



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

FIRST SECTION

CASE OF ESKI v. AUSTRIA

(Application no. 21949/03)

JUDGMENT

STRASBOURG

25 January 2007

FINAL

25/04/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Eski v. Austria,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 4 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 21949/03) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Austrian national, Mr Refet Eski (“the applicant”), on 10 July 2003.

2. The applicant, who had been granted legal aid, was represented by Mr L. Binder, a lawyer practising in Vienna. The Austrian Government (“the Government”) were represented by their Agent, Mr F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. The applicant complained, in particular, of the Austrian courts' decision to grant permission to adopt his daughter without his consent.

4. By a decision of 2 March 2006 the Court declared the application partly admissible.

5. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1963 and lives in Vienna. Between 1987 and 1995 he lived together with J.W. On 9 April 1993 J.W. gave birth to a daughter, M., of whom the applicant is the father.

7. In March 1995 the couple split up and J.W. went to live with her daughter in Linz. The applicant stayed in Linz during the summer and autumn of 1995 and then returned to Vienna.

8. On 25 December 1996 the applicant, while visiting his daughter, threatened and injured J.W., who subsequently refused him access to M.

9. On 3 July 1997 the applicant applied to the Linz-Land District Court (*Bezirksgericht*) seeking visiting rights in respect of his daughter. On 19 August 1997 the district court heard evidence from the applicant and J.W. On 24 October 1997 a visit took place. On 26 February 1998 the applicant and J.W. concluded a visiting agreement, under the terms of which visits were to take place on the premises of a youth centre in the presence of J.W.

10. On 26 June 1998, at J.W.'s request and with the approval of the Youth Welfare Office (*Jugendwohlfahrtsträger*) attached to the Linz-Land District Administrative Authority (*Bezirkshauptmannschaft*), the Linz-Land District Court withdrew the applicant's visiting rights. It noted that, at the first arranged visit on 9 March 1998, the applicant had insulted J.W. and told M. that her mother was an evil witch and a whore. M. had subsequently suffered from anxiety, sleep disturbances, gastro-intestinal problems and pneumonia. The court further noted that even before the visiting agreement had been concluded, the arrangements for and exercise of the applicant's visiting rights had been complicated by the applicant's constant aggression towards J.W. The court found that the repeated threats against her mother were seriously jeopardising M.'s mental development. Accordingly, the applicant's visiting rights were not in the best interest of the child; on the contrary, they were harmful to her mental and physical well-being.

11. On 14 January 1999 the Linz Regional Court (*Landesgericht*) upheld this decision.

12. In June 1999 J.W. started cohabiting with her new partner, A.F. They married in September 1999.

13. Another contact visit between the applicant and his daughter took place during Christmas 2000.

14. On 26 June and 4 July 2001 the applicant again lodged applications for visiting rights with the Linz-Land District Court. He further stated that he objected to the possible adoption of M. by A.F.

15. On 16 July 2001 the Linz-Land District Court rejected the applications. It noted that the applicant's visiting rights had been withdrawn and that the applicant had not submitted any arguments to suggest that the circumstances upon which that decision had been based had changed. The decision became final.

16. On 27 July 2001 A.F. instituted proceedings with the Linz-Land District Court seeking to adopt M. He requested that the court overrule the applicant's refusal to give the required consent.

17. The district court summoned the applicant to a hearing scheduled for 2 October 2001. In written submissions of 13 September 2001 the applicant informed the court that he had not changed his attitude towards the adoption request and still objected to adoption. A hearing was therefore not necessary. He added that the letter should be regarded as his submissions in the case. In further submissions to the Linz Court of Appeal, the applicant filed a motion accusing judge V., the competent judge of the Linz-Land District Court, of bias, and reiterated his request for visiting rights.

18. The district court subsequently informed the applicant that a hearing in the adoption proceedings was necessary and that any unexcused absence was punishable by a pecuniary penalty (*Ordnungsstrafe*). On 23 September 2001 the applicant informed the court that he was unable to attend the hearing scheduled for 2 October 2001, as he was attending lectures at Vienna University. He further referred to his motion accusing judge V. of bias, and submitted that his case would not be given objective consideration. He could, however, agree to another date under different circumstances.

