, will be able to detach herself from her parents' dispute and seek contact with her father herself. The present decision does not exclude these options."

21. By a judgment given on 6 February 2013 (no. 1 BvR 4/13), the Federal Constitutional Court refused to entertain a constitutional complaint

lodged by the applicant regarding the decisions taken in the main proceedings, without providing reasons.

22. After the applicant lodged his application with the Court and the application had been communicated to the Government, the family case file was sent to the Ministry of Justice and then back to the Family Court. On 18 July 2014, after its return from the Ministry, the case file was presented to a judge, who ruled: “1. Seen. Nothing to be done. 2. To be stored” (*1. Gesehen. Nichts zu veranlassen. 2. Weglegen*).

II. RELEVANT DOMESTIC LAW

A. German Civil Code

23. Under Article 1684 § 1, a child is entitled to have contact with both parents; each parent is obliged, and entitled, to have contact with their child. In accordance with 1684 § 4, a family court may restrict or exclude contact to the extent that it is in the best interests of the child. A decision restricting contact for a long period of time or permanently may only be made if otherwise the best interests of the child would be endangered.

24. Article 1696 § 2 provides that a measure which may only be taken where it is necessary to avert to the child’s welfare or which is in the child’s best interests (a measure under the law on child protection) must be cancelled by the relevant family court if there is no longer any risk to the child’s welfare or if the measure is no longer necessary.

B. Act on Proceedings in Family Matters and Matters of Non-Contentious Jurisdiction

25. Under section 24(1) of the Act on Proceedings in Family Matters and Matters of Non-Contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit* – hereinafter “the Family Matter Act”), in instances where proceedings may be instituted *ex officio* by the court, the commencement of proceedings may be proposed (“*Soweit Verfahren von Amts wegen eingeleitet werden können, kann die Einleitung eines Verfahrens angeregt werden*”). Section 24(2) provides that if the court does not accept such a proposal, it must inform the party who made it.

26. Section 26 provides that the court must, *ex officio*, conduct necessary inquiries to establish the facts that are relevant to the decision.

27. Section 166(2) provides that the relevant family court must review at reasonable intervals long-term measures which have been taken to avert a risk to the child’s welfare (a measure under the law on child protection), such as those set out in Article 1684 § 4 of the Civil Code.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

28. The applicant complained that the suspension of contact, which was not subject to a time-limit, had violated his right to respect for his family life and his right to a fair trial as provided in Articles 6 and 8 of the Convention.

29. The Government contested that argument.

30. In view of the procedural guarantees inherent to Article 8, the Court deems it appropriate to examine the submitted complaint only under that provision, which reads insofar as relevant as follows:

“1. Everyone has the right to respect for his private and family life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

31. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

32. According to the applicant, the exclusion of contact was not justified as there was no risk of the child's endangerment. He pointed out that the Court of Appeal had based its assumption – that by implementing contact the child's welfare would be at risk – on the expert's recommendations, which had changed at second instance in comparison to the first instance without any basis.

33. The applicant submitted that the court's decision to suspend contact was not justified because of the indefinite, permanent exclusion of his entitlement to contact without examination and the possibility of a review after a year. He also alleged that the indefinite exclusion of contact was disproportionate, because the Court of Appeal neither ordered a yearly review of the exclusion of contact nor had even established that such a review would affect the child's welfare itself, referring to the cases of

Heidemann v. Germany (dec.), no. 9732/10, 17 May 2011 and *Nekvedavicius v. Germany* (dec.), no. 46165/99, 19 June 2003. Following the Court of Appeal's decision, the possibility of a review had been permanently removed, the result being that the applicant had no possibility of applying for a review after a year. He stressed that decisions suspending contact needed to be subject to a time-limit so that the parent concerned knew when he could request a new examination of the entitlement to contact.

34. According to the applicant, the Court of Appeal's decision had been flawed by numerous procedural errors. It had failed to adequately examine whether the mother's obstruction could be counteracted by sanctions, custodial or otherwise, and thus any risk to the child could be prevented by implementing contact. It had, furthermore, failed to properly consider appointing a custodian and to examine whether under the principles of proportionality children's therapy was suitable, thereby ignoring the expert's reviews and recommendations.

