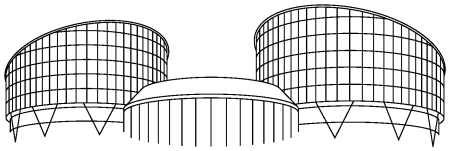

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KUPPINGER v. GERMANY

(Application no. 62198/11)

JUDGMENT

STRASBOURG

15 January 2015

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 Kuppinger v. Germany,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
Vincent A. De Gaetano,
André Potocki,
Helena Jäderblom, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 2 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 62198/11) 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 Bernd Kuppinger ("the applicant"), on 29 September 2011.

2. The applicant was represented by Mr G. Rixe, a lawyer practising in Bielefeld. The German Government ("the Government") were represented by their Agents, Mr H. J. Behrens and Mrs K. Behr of the Federal Ministry of Justice.

3. The applicant alleged, in particular, that the domestic courts had failed duly to implement his right to contact with his son.

4. On 10 September 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

5. The applicant was born in 1953 and lives in Heidelberg. He is the father of a son born out of wedlock on 21 December 2003. Shortly after the child was born, the mother refused the applicant any contact with him. In 2004 the applicant unsuccessfully attempted to establish contact.

6. On 19 May 2005 the applicant lodged a request with the Frankfurt/Main District Court for the regulation of contact rights. The course of proceedings before the District Court is summarised in the Court's judgment in the case of *Kuppinger v. Germany* [Committee], no. 41599/09, §§ 6-33, 21 April 2011. By interim order of 22 May 2007 the District Court ordered weekly supervised contact between the applicant and his son. Three supervised contact meetings took place between 14 June and 19 July 2007.

7. On 21 December 2009 the District Court suspended the applicant's contact rights for one year. This decision was amended on 22 March 2010 with respect to the applicant's right to be informed about the child's personal circumstances.

8. By judgment of 21 April 2011 (see *Kuppinger*, cited above, § 51), the Court found that the length of the proceedings before the Frankfurt District Court, which had lasted from 19 May 2005 to 22 March 2010, violated the applicant's right to a trial within a reasonable time under Article 6 § 1 of the Convention. The Court further considered that there had been a violation of the right to an effective remedy under Article 13 of the Convention.

B. Execution of the interim decision of 12 May 2010

9. On 30 December 2009 the applicant lodged an appeal against the decision given by the District Court on 21 December 2009. On 15 April 2010 the Frankfurt Court of Appeal held a hearing.

10. By interim decision of 12 May 2010 the Court of Appeal decided that the applicant had the right to see his son for three hours on six specific dates between 26 May and 6 August 2010. The first three contact meetings were to take place in the presence of a supervisor. The Court of Appeal further ordered the child's mother to take the child to the meetings on time. Finally, the Court of Appeal warned the mother that an administrative fine (*Ordnungsgeld*) of up to 25,000 euros (EUR) could be imposed if she did not comply with her obligations under this decision.

11. The Court of Appeal noted that the last contact meeting had taken place in 2007. There was no indication that contact with the applicant would jeopardise the child's welfare. According to expert opinion, the child's refusal to meet the applicant was not based on an autonomous decision, but was influenced by the mother's stance. This was in line with the personal impression the judge rapporteur had gained from hearing both parties and the child. The Court of Appeal acknowledged that the conflict between the parents, and their ensuing lack of communication, posed a risk to successful contact. However, the course of the proceedings had shown that both parents were unwilling to settle these conflicts by availing themselves of specialist help. As it was unlikely that the parents would change their attitude, the granting of contact rights could not await the outcome of successful counselling.

12. The Court of Appeal further considered that the overall course of the proceedings had demonstrated that both parents had contributed to the failure of contact visits. In view of the lengthy proceedings, which imposed an emotional burden on the child, it was particularly important to re-establish contact carefully after a regrettable interruption of two years.

13. On 31 May 2010 the supervisor reported on the first contact meeting, scheduled for 26 May 2010, which had been postponed to 29 May 2010. After a short conversation and some playful interaction with the applicant, the child had decided to go to his mother and subsequently refused to play with his father. The supervisor further informed the Court of Appeal that the mother would be on holiday for the two meetings scheduled for 25 June and 2 July 2010 and that the parties' counsels would have to agree on alternative dates.

14. On 18 June 2010 the supervisor reported on the second contact meeting scheduled for 11 June 2010. According to the report, the meeting had lasted around 35 minutes during which the applicant and his son had engaged in several play activities. The meeting was interrupted by two interactions between the child and his mother. Subsequently, the child told the applicant that he did not wish to play with him and left with his mother.

15. On 25 May 2010 the mother's counsel informed the Court of Appeal that it had not been possible to find alternative dates for the meetings scheduled during the mother's absence and that she expected that the meetings would be re-scheduled for 20 August and 3 September 2010.

16. On 28 June 2010 the applicant requested the Court of Appeal to schedule alternative dates for the meetings which were to take place during the mother's holidays.

17. On 1 July 2010 the Court of Appeal informed the applicant that it did not see any reason to issue additional orders as to the organisation of the contact meetings, which fell within the competence of the supervisor. Furthermore, there was no room for scheduling alternative meetings. The Court of Appeal further requested the mother to submit proof of her alleged holiday absence.

18. On 21 July 2010 the applicant lodged a request with the District Court to impose an administrative fine of at least EUR 3,000 on the mother for having failed to enable him to exercise his contact rights on 26/29 May and a further EUR 5,000 for having prevented him from exercising his contact rights on 11 June 2010. He submitted that the mother had failed to deliver the child on 26 May 2010, allegedly for professional reasons. On the alternative date, 29 May 2010, the mother had brought the child, but taken him away after approximately five minutes. On 11 June 2010 the mother had left the meeting place with the child after half an hour and had thus prevented further contact. In view of the urgency of the subject matter and relying on the case-law of the Court (the applicant's counsel referred to the

case of *Koudelka v. the Czech Republic*, no. 1633/05, 20 July 2006), the applicant further requested the District Court to reach a decision speedily.