19. On 12 October 2001 the President (*Vorsteher*) of the Linz-Land District Court dismissed the applicant's motion accusing judge V. of bias. On 7 January 2002 the Linz Regional Court upheld this decision. It noted that the applicant had referred to a statement made by judge V. during a hearing in August 1997 in the proceedings concerning the withdrawal of his access rights in respect of M. However, the applicant had not complained at the time of any alleged bias on the part of the judge. The motion had therefore been submitted out of time. On 14 May 2002 the President of the Linz-Land District Court rejected a further motion by the applicant accusing judge V. of bias, for the same reasons.

20. Meanwhile, on 12 March 2002, the applicant gave evidence to the Josefstadt District Court in Vienna under letters rogatory. At the hearing he argued that he had developed a close relationship with his daughter in her first two years. He had not lost interest in his daughter and still wished to obtain visiting rights. However, J.W. had sought to prevent any contact. In further written submissions to the court he argued that he did not know A.F., who had no family ties with his daughter. His daughter's alleged psychological problems had been caused by her mother, who herself had similar problems.

21. On 17 September 2002 the Linz-Land District Court heard evidence from A.F., M. and J.W. On 16 October 2002 the court, with the approval of the Youth Welfare Office attached to the Linz-Land District Administrative Authority, overruled the applicant's refusal to give consent and granted A.F. permission to adopt M. It noted that A.F. had developed a close relationship with M., who had said she was in favour of the adoption as she regarded A.F. as her father. The adoption would secure M.'s position within the family and also act as a material safeguard, as A.F. was able to support her financially. With regard to the applicant, the court found that his allegedly close relationship with M. did not correspond to reality. The last contact visit, during Christmas 2000, had been disappointing for the child, as the applicant had taken no initiatives, had not complied with the child's wishes for a special Christmas present and, during dinner, had not spoken with the child for three quarters of an hour. In the past the applicant had repeatedly tried to interfere in the relationship between M. and her mother, causing M. to develop physical and psychological problems. He had not made any effort to prove his feelings for M. in practice. Furthermore, he had not made maintenance payments for the past five years. The court therefore considered that the applicant's objection to the adoption was unjustified.

22. The applicant appealed against this decision. He complained that the lack of a public oral hearing in the presence of his daughter, A.F. and J.W. was contrary to Article 6 of the Convention. He had not been able to put questions to A.F. and J.W. or challenge the criticism made of him in several reports by the social-welfare authorities. In particular, no evidence had been heard from him concerning the accusation that he had told M. that her mother was an evil witch and a whore. He further complained that the court had not instructed him to request an opinion from an expert in child psychology. He was of Turkish origin, and adoption in these circumstances was tantamount to a denial of half of the child's genetic background. Furthermore, without an expert opinion there was nothing to substantiate the courts' findings that he had caused M.'s physical and psychological problems. The court should also have instructed him to request that evidence be heard from the social workers who had submitted negative reports about him. Instead, it had based its findings on their written submissions. Finally, the applicant contended that there were not sufficient reasons for M.'s adoption. A.F. could instead request joint custody with the child's mother and undertake to make maintenance payments on a contractual basis. The applicant's visiting rights had been withdrawn only temporarily and he had not failed to make efforts to keep in contact with M. He had been paying maintenance for M. for the past two years.

23. On 25 February 2003 the Linz Regional Court dismissed the applicant's appeal. It found that, even in the absence of an oral hearing in the presence of all the parties, which in the proceedings at issue was not obligatory, the applicant had been given a proper hearing for the purposes of

Article 6 of the Convention. In that regard it noted in particular that the Linz-Land District Court had made several attempts to hear evidence from the applicant; this had eventually been possible only by issuing letters rogatory to another court. The applicant had declared at the beginning of the adoption proceedings that he did not wish to participate further in the proceedings, that his personal appearance before the district court was not necessary and that the letter to that effect should be regarded as his personal statement. Moreover, the applicant had had sufficient opportunity to comment in written submissions, namely in the appeal proceedings, on the accusations made against him. The court further considered that it had not been necessary to seek an expert opinion or to hear evidence from the social workers concerned. In this regard it noted that the regional court had already confirmed the applicant's aggressive behaviour and its consequences in its decision of 14 January 1999, and had rejected the applicant's arguments to the contrary. Nor had the applicant, in his present appeal, been able satisfactorily to show that his conduct had not been the reason for the child's problems. The district court had given sufficient and extensive reasons why the adoption should be authorised, namely by referring to the applicant's conduct. Finally, the regional court noted that the fact that A.F. was in a better financial position than the applicant had not been a reason for granting the adoption. Accordingly, it did not go into the applicant's arguments regarding the maintenance payments. It refused the applicant leave to lodge an ordinary appeal with the Supreme Court (*Oberster Gerichtshof*). This decision was served on the applicant's counsel on 18 April 2003.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

24. Article 179a of the Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) provides that adoption requires a written contract between the person seeking the adoption and the person to be adopted in addition to authorisation by a court.

