

CASE OF **E. v. AUSTRIA**

(Application no. 21949/03)

In the case of **E.** v. Austria,

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

omissis

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 R. **E.** ("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 for Foreign Affairs.
3. The applicant complained, in particular, about the Austrian courts' decision to grant, without his consent, permission to adopt his daughter.
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. to whom the applicant is the father.
7. In March 1995 the couple split up, J.W. went to live with her daughter in Linz. The applicant stayed in Linz during summer and autumn 1995, and then returned to Vienna.

8. On 25 December 1996 the applicant, when visiting his daughter, threatened and injured J.W. who subsequently refused the applicant access to M.
9. On 3 July 1997 the applicant filed a request for a right to visit his daughter with the Linz-Land District Court (*Bezirksgericht*). On 19 August 1997 the District Court heard the applicant and J.W. On 24 October 1997 a visit took place. On 26 February 1998 the applicant and J.W. concluded a visit agreement, according to which visits should take place at the premises of a youth centre in the presence of J.W.
10. On 26 June 1998, upon J.W.'s request and with the approval of the Youth Welfare Office (*Jugendwohlfahrtsträger*) at the Linz-Land District Administrative Authority (*Bezirkshauptmannschaft*), the Linz-Land District Court withdrew the applicant's right to visit. 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 a bad witch and a whore. M. had subsequently suffered from anxiety, sleep and gastro-intestinal disturbances and pneumonia. The court further noted that even before the visit arrangement had been concluded, the arrangement and exercise of the applicant's right to visit were complicated by the fact that the applicant could not avoid conflicts with J.W. The constant threat against her mother constituted a serious danger for M.'s mental development. Therefore, the applicant's right of visit was not in the best interest of the child, but, on the contrary, harmful to its mental integrity and health.
11. On 14 January 1999 the Linz Regional Court (*Landesgericht*) confirmed this decision.
12. In June 1999 J.W. started cohabiting with her new partner A.F. They married in September 1999.
13. Another visit contact between the applicant and his daughter took place at Christmas 2000.
14. On 26 June 2001 and on 4 July 2001 the applicant again filed requests to visit M. 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 District Court dismissed the applicant's requests. It noted that the applicant's right of visit had been withdrawn and the applicant had not submitted any arguments as to why the facts upon which this decision had been based should have changed. This decision became final.
16. On 27 July 2001 A.F. instituted proceedings with the Linz-Land District Court, seeking adoption of M. He requested the replacement of the necessary consent of the applicant to the adoption with a decision of the court.
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. It added that this present letter should be regarded as his submissions in the case. In further submissions with the Linz Court of Appeal, the applicant filed a motion for bias against the competent judge V. with the Linz-Land District Court and reiterated his request for a right of visit.
18. The District Court subsequently informed the applicant that a hearing in the adoption proceedings was necessary and that an unexcused absence was punishable by a pecuniary penalty (*Ordnungsstrafe*). On 23 September 2001 the applicant informed the court that he was not able to attend the hearing scheduled for 2 October 2001 as he attended lectures at the Vienna University.

He further referred to his motion of bias against V. and submitted that there would be no objective consideration of his case. He would, however, approve another date under other circumstances.

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

20. Meanwhile, on 12 March 2002 the applicant was heard by way of letters rogatory before the Josefstadt District Court in Vienna. At this 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 a right of visit. However, J.W. had hindered any contacts. In further written submissions with the court he argued that he did not know A.F. who had no family liens with his daughter. Alleged mental disturbances of his daughter were caused by her mother who suffered herself from such disturbances.

21. On 17 September 2002 the Linz-Land District Court heard A.F., M. and J.W. On 16 October 2002 the court, with the approval of the Youth Welfare Office at the Linz-Land District Administrative Authority, replaced the applicant's consent and granted A.F. permission to adopt M. It noted that A.F. had developed a close relationship with M. who had declared to be in favour of the adoption as she considered A.F. as her father. The adoption would secure M.'s position within the family and also be a material safeguard as A.F. was able to support her financially. As regards the applicant, the court found that the alleged close relationship with M. did not correspond to reality. The last visit contact, at 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 for three quarters of an hour with the child. In the past the applicant had repeatedly tried to interfere with the relationship between M. and her mother and had thereby provoked mental and physical disturbances to M. He had not made any efforts to prove his feelings for M. in reality. Furthermore, he had not been making maintenance payments for the last five years. The court, therefore, considered that the applicant's objection to the adoption was abusive.