(b) The Government

35. The Government pointed out that the Court of Appeal's decision of 19 October 2012 had been based on thoroughly investigated facts, as the court had asked the expert to supplement his report both in writing and orally and had heard the parties, the child and the guardian *ad litem*. Its decision had been backed up by detailed reasoning, particularly with regard to the parents' antagonistic relationship, and had been focused on the child's own wishes as conveyed in the personal hearing.

36. The Government was of the opinion that the Court of Appeal had not been obliged to set a time-limit when suspending the applicant's contact. They stressed that the Court's case-law did not fundamentally require a time-limit to be imposed in such circumstances. The requirement was for decisions of this type to be reviewed at regular intervals of no more than a year, as long as the review process itself would not seriously affect the child's welfare.

37. Furthermore, they disagreed that the Court of Appeal's decision had denied the applicant contact permanently, both because of the legislative provisions and the reasons given by the Court of Appeal. Denial of contact was a measure under the law on child protection. Revocation had to be considered as a matter of course, pursuant to Article 1696 § 2 of the Civil Code taken in conjunction with section 166(2) of the Family Matter Act if the measure was no longer necessary or if there was no longer a risk to the child's welfare. Furthermore, under the domestic law the applicant had been entitled, at any time, to submit a new request to court for a new contact arrangement. Besides these legal provisions, the Court of Appeal's reasoning had made it sufficiently clear that the denial of contact was not permanent, as it had explicitly stated that contact visits were not an option

“at the present time”. The decision thus signified that no final answer had been given to the question of whether contact visits would ever be arranged again, especially as the Court of Appeal had stressed that the present decision did not rule out contact on the application of the child herself at a later date.

2. The Court’s assessment

38. The parties did not dispute that the domestic courts’ decision refusing the applicant contact with his child amounted to an interference with his right to respect for his family life as guaranteed by Article 8 § 1. The Court takes the same view.

39. Any such interference constitutes a violation of Article 8 unless it is “in accordance with the law”, pursues an aim or aims that are legitimate under paragraph 2 of this provision and can be regarded as “necessary in a democratic society”.

40. It was also undisputed that the decisions at issue had a basis in national law, namely the second sentence of Article 1684 § 4 of the Civil Code (see paragraph 23 above).

41. The Court observes that the Court of Appeal, in its decision of 19 October 2012 (see paragraphs 15-20 above), confirmed that the suspension of contact was exclusively motivated by the child’s welfare. In the Court’s view, the Court of Appeal’s decision suspending the applicant’s contact was aimed at protecting the “health or morals” and “rights and freedoms” of the applicant’s daughter. Accordingly, it pursued a legitimate aim within the meaning of paragraph 2 of Article 8. It therefore needs to be determined whether the suspension of contact without setting a time-limit was “necessary in a democratic society”.

(a) General principles

42. The Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient for the purposes of Article 8 § 2. Undoubtedly, consideration of what lies in the best interests of the child is of crucial importance in every case of this kind. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the parties concerned. It follows that the Court’s task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody and contact issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their margin of appreciation (see, *inter alia*, *Süß v. Germany*, no. 40324/98, § 86, 10 November 2005; *Hokkanen v. Finland*, 23 September 1994, Series A no. 299-A, p. 20, § 55; and *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII).

43. Furthermore, a fair balance must be struck between the interests of the child and those of the parent and, in striking such a balance, particular importance must be attached to the best interests of the child. The parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (compare *Elsholz v. Germany* [GC], no. 25735/94, § 50, ECHR 2000-VIII and *Heidemann*, cited above).