25. Pursuant to Article 181 § 1, the court may not authorise an adoption if the parents of a minor child have not given their consent to the adoption.

26. Article 181 § 3 provides that, at the request of one of the parties, the court may overrule the refusal of consent by the parent of a minor child, where the person concerned has not given justifiable reasons for his or her refusal.

27. Article 5 of the European Convention on Adoption of 1967, which is binding on several of the Council of Europe's Member States, including Austria, provides as follows:

“1. Subject to paragraphs 2 to 4 of this article, an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn:

(a) the consent of the mother and, where the child is legitimate, the father; or if there is neither father nor mother to consent, the consent of any person or body who may be entitled in their place to exercise their parental rights in that respect;

(b) the consent of the spouse of the adopter.

2. The competent authority shall not:

a) dispense with the consent of any person mentioned in paragraph 1 of this article, or

b) overrule the refusal to consent of any person or body mentioned in the said paragraph 1, save on exceptional grounds determined by law.

3. If the father or mother is deprived of his or her parental rights in respect of the child, or at least of the right to consent to an adoption, the law may provide that it shall not be necessary to obtain his or her consent.”

28. In its White Paper on principles concerning the establishment and legal consequences of parentage of 15 January 2002, the Council of Europe's Committee of Experts on Family Law states as follows:

Principle 15:

“1. An adoption shall not be granted unless at least the following consents to the adoption has been given and not withdrawn: - the consent of the mother - the consent of the father.

States may also require the consent of the child considered by the internal law as having sufficient understanding.

2. The law may dispense with the consent of the father or of the mother or of both if they are not holders of parental responsibilities or if this consent cannot be obtained, in particular if the whereabouts of the mother or of the father or of both is unknown and they cannot be found or are dead.

3. The competent authority may overrule the refusal to consent of any person mentioned in paragraph 1 only on exceptional grounds determined by law.”

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

29. The applicant complained about the Austrian courts' decision to grant A.F. permission to adopt his daughter without his consent. The Court considers that this issue should be considered under Article 8 of the Convention which, in so far as relevant, provides:

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

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 in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

30. The applicant submitted in this regard that the fact of having a new father also affected his child's right to her biological father. He further contended that the reasons given by the domestic courts did not justify the interference with his right to respect for his family life. A good relationship between the child and her mother's husband was not incompatible with the relationship between the child and her father. There were ways to circumvent the problems between the parents during the exercise of visiting rights without destroying the relationship between the child and her father.

31. The Austrian courts had not taken any measures to secure an agreement between the parties.

32. The Government argued that, while the adoption of M. constituted interference with the applicant's right to respect for his family life under Article 8 of the Convention, the interference was justified under paragraph 2 of that Article. It had a legal basis, namely Article 181 § 3 of the Civil Code, and pursued the legitimate aim of protecting the rights of the applicant's minor daughter, by protecting her health, including her psychological well-being, and her legal interest in consolidating and formalising *de facto* family ties with her adoptive father. According to the case-law of the Austrian courts, the well-being of the child concerned was in itself not sufficient to justify overruling a parent's refusal of consent under Article 181 § 3. Only persistent conduct absolutely contrary to family values on the part of a parent could justify such a decision. In the present case, the applicant had demonstrated such conduct by repeatedly threatening and grossly insulting the child's mother in the presence of the child, at that time very young, during previous contact visits. As result, the child had suffered from anxiety and severe somatic disorders. The applicant had acted as the child's father only in the first months of her life. After the breakdown of his relationship the applicant, by his conduct towards the child's mother who had custody of the child, had made the exercise of his rights and duties as a father impossible. His refusal to consent to the adoption prevented the husband of the child's mother from taking on a role which he himself could no longer fulfil. Furthermore, he had discontinued maintenance payments for the child five years prior to the adoption being granted, thereby leaving it to others to care for his daughter. When questioned about the reasons for his refusal to give consent, the applicant had merely stated that he wished to visit his daughter and that her mother was preventing him from doing so. Such submissions could not be regarded as decisive reasons. Furthermore,

the applicant had insisted on evidence being heard from the child in his own and the other parties' presence, apparently without caring much about the stress that would inevitably be caused to the child. The applicant had been sufficiently involved in the decision-making process. As it had transpired after several unsuccessful attempts that the applicant, for personal reasons, was unable to attend a hearing by the court competent to deal with the case, he had given evidence before another court under letters rogatory. Moreover, he had expressly stated at the beginning of the proceedings that he did not wish to be further involved in the proceedings and that his written submissions should be regarded as his statements.