19. On 29 July 2010 the supervisor reported on the contact scheduled for 23 July 2010. The unsupervised contact ordered by the Court of Appeal had not taken place because the child had refused to go with his father and the supervisor's mediation attempts had been to no avail.

20. On 30 July 2010 the mother submitted documents to justify her absence.

21. On 11 August 2010 the applicant requested the District Court to impose further administrative fines on the mother for failure to comply with her obligations under the interim decision. Relying on the report by the supervisor, he submitted that the mother had prematurely terminated the contact visit on 18 June 2010. Furthermore, she had failed to appear at the meeting place on 25 June and 2 July 2010. On 23 July 2010 the mother had failed to hand over the child to the supervisor, and induced the child to declare that he did not wish to have any contact. On 6 August 2010 the applicant informed the supervisor that he would be approximately 30 minutes late because of traffic problems. The supervisor informed him that mother and child had left the building after ten minutes.

22. On 25 August 2010 the Youth Office submitted comments.

23. On 26 August 2010 the District Court scheduled a hearing for 10 September 2010.

24. On 9 September 2010 the District Court, on the mother's counsel's request, postponed the hearing to 24 September 2009.

25. During the hearing on 24 September 2010 the District Court heard the supervisor's oral submissions.

26. On 1 September 2010 the District Court informed the applicant that no decision could yet be taken for lack of the main case file on the contact proceedings.

27. On 22 October 2010 the applicant's counsel requested the District Court to expedite the proceedings. He further submitted that the District Court was in possession of all relevant documents and that it was not necessary to await the return of the main case file.

28. By decision of 12 November 2010 the District Court imposed an overall administrative fine of EUR 300 on the mother for having contravened the contact order six times. The District Court noted that it was not in dispute between the parties that contact did not take place, or took place only for a limited period of time, on the six dates relied upon by the applicant. The District Court further considered that the mother was accountable for the failed contact, albeit to a limited degree.

29. The District Court considered that the fact that contact visits were terminated because of the child's resistance did not exonerate the mother. The Court of Appeal had repeatedly stated that it was up to the mother to avail herself of the necessary educational measures in order to influence the

child and thus to allow contact visits. The mother had failed to establish that she had undertaken such measures. She might have had good reason for requesting the dates to be rescheduled. However, she did not have the right to cancel these dates without the Court of Appeal's or the applicant's consent. Finally, the mother was under an obligation to wait for the applicant on 6 August 2010, taking into account that the applicant had informed her beforehand that he would be late.

30. The District Court observed that the relevant provisions prescribed an administrative fine of up to EUR 25,000 for each established contravention of the court order. Based on an overall assessment of the circumstances, the District Court considered that only administrative fines within the lowest range could be envisaged. The District Court took into account that, according to a report submitted by an access custodian on 2 October 2010 (see paragraph 45, below) there were serious indications that it would not even have been possible for a professional counsellor to establish contact. Against this background, the mother's personal responsibility appeared to be minor. This was even more so as the mother did not completely prevent contact, but took the child to four of the scheduled meetings. The demands on her educational capabilities had been high, as she had not only been obliged to reconsider her own stance on the problems within a period of a few weeks, but also to change the child's established pattern of behaviour. It had further to be taken into account that comparable contraventions would not have to be sanctioned in the mid-term future, because a contact custodian had been appointed. Against this background, the administrative fine had primarily the character of a sanction for past behaviour, but not of a coercive measure.

31. According to the District Court, account also had to be taken of the fact that the purpose of the first dates, on which the child had prematurely terminated the contact visits, was to institute contact. It was inherent in this constellation that contact could only be established gradually and might fail. The Court of Appeal had pointed out this possibility and had also indicated that no undue pressure should be exerted on the child.

32. With regard to the contact meetings scheduled for 25 June and 2 July 2010, the applicant had been informed beforehand that mother and child would be absent and this fact should also be taken into account. He had thus incurred travel and other expenses on these dates in spite of this knowledge.

33. Considering these circumstances, the Court found it reasonable to impose an administrative fine of EUR 80 for each of the three occasions when contact did not take place at all and of EUR 20 each for the three remaining contraventions.

34. Both parties lodged complaints. The applicant submitted that the administrative fine imposed was far too low and obviously ineffective. He further complained that the length of the administrative fine proceedings

had been excessive and had violated his rights under Article 8 of the Convention.

35. On 2 December 2010 the District Court refused to amend its decision of 12 November 2010 and forwarded the complaints to the Frankfurt Court of Appeal.

36. On 17 December 2010 the Court of Appeal invited both parties to submit comments in reply by 6 January 2011.

37. On 2 February 2011 the Court of Appeal rejected both parties' complaints. In respect of the applicant's complaint, the Court of Appeal considered that the District Court had exercised its discretion in an acceptable way, taking into account all relevant circumstances. The Court of Appeal further considered that while it was true that the proceedings on administrative fines had to be processed speedily, the courts had to retain the possibility of availing themselves of all relevant information. Even though there were several reasons to assume that the length of the proceedings had been acceptable, the Court of Appeal did not consider it necessary to decide whether the proceedings had been conducted within a reasonable time, as there was no legal basis for establishing that the length of proceedings had been excessive.

38. On 28 February 2011 the applicant lodged an application to be heard (*Anhörungsrüge*) with the Court of Appeal, which was rejected by that court on 4 May 2011.

39. On 16 August 2011 the Federal Constitutional Court refused to accept the applicant's constitutional complaint for adjudication (no. 1 BvR 1544/11).