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. and challenge the reproaches made to him in several reports of the social authorities. In particular, he had not been heard concerning the reproach that he had told M. that her mother was a bad witch and a whore. He further complained that the court had not instructed him to request an expert opinion on child psychology. He was of Turkish origin and an adoption was equal to a denial of half of the child's genetic background. Furthermore, without an expert opinion there was no proof of the courts' findings that he had caused the mental and physical disturbances of M. The court should further have instructed him to request a hearing of the social workers who had submitted negative reports about him. Instead, it had based its findings on their written submissions. The applicant finally contended that there was no sufficient reason for the adoption of M. A.F. could instead request joint custody with the child's mother and engage himself in maintenance payments on a contractual basis. His right of visit had only been withdrawn temporarily and he had not failed to make efforts to keep in contact with M. He had been paying maintenance for M. for the last 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 parties, which in the proceedings at issue was not obligatory, the applicant had been properly heard within the meaning of Article 6 of the Convention. In this regard it noted in particular that the Linz-Land District Court had made several attempts to hear the applicant, which finally had only been possible by way of letters rogatory before another court. The applicant had declared at the beginning of the adoption proceedings that he did not wish to participate further in the proceedings and, furthermore, 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 reproaches made against him. The court further considered that it was not necessary to seek an expert opinion or to hear 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 dismissed the applicant's statements to the contrary. Nor could the applicant, in his present appeal, satisfactorily show that his conduct had not been the reason for the child's disturbances. The District Court had given sufficient and extensive reasons why the adoption should be granted, namely by referring to the applicant's conduct. It finally noted that the fact that A. F. was in a financially better position than the applicant had not been a reason for granting the adoption. Therefore, it did not go into the applicant's arguments as regards the maintenance payments. It did not allow the ordinary appeal to 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. Section 179a of the Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) provides that an adoption needs a written contract between the person seeking the adoption and the person who is going to be adopted as well as a permission by court.

25. Pursuant to section 181 § 1 the court may not permit an adoption when the parents of a minor child do not give their consent to the adoption.

26. Section 181 § 3 provides that, upon request of one of the contracting parties, the court has to replace the consent of a parent of a minor child when this person has not given justifiable reasons for his/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. The White Paper on principles concerning the establishment and legal consequences of parentage of 15 January 2002 of the European Council'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, without his consent, A.F. permission to adopt his daughter. The Court considers that this issue should be considered under Article 8 of the Convention, which, as far as relevant, reads as follows:

“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 change of fatherhood 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 rights to a family. A good relationship between the child and the husband of her mother was not in contradiction to the relationship between the child and her father. There were ways to circumvent the problems between the parents during the exercise of visit rights which did not break the relationship between the child and her father.

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

32. The Government argued that while the adoption of M. constituted an interference with the applicant's right to respect for family under Article 8 of the Convention, this interference was justified under § 2 of Article 8. It had a legal basis, namely Section 181 § 3 of the Civil Code, and pursued the legitimate aim of protecting the rights of the applicant's minor daughter, namely by protecting her health, including her psychological well-being, and, furthermore, her legal interest in consolidating and formalising *de facto* family ties with her adoptive father. According to the jurisprudence of the Austrian courts the well-being of the concerned child was, in itself, not sufficient to justify the replacement of a parent's consent under Section 181 § 3. Only a parent's tenacious conduct absolutely contrary to family values could justify such decision. In the present case, the applicant had shown such conduct in that he repeatedly threatened and grossly insulted the child's mother in the presence of the child, at that time very young, during previous contacts. 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 entitled to care for the child, 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 to take over a role which he himself could no longer fulfil. Furthermore, he had discontinued maintenance payments for the child already five years prior to the adoption authorisation and, thereby, left it to others to care for his daughter. When requested about the reasons of his refusal to consent, the applicant merely stated that he wished to visit his daughter and that her mother prevented him from doing so. Such submissions cannot be regarded as decisive reasons. Furthermore, the applicant insisted on the child being heard in his own and the other parties' presence, apparently without caring much about the stress that would invariably have been caused to the child. The applicant had been sufficiently involved in the decision-making process. As it turned out after several unsuccessful attempts that the applicant, for personal reasons, was not able to attend a hearing by the court competent to deal with the case, he was heard by letters rogatory by another court. Moreover, he had expressly noted at the beginning of the proceedings that he did not wish to be further involved in the proceedings and that his written submissions could be regarded as his statements.