33. The district court had been unable to make a reasonable attempt at securing a settlement because the applicant had not been prepared to enter into talks. The Austrian courts endeavoured in principle to ensure that adoptions took place with the consent of all those involved, and did their best to secure agreement to that end. In the present case their attempts had, however, been unsuccessful because of the applicant's conduct.

34. The Court notes that it is undisputed that the adoption of the applicant's child without his consent amounted to interference with his right to respect for his family life under Article 8 § 1 of the Convention. It had a legal basis, namely Article 181 § 3 of the Austrian Civil Code, and pursued the legitimate aim of protecting the rights of the child. It remains to be examined whether the decision allowing the adoption without the applicant's consent was "necessary in a democratic society".

35. In that connection, the Court reiterates at the outset that in cases of this kind the national authorities have the benefit of direct contact with all the persons concerned. It is not the Court's task to substitute itself for the domestic authorities, but rather to review, in the light of the Convention, the decision taken by those authorities in the exercise of their power of appreciation (see *Kuijper v. the Netherlands* (dec.), no. 64848/01, 3 March 2005). However, the margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. While the Court has recognised that the authorities enjoy a wide margin of appreciation in particular when deciding on custody, a stricter scrutiny is called for as regards any further limitations 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. Article 8 requires that the domestic authorities strike a fair balance between the interests involved and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents (see, *mutatis mutandis*, *Sommerfeld v. Germany* [GC], no. 31871/96, §§ 62-64, ECHR 2003-VIII (extracts))

36. The Court reiterates that legislation permitting the placing for adoption of a child by a mother shortly after the child's birth without the

natural father's knowledge or consent may be in breach of Article 8 of the Convention (see *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, p. 16). In another case, concerning the deprivation of a mother's parental rights and access in the context of compulsory and permanent placement of her daughter in a foster home with a view to adoption by foster parents, the Court stressed that such a particularly far-reaching measure should only be applied in exceptional circumstances and be motivated by an overriding requirement pertaining to the child's best interests (see *Johansen v. Norway*, judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, p. 30). In two more recent cases (*Söderbäck v. Sweden*, judgment of 28 October 1998, *Reports* 1998-VII and *Kuijper v. the Netherlands*, cited above), the Court, in finding no violation of the Convention, noted in particular that the natural parent concerned had not had custody of the child and that contacts with the child were very limited. The adoptions had served to consolidate and formalise *de facto* family ties and the natural parent opposing adoption had been given the opportunity to state his or her case. In the *Kuijper* case the Court had regard also to the fact that the request for adoption was fully supported by the child, who had almost come of age.

37. In this context, reference should also be made to the European Convention on the Adoption of Children, which is binding on several of the Council of Europe's Member States, including Austria. This text requires in principle the consent of the mother and, where the child is legitimate, of the father, to their child's adoption, save on exceptional grounds determined by law. If the father or mother has been deprived of his or her parental rights in respect of the child, the law may provide that it is not necessary to obtain his or her consent. Likewise, in its White Paper on principles concerning the establishment and legal consequences of parentage of 15 January 2002, the Council of Europe's Committee of Experts on Family Law recommends that an adoption shall not be granted unless the mother's and the father's consent has been given. The competent authority may overrule the refusal of such consent only on exceptional grounds determined by law. However, the consent of the father or mother or both may be dispensed with by law if they do not hold parental responsibility (see paragraphs 27 and 28 above).

38. In the present case, the adoption of M. by the husband of the applicant's former partner had the legal effect of totally depriving the applicant of further family life with his daughter. This was certainly a far-reaching measure and the Court will therefore carefully examine the reasons given by the domestic courts for overruling the applicant's refusal of consent.