40. In the meantime, on 14 February 2011 the applicant requested the District Court to execute its decision of 12 November 2010. On 21 March 2011 the District Court ordered the applicant to advance court fees. On 26 April 2011 the District Court requested the applicant to submit an original version of the decision to be executed. On 4 May 2011 the applicant pointed out that the decision had to be executed *ex officio*. On 1 June 2011 the mother, who had been granted leave to pay by instalments, had paid the administrative fine in full. On 19 July 2011 the District Court informed the applicant that the administrative fine had already been paid.

C. Execution of the contact order of 1 September 2010

41. On 1 September 2010 the Frankfurt Court of Appeal, in the main proceedings, quashed the decision of the District Court of 21 December 2009 (suspension of contact rights) and granted the applicant contact rights on every second Wednesday afternoon for three hours each time, beginning on 29 September 2010. Following four supervised contact meetings, the applicant was to have the right to unsupervised contact meetings of up to eight hours each. The Court of Appeal further appointed Mr. H. as custodian

for the implementation of contact rights (*Umgangspfleger*). The mother was ordered to hand over the child to the custodian for the purpose of contact meetings. Both parents were ordered to have preparatory conversations with the custodian.

42. The Court of Appeal confirmed its previous finding that there was no indication that contact with his father would jeopardise the child's welfare and that there was thus no reason to suspend contact rights. There was furthermore not sufficient evidence that the child insistently refused to see his father. The Court of Appeal considered that the child's verbal refusals to meet his father were not based on the child's own assessment, but stemmed from the child's loyalty to his mother as his immediate caregiver. It was evident that contact meetings had solely failed because of the mother's lack of willingness or her inability to allow such contact.

43. The Court of Appeal further observed that both parents had contributed to the lack of communication and to the overall development of the proceedings.

44. In view of the mother's continuing failure to fulfil her parental duties, the Court of Appeal considered it necessary to appoint a custodian for the implementation of contact rights. The Court of Appeal observed that the custodianship had to be subject to a time-limit. It considered that the time until 31 March 2011 should be sufficient for establishing a stable relationship between the applicant and his son, allowing continued contact.

45. On 2 October 2010 the custodian informed the Court of Appeal that he had met the applicant, who had been uncooperative and did not seem to take an interest in the child's welfare. Under these circumstances, contact could not take place as scheduled. Nevertheless, in order to allow for contact, he recommended that the applicant seek professional counselling.

46. On 15 November 2010 the applicant requested the District Court to discharge the custodian from his duties.

47. On 16 November 2010 the District Court appointed a curator *ad litem* to represent the child's interests and submitted the request to the mother, the custodian and to the Youth Office for comments within one week.

48. On 30 November and 9 December 2010 the Youth Office and the mother asked the District Court to reject the request.

49. On 10 December 2010 the applicant requested the District Court to expedite the proceedings. On the same day, the District Court scheduled a hearing for 21 January 2011.

50. On 17 December 2010 the applicant complained that the District Court, when scheduling the hearing, had not respected the time-limit of one month laid down in section 155 § 2 of the Act on Proceedings in Family Matters (see Relevant Domestic Law, below).

51. On 12 January 2011 the District Court informed the applicant that it had not been possible to schedule an earlier hearing, as the judge in charge

had been replaced by 1 January 2011 and the hearing was scheduled immediately after the new judge's return from holidays.

52. On 21 January 2011 a hearing took place in the absence of the custodian, who had informed the District Court that he was on holiday.

53. On 29 January 2011 the custodian requested the District Court to discharge him from his duties.

54. Between 2 and 9 February 2011 the District Court judge contacted by telephone eight potential custodians. Ms R. was ready to supervise the first contacts, while Ms Z. declared her readiness to hand over the child for the ensuing unsupervised visits.

55. On 11 February 2011 the District Court informed the parties that custodian H. could only be dismissed if a new custodian was appointed. The District Court's intensive endeavours to find a person who was ready to implement the decision of 1 September 2010 proved difficult. On that same date, the District Court judge wrote letters to 22 potential custodians and enquired about their readiness to take up duties in the instant case. Furthermore, the District Court informed the parties that it had instituted *ex officio* fresh contact proceedings in order to review the existing regulations (*Abänderungsverfahren*, see paragraphs 67-81, below).

56. On 16 March 2011 the mother challenged the District Court judge for bias. She withdrew her motion on 12 April 2011.

57. On 12 April 2011 the applicant's counsel informed the mother's counsel that the applicant intended to exercise contact rights on 16 April 2011 and that he expected the mother to hand over the child. The applicant expressed the opinion that the Court of Appeal's decision of 1 September 2010 still provided for unsupervised visits on every second Saturday. On 14 April 2011 the mother's counsel replied that she considered that the applicant did not have the right to unsupervised contact.

58. Between 16 April and 9 July 2011 the mother did not open the door when the applicant appeared for contact visits. Between 10 May and 11 July 2011 the applicant lodged 6 requests to impose administrative fines on the mother for failure to comply with her obligations to hand over the child to the applicant. He further requested the District Court to expedite the proceedings.

59. On 27 June 2011 the mother's counsel requested the District Court to suspend proceedings pending the proceedings on the review of contact rights.

60. By decision of 29 June 2011 the District Court established that Mr H.'s custodianship had expired on 31 March 2011.

61. On 5 July 2011 the applicant requested the District Court to decide without further delay. On 8 July 2011 the District Court informed the applicant that the mother still had to be allowed to submit comments on the request of 1 July and on the applicant's letter of 5 July 2011.

62. On 19 July 2011 the applicant complained that the District Court's failure to decide on his requests violated his right to an effective legal remedy.

63. On 19 July 2011 the District Court informed the parties of its intention to decide in written proceedings on the basis of submissions lodged by 19 August 2011.

64. On 26 August 2011 the District Court rejected the applicant's requests to impose administrative fines on the mother. The District Court observed that the supervised contact ordered in the decision of 1 September 2010 had not taken place. There was no indication that unsupervised contact could take place without an initial phase of supervised contact. This question was the subject matter of the new proceedings on the review of contact rights instituted by the District Court. Under these circumstances, it could not be said that the mother had failed to comply with the contact order of 1 September 2010.