33. The District Court could not make a reasonable attempt to reach a settlement because the applicant was not prepared to enter into such talks. The Austrian courts in principle try to carry out adoptions with the consent of all those involved and do their best to reach such an agreement. In the present case this was, however, unsuccessful because of the applicant's conduct.

34. The Court notes that is undisputed that the adoption of the applicant's child without his consent amounted to an interference with his right to respect for family life under § 1 of Article 8 of the Convention. It had a legal basis, namely Section 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 this respect, the Court recalls in first place 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 tasks 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 recalls 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 (*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 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 (*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 of Judgments and Decisions* 1998-VII; *Kuijper v. the Netherlands*, cited above), in finding no violation of the Convention, the Court noted in particular that the natural parent concerned had not had custody over the child and contacts with the child were very limited. The adoptions served to consolidate and formalise *de facto* family ties and the natural parent opposing adoption had been given opportunity to state his/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 nearly 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 for exceptional reasons determined by law. If the father or mother is deprived of his or her parental rights in respect of the child, the law provides that it may not be necessary to obtain his or her consent. Likewise, the White Paper on principles concerning the establishment and legal consequences of parentage of 15 January 2002 of the European Council's Committee of Experts on Family Law recommends that an adoption shall not be granted unless the mother's and the father's consents have been given. The competent authority shall overrule the refusal of these consents only on exceptional grounds determined by law. However, the consent of the father or of the mother or of both may be dispensed with by law if they are not holders of parental responsibilities (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 grounds given by the domestic courts for replacing the applicant's consent.

39. The Court notes that an important reason given by the domestic courts when replacing the applicant's consent was their argument that the applicant's alleged close relationship with his daughter did not correspond to reality. The Court notes that the child, aged some nine and a half years 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 right to visit as it found that the applicant's conflicts with the child's mother were harmful to the child's integrity and health. Thereafter, only one further visit contact, at

Christmas 2000, took place. On the other hand, the child had been living with her adoptive father since she was six years old. Thus, when the adoption was granted, *de facto* family ties existed between the adopter and the child for more than three years. The adoption, therefore, did not set in motion the bonding of the child with the adopter (see *mutatis mutandis Keegan v. Ireland*, cited above, § 55) but, on the contrary, consolidated and formalised already existing ties like in the above cited cases of *Söderbäck* and *Kuijper*.

40. The Court further observes that the District Court granted the adoption after having heard the child, her adoptive father and the child's mother. On this occasion the child, then aged nine and a half years, 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 statements, was given the opportunity to state his case before the competent court. He, however, refused to do so and was subsequently heard by ways of letters rogatory before another court in the town where he was living.

42. Against this background, the Court considers that the domestic courts were in a better position in striking a fair balance between the interests involved. Having regard in particular to their assessment of the child's best interests as well as to the limited relations that the applicant had with his child at the relevant time, the Court finds that their decision to grant 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 Christos Rozakis
Registrar 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 Contracting Parties, the court must replace the consent of a parent of a minor child when this person fails to provide justifiable reasons for his/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

limitations. In accordance with Article 8 § 2, there may be an 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 relations with his daughter did not correspond to reality. In those circumstances, the refusal of consent was considered abusive (§ 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 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 the fact that A.F. was in a financially better position than the applicant had not been a reason for granting the adoption" (§ 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 right to visit. 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 right to visit 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 and had thereby provoked mental and physical disturbance to the child. 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 a bad 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 visit

contact 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.