44. The margin of appreciation to be accorded to the relevant national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. It must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their power of appreciation (see *Glesmann v. Germany*, no. 25706/03, § 102, 10 January 2008). The Court has thus recognised that the authorities enjoy a wide margin of appreciation, particularly when deciding on custody. However, stricter scrutiny is called for as regards any further limitations – such as restrictions placed by those authorities on parental contact – or legal safeguards designed to secure effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that family relations between parents and a young child might be effectively curtailed (see *Sommerfeld*, cited above, § 63, and *Görgülü v. Germany*, no. 74969/01, § 42, 26 February 2004).

45. The Court further reiterates that whilst Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by that provision. The Court cannot satisfactorily assess whether the reasons adduced by the national courts to justify these measures were “sufficient” for the purposes of Article 8 § 2 without at the same time determining whether the parent was involved in the decision-making process, seen as a whole, to a degree sufficient to provide him with the requisite protection of his interests (see, *inter alia*, *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 72, ECHR 2001-V, and *Süß*, cited above, § 89).

(b) Application of these principles in the present case

46. Turning to the circumstances of the present case, the Court observes that on 15 April 2011 the Family Court granted the applicant contact for two hours every fortnight and that this decision was quashed on 19 October 2012 by the Zweibrücken Court of Appeal. The Court of Appeal suspended the applicant's contact in view of the firm wish of the nine-year old child not to meet her father, which she expressed in a hearing before it. The Court of Appeal relied furthermore on the expert's opinion, who considered that suspending the applicant's contact would be the less damaging approach at the moment and who held that H.'s attitude had been influenced by the

loyalty she felt towards her mother. The Court therefore considers that the decision to suspend the applicant's contact was based on considerations relating to the child's welfare.

47. As regards the applicant's complaint that the decision was flawed, the Court notes that the Court of Appeal, in its decision-making process, relied on detailed extensive information such as assessments of the expert's opinion and the oral hearing of the applicant, the child's mother, the guardian *ad litem*, the expert and the child. It addressed the applicant's submission on behalf of a custodian when ruling that it was not possible to solve the child's dilemma by specifying the arrangements for contact or by appointing a custodian. The Court is therefore satisfied that the decision-making process was fair and afforded respect to the interests involved.

48. Moreover the Court notes that the Court of Appeal gave clear reasons for its decision as such by assessing the parents' previous conduct both in and outside the courtroom, the necessity of an improvement of the parents' communication before reinstating contact and the possibility of a successful recourse to mediation (see paragraphs 19 and 20 above). It further referred to possible changes in the future. However, the decision is unclear in so far as it emphasized that the exclusion of contact rights was the best solution "at present" while not limiting it in time.

49. In this respect the Court reiterates that the reasons for a suspension of contact cannot, as a rule, be regarded as permanent and should generally be reviewed at regular intervals, unless the review would in itself seriously affect the child's welfare (see *Nekvedavicius v. Germany* (dec.), no. 46165/99, 19 June 2003, and *Heidemann*, cited above).

50. In the present case, the Court of Appeal explained that due to the child's psychological conflict both parents were obliged to improve their way of communicating. Under these circumstances the Court of Appeal held that the only available option was to exclude the applicant from contact. While it is clear from the reasons given by the Court of Appeal that the passage of time alone would not be sufficient, but the parents' attitude would have to change in order to reassess the contact rights, it is true that the court did not give any explicit reason for not setting a time-limit and did not explicitly establish that a fresh assessment in itself would jeopardise the child's welfare (contrast, *Heidemann*, cited above). In the Court's opinion, even though the Court of Appeal showed that it was aware of its duty to preserve the uniting bonds between father and daughter (compare *Süß*, cited above, § 91, and *Luig v. Germany* (dec.), 28782/04, 25 September 2007), the reasons adduced by it in the present case are insufficient to explain why, bearing in mind the danger that family relations could be effectively curtailed by an indefinite suspension of contact, this decision was necessary in the child's best interests.

51. Nevertheless, the Court of Appeal's decision has to be seen in the context of the regulations on contact rights seen as a whole.