65. On 13 September 2011 the applicant lodged a complaint which was rejected by the Frankfurt Court of Appeal on 12 December 2011.

D. Proceedings on the review of regulations on contact rights

66. On 11 February 2011 the Frankfurt District Court instituted *ex officio* fresh contact proceedings in order to review the existing regulations and scheduled a hearing in the presence of Ms Z. and Ms R., who had previously declared their readiness to take on duties as custodians, for 16 March 2011.

67. During the hearing on 16 March 2011, the applicant and Ms Z. could not reach an agreement on the modalities of the contact, in particular the envisaged length of the first unsupervised contact meeting. The mother challenged the District Court judge for bias (compare paragraph 56 above for the parallel proceedings). On 31 March 2011 the substitute judge requested the mother's counsel to submit reasons for this motion. On 12 April 2011 the mother's counsel withdrew the motion.

68. On 18 May 2011 the District Court judge heard the child.

69. On 29 June 2011 the District Court decided to hear expert opinion on the question of whether the decision on contact rights issued by the Court of Appeal on 1 September 2010 could still be implemented or whether it was in the child's best interests either to order unsupervised contact or to suspend contact rights.

70. On 15 July 2011 the applicant challenged the court-appointed expert for bias. On 25 July 2011 the District Court rejected the motion as being unfounded. On 5 August 2011 the applicant lodged a complaint. On 3 November 2011 the Court of Appeal accepted the motion.

71. On 19 December 2011 District Court appointed a new expert. On 15 March 2012 the expert informed the court that he had been unable to

contact the applicant. The applicant informed the court that he was unavailable for further examination. On 29 March 2012 the applicant's counsel abandoned his brief.

72. On 17 April 2012 the applicant requested the District Court to schedule a hearing immediately.

73. On 20 April the District Court, having received the expert report on 19 April, scheduled a hearing for 29 May 2012 and informed the parties that the applicant could be assessed on the basis of the expert's personal impression gained during the hearing. On 22 May 2012 the applicant rejected the District Court judge on grounds of bias and the hearing was cancelled.

74. On 22 June 2012 the challenge for bias was rejected as being unfounded. On 9 July 2012 the applicant lodged an appeal which was rejected by the Court of Appeal on 31 October 2012.

75. On 16 November 2012 the District Court scheduled a hearing for 30 January 2012. On 5 December 2012 the applicant lodged a fresh challenge for bias, which was dismissed on 29 January 2013. On 15 March 2013 the District Court scheduled a hearing for 11 April 2013. Upon the applicant's request, the hearing was postponed to 6 June 2013.

76. On 1 June 2013 the applicant informed the District Court that health reasons prevented him from attending the hearing. The District Court, taking into account the parties' absences during the summer months, postponed the hearing to 22 August 2013.

77. On 14 August 2013 the applicant once again requested the District Court to cancel the hearing. He did not appear at the hearing which took place on 22 August 2013. On 11 September 2013 the applicant requested the District Court to re-open the hearing, while at the same time submitting that he was unfit to appear in court.

78. On 12 November 2013 the Frankfurt District Court suspended the applicant's contact rights until 31 October 2015 on the ground that contact against the child's expressed will would jeopardise his welfare. The applicant lodged an appeal.

79. The applicant did not appear at the hearing which took place before the Frankfurt/Main Court of Appeal on 11 February 2014. The Court of Appeal scheduled a further hearing for 21 May 2014, to which the court-appointed expert was also summoned. On 20 May 2014 the applicant asked the Court of Appeal to allow him to bring a private expert to the hearing and, at the same time, to postpone the hearing scheduled for the following day as the private expert was unable to attend. The Court of Appeal referring, *inter alia*, to section 155 of the Act on Procedure in Family Matters, refused the request. On 21 May 2014 counsel for the applicant, who did not attend the hearing in person, challenged the Chamber of the Court of Appeal for bias, which was dismissed on 21 July 2014.

80. On 17 September 2014 the Frankfurt/Main Court of Appeal confirmed the suspension of contact rights until 31 October 2015. It furthermore allowed the father to write monthly letters, which the mother was ordered to hand over to the child. Relying on expert opinion, the Court of Appeal considered that personal contacts against the consistently expressed will of the child, who had now reached the age of eleven, would jeopardise the child's psychological development and had thus to be temporarily excluded. The Court of Appeal further observed that the administrative fine imposed on the mother might have been insufficient and that the refusal of contacts between father and child, which had already lasted more than a decade, had not only been caused by the parents' and, in particular, the mother's failure, but also by a failure of the judiciary and of the children and youth welfare services involved.

II. RELEVANT DOMESTIC LAW

81. Section 1684 of the German Civil Code provides:

Contact of the child with its parents

"(1) The child has the right to contact with each parent; each parent has a duty and a right of contact with the child.

(2) The parents must refrain from everything that renders more difficult the relationship of the child to the other parent or the upbringing. Similar provisions apply if the child is in the charge of another person.

(3) The family court may decide on the scope of the right of contact and make more detailed provisions on its exercise, including provisions affecting third parties. It may enjoin the parties by orders to fulfil the duty defined in subsection (2). If the obligation in accordance with subsection (2) is considerably violated permanently or repeatedly, the family court may also order custodianship for the implementation of contact (contact custodianship). Access custodianship includes the right to demand surrender of the child to implement access and to determine where the child is to be for the duration of access. The order is to be time-limited...

(4) The family court may restrict or exclude the right of contact or the enforcement of earlier decisions on the right of contact, to the extent that this is necessary for the best interests of the child. A decision that restricts the right of contact or its enforcement for a long period or permanently may only be made if otherwise the best interests of the child would be endangered. The family court may in particular order that contact may take place only if a third party who is prepared to cooperate is present...."