39. The Court notes that an important reason given by the domestic courts when overruling the applicant's refusal to give consent was their argument that the applicant's allegedly close relationship with his daughter did not correspond to reality. The Court notes that the child, who was about

nine and a half years old at the time of the adoption, had been living exclusively with her mother since she was two years old. The applicant had not had custody, nor had he apparently assisted in any other capacity in the upbringing of the child. Furthermore, his contacts with the child were, at least from 25 December 1996 onwards, infrequent and limited in character. In June 1998 the district court withdrew his visiting rights as it found that the applicant's aggression towards the child's mother was harmful to the child's health and well-being. Thereafter, only one further contact visit took place, during Christmas 2000. The child, meanwhile, had been living with her adoptive father since she was six years old. Thus, when the adoption was granted, *de facto* family ties had existed between the adoptive parent and the child for more than three years. The adoption, therefore, did not set in motion the bonding of the child with the adoptive parent (see, *mutatis mutandis*, *Keegan v. Ireland*, cited above, § 55) but, on the contrary, consolidated and formalised already existing ties, as in the cases of *Söderbäck* and *Kuijper*, cited above.

40. The Court further observes that the district court granted the adoption after having heard evidence from the child, her adoptive father and the child's mother. On that occasion the child, then aged nine and a half, stated that she considered her adoptive father as her father and supported the adoption. The district court also obtained the opinion of the competent Youth Welfare Office, which approved the proposed adoption.

41. The Court finally notes that the applicant, contrary to his assertions, was given the opportunity to state his case before the competent court. However, he refused to do so and subsequently gave evidence under letters rogatory to another court in the town where he was living.

42. Against this background, the Court considers that the domestic courts were better placed to strike a fair balance between the interests involved. Having regard in particular to their assessment of the child's best interests and to the limited relationship which the applicant had with his child at the relevant time, the Court finds that their decision to grant the adoption fell within their margin of appreciation. Given the aims sought to be achieved by allowing the adoption to go ahead, it cannot be said that the adverse effects it had on the applicant's relations with the child were disproportionate (see, *mutatis mutandis*, *Söderbäck v. Sweden* and *Kuijper v. the Netherlands*, cited above).

43. There has, accordingly, been no violation of Article 8 of the Convention in the present case.

FOR THESE REASONS, THE COURT

Holds by five votes to two that there has been no violation of Article 8 of the Convention;

Done in English, and notified in writing on 25 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following joint dissenting opinion of Mrs Tulkens and Mr Spielmann is annexed to this judgment.

C.L.R.
S.N.

JOINT DISSENTING OPINION OF JUDGES TULKENS AND
SPIELMANN*(Translation)*

For several reasons which we will set out below, we do not share the majority's opinion that there has been no violation of Article 8 of the Convention in this sensitive case, which raises the question of adoption without the consent of a child's father.

1. From a legal perspective, adoption remains an “essentially consensual institution” in Europe¹. It follows that the adoption of a child without the consent of one of his or her biological parents may occur only in exceptional circumstances. The international law texts cited in the judgment are clear on this point and, in our opinion, it is important to draw the appropriate conclusions from them. Thus, the European Convention on the Adoption of Children of 24 April 1967 specifically states that the competent authority may not dispense with consent “save on exceptional grounds determined by law” (Art. 5 § 2, (b)). Equally, principle 15 of the White Paper on principles relating to the establishment and legal consequences of parentage, dated 15 January 2002 and drawn up by the Committee of Experts on Family Law, specifies that “the competent authority may overrule the refusal to consent only on exceptional grounds determined by law” (§ 3). In domestic law, the legislation of the Council of Europe's member States also provides, in exceptional circumstances, for the possibility of a child being adopted without the consent of at least one of his or her biological parents. Whilst, in the majority of countries, waiving of the consent requirement is determined on the basis of objective circumstances (death, uncertain paternity, deprivation of parental authority, etc.), in other countries subjective circumstances are also taken into consideration when permitting the authorities to overrule a refusal to grant consent. This is the situation in the instant case in so far as Article 181 § 3 of the Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch*) provides that “at the request of one of the parties, the court may overrule the refusal of consent by the parent of a minor child, where the person concerned has not given justifiable reasons for his or her refusal”. Thus, it is the scenario of an unjustified refusal which is at issue here and constitutes a reason for depriving the father and mother of the right to consent to the adoption.