52. The Court notes that, pursuant to Article 1696 § 2 of the Civil Code taken in conjunction with section 166(2) of the Family Matters Act (see paragraphs 24 and 27 above), the domestic courts are under the obligation to review the situation *ex officio* at reasonable intervals. This is in principle to be considered as one of the safeguards counterbalancing the unlimited exclusion of contact rights in the decision. In the present case, however, there is nothing to indicate that the competent judge had taken the initiative for formal review. When being presented the case-file after its return he noted that nothing needed to be done (see paragraph 22 above).

53. The Court further notes that the applicant was entitled to propose to start new proceedings for a review at any time under section 24(1) of the Family Matters Act (*Anregung eines Verfahrens*, see paragraph 25, above). This means that the regulation on contact rights, even if it is part of a final judicial decision, remains open to change. The Court is aware of the fact that Section 24(1) of the Family Matters Act does not entitle a person formally to request a review, but assumes that it is taken very seriously by the courts obliged to find a fair balance between all the rights involved. In any event, the procedure allows advancing relevant reasons for a reassessment of the family court's original analysis of what is in the best interest of the child. The Court cannot speculate whether or not the applicant would have been successful in proposing new proceedings under section 24(1) of the Family Matters Act. Nevertheless, it cannot but note that he has never even tried to use this procedural possibility. This is all the more relevant as the Court of Appeal's decision defined the solution as being valid for the "present time" and alluded to a possible change of the child's will with advancing age and maturity. Therefore the Court is of the opinion that there were procedural safeguards counterbalancing the shortcomings of the Court of Appeal's decision in the present case.

54. Having regard to the above considerations and bearing in mind the Court's subsidiary rule, the Zweibrücken Court of Appeal's decision of 19 October 2012 to suspend the applicant's contact with his child did not overstep the margin of appreciation afforded to the domestic courts in matters concerning a parent's contact with his or her minor child, and can still be regarded as having been "necessary" in a democratic society.

55. There has, accordingly, been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares* unanimously the complaint concerning Article 8 of the Convention admissible;
2. *Holds*, by four votes to three, that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 28 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Ganna Yudkivska
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Ranzoni, Hajiyeu and Vehabović is annexed to this judgment.

G.Y.
C.W.

DISSENTING OPINION OF JUDGE RANZONI, JOINED BY
JUDGES HAJIYEV AND VEHA BOVIĆ

1. I respectfully disagree with the majority that there has been no violation of Article 8 of the Convention.

2. Since November 2003 the parents have been arguing over the contact rights of the father. He had contact with his daughter, more or less regularly, until the summer of 2008. Subsequently these contacts could no longer take place. Thus, at the time of the Court of Appeal's decision in October 2012 to suspend all contact between father and daughter for an indefinite period of time, the applicant had already not seen his daughter for some four years.

3. From the case file it appears that the mother did not want her daughter to have contact with the father. The expert explained that the daughter was in a loyalty conflict with her mother. He also declared that regular contacts between father and daughter would be in the best interests of the child but that in the concrete circumstances and in view of the dilemma of the daughter due to her loyalty conflict with the mother the suspension of the contact would "at present" be in the child's best interests. Therefore, the decision of the Court of Appeal to suspend contact was justified. But to my mind, the domestic courts overstepped their margin of appreciation in suspending the contact without setting a time-limit and without counterbalancing the serious impact of this decision.

4. In paragraph 44 of the present judgment the Court rightly states that the margin of appreciation of domestic authorities when deciding on contact is more limited than when deciding on custody. In *Sommerfeld v. Germany* (no. 31871/96, 8 July 2003, § 63) the Court noted:

"However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed."

5. Furthermore, the Court has found that the passage of time could have irremediable consequences for the relationship between the child and the non-resident parent (see *Santilli v. Italy*, no. 51930/10, 17 December 2013, § 65, and *Bondavalli v. Italy*, no. 35532/12, 17 November 2015, §§ 73 and 83).

6. This judgment also states that the Court of Appeal did not give any explanation as to why the suspension of contact between father and daughter for an indefinite period of time was necessary in the child's best interests. However, the majority are of the opinion that there were procedural safeguards counterbalancing these shortcomings and thus justifying the far-reaching decision to suspend contact without any time-limit. I am not able to share this view.