82. Under section 1626a of the Civil Code as in force until 18 May 2013, the parents of a minor child born out of wedlock exercised joint custody if they made a declaration to that effect or if they married. Otherwise the mother obtained sole custody.

83. Section 155 of the Act on Procedure in Family Matters (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der*

freiwilligen Gerichtsbarkeit) as in force since 1 September 2009 reads as follows:

> "(1) Parent and child matters referring to the child's place of abode, contact rights or the surrender of the child, as well as proceedings based on a threat to the child's welfare must be conducted as a matter of priority and expediently.
>
> (2) In proceedings pursuant to subsection (1) the court shall discuss the case with the parties at a hearing. The hearing shall take place at the latest one month after the proceedings have been instituted. The court shall hear the Youth Office during this hearing. This hearing may only be postponed for compelling reasons. Proof of the reasons for the need for postponement must be furnished when the request for postponement is made.
>
> (3) ..."

84. Section 89 provides

> **Administrative fines (*Ordnungsmittel*)**
>
> "(1) In case of non-compliance with an enforcement order for the surrender of persons and for the regulation of contact, the court may impose an administrative fine (*Ordnungsgeld*) on the obligated party and in the event that the administrative fine cannot be collected it may order arrest for disobedience to court orders (*Ordnungshaft*). Where the imposition of an administrative fine lacks prospect of success, the court may order arrest. The order is taken by court decision.
>
> (2) The decision ordering the surrender of a person or the regulation of contacts shall indicate the consequences of any non-compliance with the enforcement order.
>
> (3) The amount of an individual administrative fine shall not exceed EUR 25,000...
>
> (4) No administrative measure shall be imposed if the obligated person submits reasons establishing that he cannot be held liable for the non-compliance..."

85. According to section 90 of that same law, decisions on contact rights shall not be executed by use of direct force against a child.

86. The Act on Protracted Court Proceedings and Criminal Investigations (*Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren*, henceforth: the Remedy Act) entered into force on 3 December 2011. According to section 198, paragraph 1, of the Courts Constitution Act as amended by the Remedy Act, a party to proceedings who suffers a disadvantage from protracted proceedings is entitled to adequate monetary compensation. A prior objection to delay (*Verzögerungsrüge*), which has to be raised before the court whose proceedings are allegedly unduly delayed, is a prerequisite for a subsequent compensation claim. According to its Article 23 the Remedy Act applies to pending as well as to terminated proceedings whose duration may still become or has already become the subject of a complaint with this Court. In pending proceedings the objection to delay should be raised without delay, when the Remedy Act entered into force. In these cases the objection preserved a subsequent compensation

claim even retroactively. For further details compare *Taron v. Germany* (dec.), no. 53126/07, §§ 29-26, 29 May 2012).

THE LAW

I. SCOPE OF THE COMPLAINT

87. In his submissions to the Court, the applicant complained about the domestic courts' failure to implement his contact rights in proceedings instituted on 19 May 2005.

88. The Government pointed out that the proceedings between 19 May 2005 and 22 March 2010 could not be re-examined by the Court as they had been the subject matter of the judgment given by the Court on 21 April 2011 (*Kuppinger*, cited above).

89. The applicant submitted in reply that the previous proceedings before the Court exclusively concerned his complaint under Article 6 § 1 of the Convention about the excessive length of the proceedings, but not the complaint about the excessive length and lack of effectiveness under Article 8 of the Convention. The instant case thus clearly concerned distinct subject matter.

90. Article 35 § 2 (b) of the Convention provides:

> "The Court shall not deal with any application submitted under Article 34 that... is substantially the same as a matter that has already been examined by the Court..."

91. The Court observes that in its judgment given on 21 April 2011 (*Kuppinger*, cited above), a Committee of the Court examined the applicant's complaints under Articles 6 and 8 about the length of contact proceedings lasting from 19 May 2005 until 22 March 2010. The Court chose to examine this complaint solely under Article 6 of the Convention (see *Kuppinger*, cited above, § 37). The Court reiterates that a complaint is characterised by the facts alleged in it, not by the legal grounds or arguments relied on (see, among other authorities, *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I; and *Previti v. Italy* (dec.), no. 45291/06, 8 December 2009). It follows that the complaint about the conduct of contact proceedings prior to 22 March 2010 is substantially the same as a matter that has already been examined by the Court in the above-mentioned judgment.

92. It follows that the complaint concerning the proceedings between 19 May 2005 and 22 March 2010 must be rejected under Article 35 §§ 2 (b) and 4 of the Convention as being substantially the same as a matter that has already been examined by the Court and that the Court is only competent to examine the proceedings which took place after that date.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

93. Regarding the proceedings which took place after 22 March 2010, the applicant complained that the domestic authorities failed to implement his contact rights with his son, thus violating his right to respect for his family life as provided in Article 8 of the Convention, which 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."

94. The Government contested that argument.

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

A. Merits

1. Execution of the interim decision of 12 May 2010

(a) The applicant's submissions

96. According to the applicant, the administrative fine imposed by the Frankfurt/Main District Court was ineffective and obviously inappropriate for implementing his contact rights. As was to be expected, the fine did not have any impact on the mother's behaviour. There was, furthermore, no indication that the appointment of a contact custodian would change the mother's refusal of contact. The applicant furthermore claimed that the length of the administrative fine proceedings had been excessive.