2. Under the Convention, the right to consent or disagree to the adoption of a child may be considered an element of the father's and mother's right to respect for private and family life, guaranteed by Article 8 § 1, and even that of the child itself. Admittedly, this right is not absolute and is subject to

¹ I. LAMMERANT, *L'adoption et les droits de l'homme en droit comparé*, Bruxelles, Bruylant, 2001, n° 323, p. 368.

limitations. In accordance with Article 8 § 2, there may be interference by a public authority justified, *inter alia*, by the protection of health or morals or the protection of the rights and freedoms of others. The Court must therefore engage in a careful examination of the interests at stake in order to determine whether, exceptionally, a decision on adoption taken without the consent of the biological parent may be justified under the Convention.

3. In the present case, the Linz-Land District Court held on 16 October 2002 that it could overrule the applicant's refusal to grant consent and authorise his daughter's adoption by her mother's new partner. On the one hand, the district court noted that the child had developed a close relationship with her mother's new partner and that adoption would secure her position in the family and be a material safeguard. At the same time, it considered that the applicant's allegedly close relationship with his daughter did not correspond to reality. In those circumstances, the refusal of consent was considered unjustified (paragraph 21). The Linz Regional Court dismissed the applicant's appeal on 25 February 2003. The regional court held that it was not necessary to request an expert opinion or to hear evidence from the social workers concerned. It considered that the reasons given by the lower court were sufficient, particularly in relation to the applicant's conduct; nonetheless, it minimised the argument concerning the adoptive father's financially more advantageous position, stating that the fact that A.F. was in a better financial position than the applicant had not been a reason for granting the adoption (paragraph 23 *in fine*).

4. We do not find that these reasons were, in the circumstances of this case, relevant and sufficient to justify the adoption of the applicant's daughter against his will.

We note, firstly, that the applicant's contacts with his daughter were certainly limited at the time of the adoption. However, this was not due to the applicant's lack of interest but a consequence of the fact that, following his aggression towards his former partner, the latter refused him access to the child and the courts subsequently withdrew his visiting rights. Prior to these events, the applicant had been living with his daughter for some two years and had maintained visiting contact for another year and some nine months.

Furthermore, the applicant had constantly expressed his wish to visit his child. He had applied to the courts after his former partner refused him access, had appealed against the withdrawal of his visiting rights and had filed further repeated requests for visiting rights in the subsequent years. The present case, therefore, falls to be distinguished from other cases before the Court (see *Söderbäck v. Sweden*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VII and *Kuijper v. the Netherlands* (dec.), no. 64848/01, 3 March 2005) which also concerned the adoption of a child against the biological parent's wishes but where the parent in question had accepted the lack of contact with his/her child for several years.

We further observe that the domestic courts referred to the fact that the applicant had repeatedly interfered in the relationship between the child and her mother, causing the child to develop physical and psychological problems. The applicant had threatened and injured the child's mother in December 1996. Some two years later, in March 1998, he had insulted the child's mother and informed the child that her mother was an evil witch and a whore, thus causing distress to the child. Whilst we agree with the domestic courts' finding that in behaving in such a manner the applicant had acted contrary to family values, we nevertheless find it difficult to accept that this conduct must be considered of such seriousness as to justify the severing of the applicant's bonds with his child against his will. This opinion is strengthened if we note that, at the time of the adoption, the impugned events dated back more than four years and three years respectively and that a later contact visit in December 2000 had passed without similar incident.

5. While not overlooking the domestic courts' reasoning that the adoption was in the child's best interest, we find that, in view of its far-reaching impact on the relationship between the applicant and his child and its irrevocable character, such a measure presupposed a particularly careful investigation and consideration of other possible solutions.

On the one hand, we cannot find that the procedure applied by the courts in the present case met these requirements. We note, in particular, that the child's overriding interest was found to be established on the basis of the above-cited facts without any further investigation into the matter such as, for instance, the taking of an expert opinion on child psychology.

On the other hand, the courts overruled the applicant's lack of consent without a prior attempt to reach an agreement between the parties. We do not believe that the child's real interests lie in depriving her biological father or mother of their right to consent to her adoption. Such an extreme situation, which may only occur in duly established exceptional circumstances, is one of failure, and potentially a source of deep suffering for the child. In the area of adoption, it is for the State to take all possible measures to ensure a balance, within the adoption triangle, of the rights of the biological parents, the candidates for adoptive parenthood and children themselves.

6. Against this background, we find that the fact of permitting the adoption of the applicant's child without his consent represented an interference with his right to family life which has not been shown to be necessary in a democratic society. There has therefore been a violation of Article 8 of the Convention.