7. As to the obligation for the domestic courts to review the situation “*ex officio*” (see paragraph 52), the domestic legislation only provides for a review at “reasonable intervals” without being more specific. More importantly, in the present case on 18 July 2014, after the case file had been returned, the competent judge of the Family Court ruled: “1. Seen. Nothing to be done. 2. To be stored” (“1. Gesehen. Nichts zu veranlassen. 2. Weglegen”; see paragraph 22). This happened almost two years after the Court of Appeal’s decision and shows quite clearly that the case file was to be “stored” for an unlimited time and that no reassessment was planned for the future. There is no other indication of any such review by the domestic courts, of their own motion, of whether or not the requirements for further suspension of contact were still being met.

8. As to the possibility of proposing a review (see paragraph 53), first, as mentioned in the Chamber judgment, section 24(1) of the Family Matters Act does not give the applicant a right formally to request a review. It is just a proposal to start new proceedings (*Anregung eines neuen Verfahrens*) which does not at all have the same procedural value as a formal application in civil law. Neither does it necessarily entail new proceedings or a judicial decision. The Chamber assumes that proposals for review are taken “very seriously by the courts”. In the case at hand, at least, I cannot see any justification for such an assumption. Secondly, the judgment refers to the fact that the applicant has never even tried to use this procedural avenue. However, in the Court of Appeal the expert stated that further attempts by the father to have contact with his daughter would “at present” – in September 2012 – prejudice (“*abträglich sein*”) the best interests of the child, and that there were “at present” no possibilities for the father to actively and positively work towards such contacts. The applicant even agreed to mediation, whereas the mother refused such steps towards a solution. The problem did not seem primarily to lie with the father but with the mother and her – as worded by the Court of Appeal – “aversion to the father” (“*Abneigung gegen den Vater*”). In this difficult situation, there was very little the father could do. Moreover, the Court of Appeal explicitly demanded that the applicant be “patient” and “understanding”. Besides the fact that this is not at all easy for a father who has not seen his daughter for several years, the court’s demand provides a further argument as to why the applicant cannot be blamed for not having proposed new proceedings. Thirdly, the judgment points out that the Court of Appeal, in its decision, “alluded to a possible change of the child’s will with advancing age and maturity”. Does that really constitute a counterbalancing factor? In this regard the Court has held that the right of contact is an important element of the duty to preserve the uniting bonds between father and daughter and that the national courts are under a positive and ongoing obligation to reassess the situation and to try to overcome any of the obstacles which might hinder the granting of even very limited contact (see *Nekvedavicius v. Germany*

(dec), no. 46165/99, 19 June 2003). This positive obligation is not fulfilled by simply alluding to a possible change with advancing age and maturity. In addition, a lack of cooperation between parents does not dispense the domestic authorities from their positive obligation (see *Bondavalli*, cited above, § 82).

9. Against this background, the domestic courts should have set – as Family Courts would normally do – a reasonable time limit for reassessing the situation of their own motion. This would, in the present case, have put a certain “pressure” on the mother, in particular, to work towards regular contacts between daughter and father, in the best interests of the child. The expert emphasised that regular contact should be revived and maintained and that contact should be suspended only “at present” due to the daughter’s loyalty conflict with her mother.

10. Accordingly, in my mind it was not justified to suspend contact without a time-limit. The national authorities should have actively taken measures in order for the father to see his daughter and, even more importantly, for the daughter to see her father. Neither the relevant domestic legislation nor the practice in the case at issue afforded the applicant adequate and effective safeguards against the effect of the indefinite suspension of contact, namely the danger of irremediably curtailing the relationship between daughter and father.

11. Bearing in mind the limited margin of appreciation in cases concerning the restriction of contact rights, the concrete circumstances of this case and the best interests of the child concerned, which in principle require regular contact with the father, the suspension of contact without any time-limit, without giving any reasons for it and without any kind of effective counterbalancing measures, was not proportionate and not “necessary” within the meaning of Article 8. Accordingly, in my opinion, there has been a violation of this provision.