(b) The Government's submissions

97. The Government considered that the District Court had taken measures which could reasonably be expected to enable effectively the implementation of the contact decision of 12 May 2010. The sum of EUR 300, even though it may appear a small amount at first glance, represented an appropriate measure for promoting the child's mother's willingness to cooperate. Given the highly escalated conflict between the parents, it was already doubtful whether an administrative measure provided for by law could actually represent an appropriate means to enforce contact. The fact that his mother was exposed to administrative fine proceedings had rather intensified the child's rejection of the applicant. Given the extremely complex and contentious situation, the District Court's assessment of the

degree of the mother's accountability was comprehensible. Furthermore, it had to be taken into account that the measure was primarily aimed at sanctioning past behaviour, as the appointment of a contact custodian meant that further contraventions of the decision on contact rights were not to be expected.

98. The Government further submitted that the District Court took the decision on the administrative measures three and a half months after the applicant's request. The fact that the District Court awaited the return of the case file before taking its decision on 12 November 2010 was not cause for objection given the complexity of the proceedings and the fact that the main proceedings had already been terminated on 1 September 2010. The joinder of the two requests lodged by the applicant on 21 July and 11 August 2010 served the purpose of enhancing the efficiency of the proceedings. The District Court judge had granted the case the highest priority and had even postponed her own holiday plans in order to be able to schedule the hearing at the earliest possible date.

(c) The Court's assessment

99. The Court reiterates that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention (see, among other authorities, *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005 and *Tsikakis v. Germany*, no. 1521/06, § 74, 10 February 2011).

100. Furthermore, even though the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in effective "respect" for family life. In relation to the State's obligation to implement positive measures, the Court has held that Article 8 includes for parents a right that steps be taken to reunite them with their children and an obligation on the national authorities to facilitate such reunion (see, among other authorities, *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; *Nuutinen v. Finland*, no. 32842/96, § 127, ECHR 2000-VIII; and *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, § 49, ECHR 2003-V).

101. In cases concerning the enforcement of decisions in the sphere of family law, the Court has repeatedly found that what is decisive is whether the national authorities have taken all necessary steps to facilitate the execution that can reasonably be demanded in the special circumstances of each case (see, *mutatis mutandis*, *Hokkanen v. Finland*, 23 September 1994, § 58, Series A no. 299-A; *Ignaccolo-Zenide*, cited above, § 96; *Nuutinen*, cited above, § 128; and *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 59, 24 April 2003).

102. In this context, the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have

irremediable consequences for relations between the child and the parent who do not cohabit (see *Ignaccolo-Zenide*, cited above, § 102).

103. Finally, the Court has held that although coercive measures against children are not desirable in this sensitive area, the use of sanctions must not be ruled out in the event of unlawful behaviour by the parent with whom the child lives (see *Ignaccolo-Zenide*, cited above, § 106; and *Eberhard and M. v. Slovenia*, no. 8673/05 and 9733/05, § 130, 1 December 2009).

104. Turning to the circumstances of the instant case, the Court notes that the Frankfurt Court of Appeal decided on 12 May 2010 that the applicant had the right to see his son for three hours on each of six specific dates between May and August 2010. These contact meetings were to be followed by unsupervised visits. On 21 July 2010 the applicant asked the District Court to impose an administrative fine of at least EUR 3,000 on the mother, as none of the visits had taken place as scheduled. On 11 August 2010 the applicant lodged a further request for the remaining dates. On 12 November 2010 the District Court, jointly ruling on both requests, imposed an overall administrative fine of EUR 300 on the mother for having contravened six times the decision on contact rights. Even though the mother paid this sum in June 2011, none of the supervised visits took place as scheduled.

105. Under the general principles set out above, it is the Court's task to determine whether the domestic authorities took all necessary steps to facilitate the execution of the contact order of 12 May 2010 as could reasonably be demanded in the special circumstances of this case. The Court notes, at the outset, that the District Court's decision contains no information on the financial situation of the mother. Nevertheless, it cannot but observe that the overall administrative fine of EUR 300 appears to be rather low, given that the pertinent provisions allowed for the imposition of a fine of up to EUR 25,000 for each individual case of non-compliance. It is thus doubtful whether this sanction could reasonably have been expected to have a coercive effect on the child's mother, who had persistently prevented contact between the applicant and his son. The Court takes note of the District Court's reasoning that even though the child's mother was accountable for the failed contact, her personal responsibility proved to be minor, as the demands on her educational capabilities had been high and as she had been obliged "not only to reconsider her own stance on the problems within a few weeks, but also to change the child's established pattern of behaviour" (see paragraph 30, above).

106. The Court observes in this context that the parties had agreed to institute supervised contact as early as 2005 and that the Frankfurt/Main District Court had first ordered such contact on 22 May 2007 (see *Kuppinger*, cited above, §§ 7, 16). Having regard to the fact that the mother must have been made aware during the previous court proceedings of her general obligation to allow the applicant contact to his son, it is difficult to

follow the District's Court's reasoning that the mother had to reconsider her stance on the problems "within a few weeks". The Court further observes that the decision contains no information on whether the mother had at least attempted to meet her obligations under the contact order by encouraging the child to meet the applicant. The Court finally observes that the Frankfurt Court of Appeal, in its decision given on 17 September 2014 (see paragraph 80, above), conceded that the administrative fine imposed on the mother might have been insufficient.

107. Even if it is possible that more severe sanctions would not have changed the mother's general stance towards the applicant's contact rights, this did not dispense the domestic authorities from their obligation to undertake all appropriate steps to facilitate contact. Finally, the Court is not convinced by the Government's argument that it was unlikely that the situation would repeat itself, given that the family court had, in the meantime, set up contact custodianship. Even if a contact custodian had more effective means at his disposal than a mere supervisor, it is hardly conceivable that he would be able to achieve his task of implementing contact rights without a certain degree of cooperation on the mother's side.

108. With regard to the swiftness of the enforcement proceedings, the Court observes that the proceedings lasted more than ten months from 21 July 2010, when the applicant lodged his first request to impose an administrative fine, until 1 June 2011, when the overall fine was paid. The Court notes that the District Court did not give a separate decision on the applicant's first request, but awaited the submissions in reply to the subsequent requests before giving a decision. Given the special urgency of the subject matter, the Court is not convinced that the joinder, which caused a delay of several weeks, best served the interest of the efficiency of the proceedings. Furthermore, a delay of approximately one month occurred when the District Court awaited the return of the main case file from the Court of Appeal, even though the main proceedings before that Court had already been terminated six weeks before. It follows that this delay could have been avoided by a swifter dispatch of the case file.

109. Having regard to the facts of the case, including the passage of time, the best interests of the child, the criteria laid down in its own case-law and the parties' submissions, the Court, notwithstanding the State's margin of appreciation, concludes that the German authorities have failed to make adequate and effective efforts to execute the contact order of 12 May 2010.

110. There has accordingly been a violation of Article 8 of the Convention.

2. Execution of the decision of 1 September 2010

(a) The applicant's submissions

111. According to the applicant, the implementation of contact custodianship had failed because of the custodian's inappropriate and unprofessional behaviour. The proceedings on the discharge of the contact custodian had been inefficient and excessively long. The District Court had failed to take the necessary steps of contacting potential custodians who had previously expressed their readiness to accept this task. Furthermore, the District Court had failed to comply with its obligation under section 155 of the Act on Procedure in Family Matters to schedule a hearing within a month of receipt of the applicant's request. Accordingly, the District Court could have taken a decision in 2010.

112. The applicant further submitted that the refusal to impose further administrative fines was arbitrary and did not comply with the domestic law.

(b) The Government's submissions

113. The Government submitted that the domestic courts did not fail to comply with their obligations under Article 8 of the Convention in respect of the proceedings on the applicant's request to discharge the contact custodian and on his request for further administrative fines to be imposed on the mother.

114. The implementation of contact custodianship had failed on account of an open dispute between the applicant and the custodian. The proceedings on the discharge of the custodian had not been excessively long. The District Court's attempts to organise a replacement for the custodian had ultimately failed due to a dispute between the applicant and the potential contact custodians. As the contact custodianship ended on 31 March 2011, the decision of 29 June 2011 was of a purely declaratory nature. The Government pointed out in this context that non-compliance with section 155 of the Act on Procedure in Family Matters was not a decisive factor in the current proceedings, because this provision was merely a recommendation and did not stipulate swiftness at all costs. The decisive factor was always the best interest of the child.

115. The Government also submitted that the applicant's further requests for administrative fines clearly lacked any prospect of success as the contact order given on 1 September 2010 only provided for unsupervised contact following a preparatory phase of supervised contacts. It must thus have been clear for the applicant that the decision did not grant him the right to unsupervised contact without an initial phase of supervised contact. The Government further submitted that the proceedings were processed without any undue delay.

(c) The Court's assessment

116. The Court observes, at the outset, that the applicant did not lodge an appeal and thus did not exhaust domestic remedies against the District Court's decision of 26 August 2011 not to impose further administrative fines on the child's mother. It follows that the Court is only called upon to examine the applicant's Article 8 complaint with regard to the length issue.

117. The Court observes that the proceedings on the discharge of the contact custodian were instigated on 15 November 2010, when the applicant lodged his request, and were terminated on 29 June 2011, when the District Court established that contact custodianship had expired on 31 March 2011. The proceedings thus lasted seven months and two weeks before the District Court. The Court notes that, under the pertinent legislation, a contact custodian could only be dismissed if a new custodian was appointed at the same time. The Court further notes that the District Court made considerable efforts to find a contact custodian, which were ultimately to no avail. The proceedings on the applicant's requests to impose further administrative fines lasted from 10 May 2011, when the applicant lodged his first request, and ended on 26 August 2011, when the District Court rejected the requests. Proceedings thus lasted three months and seventeen days. In the light of all circumstances of the case, the Court does not find this length of proceedings to be excessive.

118. In the light of these considerations, the Court cannot find that the conduct of the proceedings on the discharge of the contact custodian and on the applicant's requests to impose further administrative fines violated the applicant's rights under Article 8 of the Convention.

3. Proceedings on the review of contact regulations

(a) The Government's submissions

119. The Government submitted that the length of the proceedings on the review of contact regulation was primarily caused by the applicant's own conduct. While the applicant was free to make use of all procedural means available to him, the ensuing delays were not imputable to the domestic courts.

(b) The applicant's submissions

120. The applicant contested that the length of the proceedings was imputable to him. The proceedings on the modification of contact rights were ineffective and lasted an excessively long time. In particular, the District Court had failed to summon other possible contact custodians after the agreement with Ms Z. had failed. The necessity to hear an expert opinion was caused by the excessive length of the prior proceedings and therefore also imputable to the domestic courts.

(c) The Court's assessment

121. The Court notes that the proceedings on the review of contact regulations were instituted *ex officio* by the District Court on 11 February 2011 and were terminated before that court on 12 November 2013. The appeal proceedings were terminated by the decision given by the Frankfurt Court of Appeal on 17 September 2014. Therefore, the proceedings lasted two years and nine months before the first instance court and some ten months before the Court of Appeal. The Court observes that the applicant lodged two motions, and the defending party one motion, for bias against the District Court Judge, each of which caused a delay of several weeks. A further delay of almost five months was caused by the fact that the applicant rejected the court-appointed expert on grounds of bias. While this rejection was ultimately successful, it has not been established that the grounds for the suspicion of bias lay within the sphere of the District Court or could have been known to the District Court prior to his appointment. Hearings were postponed twice upon the request of the applicant, who finally stated that he was unfit to appear in court. The Court further observes that the applicant did not appear at any of the hearings scheduled by the Court of Appeal and rejected the Chamber of the Court of Appeal for failure to comply with his request to postpone a hearing.

122. In the light of these facts, the Court cannot find that the length of the proceedings before the family courts, even though considerable, was due to the courts' lack of special diligence. In particular, the applicant's alleged inability to take part in the scheduled hearings cannot be held imputable to the family courts. The Court concludes that it has not been established that the family courts have failed to comply with the procedural aspect of Article 8 of the Convention with regard to the proceedings instituted on 11 February 2011.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

123. The applicant also complained that the length of the court proceedings concerning contact rights had exceeded a reasonable time in breach of Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a... hearing within a reasonable time by a ... tribunal..."

124. The Court notes that, under the Remedy Act, the applicant was entitled to lodge a claim for just satisfaction, but failed to do so. However, he disputes the effectiveness of the Remedy Act. Referring to a judgment in which a Court of Appeal awarded an applicant monetary compensation

amounting to EUR 1,500 for the excessive length of contact proceedings lasting two years and eight months, and which had been confirmed by the Federal Court of Justice on 13 March 2014 (III ZR 91/13), the applicant submitted that the domestic courts had failed to take into account relevant case-law of the Court when assessing just satisfaction claims under the Remedy Act.

125. The Court reiterates that in the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see, *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV*;* and *Eberhard and M.*, cited above, § 147).

126. The Court notes that the applicant had access to the claim for just satisfaction, which became available to him under the transitory provision of the Remedy Act upon its entry into force on 3 December 2011. The Court has previously found that the Remedy Act was in principle capable of providing adequate redress for the violation of the right to a trial within a reasonable time and that an applicant could be expected to make use of this remedy, even though it became available to him only after he had lodged his complaint with the Court (see *Taron*, cited above, §§ 40-43). The Court considers that the applicant has not submitted any reason which would allow the conclusion that the just satisfaction claim would not have had a reasonable prospect of success if pursued by the applicant in respect of the alleged unreasonable length of the court proceedings. The mere allegation that one Court of Appeal, in a court decision confirmed by the Federal Court of Justice, may have failed to take into account relevant case-law of the Court when assessing the amount of damages to be awarded under the Remedy Act, is not sufficient to call into question the general effectiveness of the legal remedy as a whole.

127. This part of the application must thus be rejected for non-exhaustion of domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

128. The applicant complained of a violation of his right to an effective remedy against the excessive length of the proceedings before the family courts. He relied on Article 13 in conjunction with Article 8 of the Convention.

129. The Government contested that argument.

A. Admissibility

130. 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 Government's submissions

131. Referring to the Court's decision in the case of *Taron* (cited above, §§ 39-45), the Government submitted that the Court had already established that the Remedy Act was generally suited to provide effective redress against excessive length of proceedings. While the evaluation of the domestic remedy, which had been in force for two years, was still pending, the existing case-law showed that the new remedy was functioning well in practice. This had been confirmed by the final resolution issued by the Committee of Ministers in the *Rumpf* case (see *Rumpf v. Germany*, no. 46344/06, 2 September 2010 and Resolution CM/ResDH(2013)244).

132. According to the Government, the new legal remedy was effective also in cases concerning contact with children, as it had a general preventive effect besides offering monetary redress. The two-stage legal remedy available under the amended Courts Constitution Act had a general, preventive effect by virtue of its very existence. In addition, the instrument of an objection to delay had a warning function, since it pointed out to the trial court which proceedings were already protracted from an applicant's point of view and thus allowed that court to expedite the proceedings. Furthermore, the compensation claim under the Remedy Act also had a preventive function, as it could already be lodged while proceedings were pending. Finally, the plaintiff had the option of obtaining monetary compensation for any disadvantages resulting from a violation of the right to a decision within a reasonable time.

133. The Government observed that the proceedings which were the subject matter of the instant complaint had been pending since May 2010

and thus fell under the transitional provision of Article 23 of the Remedy Act. Accordingly, the objection to delay was not yet available at that stage of the proceedings. However, the draft legislation had already been published at that time; furthermore, especially in regard to family law, the appeal courts had already generally recognised the legal institution (which was not regulated by law) of a complaint on account of inactivity in order to avert the danger of creating irreversible effects. Finally, the applicant himself had lodged several objections to delay during the proceedings at hand.

2. The applicant's submissions

134. According to the applicant, the Remedy Act did not comply with the prerequisites laid down in the Court's case-law. The Court had held in several judgments that a purely compensatory remedy was not sufficient to address violations resulting from the length of proceedings in which the conduct of the proceedings may have an impact on the applicant's family life (the applicant referred to the Court's judgments in the cases of *Macready v. the Czech Republic*, nos. 4824/06 and 15512/08, 22 April 2010 and *Bergmann v. the Czech Republic*, no. 8857/08, 27 October 2011).

135. The Remedy Act was not yet in force when the proceedings at issue were instituted and the applicant would only have been in a position to lodge a compensation claim under its transitory provisions. However, after consideration, the applicant had abstained from making use of this possibility also in view of its lack of effectiveness. The solution of compensation provided by the Remedy Act did not satisfy the requirements of an effective preventive remedy, because it did not lead to an order of binding measures to expedite proceedings. Neither did the objection to delay fulfil these requirements, as it constituted neither a legal claim for a declaration of a violation of the Convention nor a right to effective redress, as the law did not provide for a possibility of an effective appeal.

3. The Court's assessment

(a) General principles

136. The Court reiterates that Article 13 of the Convention gives direct expression to the States' obligation, enshrined in Article 1 of the Convention, to protect human rights first and foremost within their own legal system. It therefore requires that the States provide a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000‑XI). In the present case, having regard to its conclusion with regard to the conduct of the proceedings before the family courts (compare, in particular, paragraph 109, above), the Court considers that the applicant had an arguable claim of a

violation of Article 8 relating to the conduct of the proceedings on contact rights.

137. The Court further reiterates its case-law according to which remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are "effective" within the meaning of Article 13 of the Convention if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred. A remedy therefore fulfils these criteria if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002‑VIII; and *Sürmeli v. Germany* [GC], no. 75529/01, § 99, ECHR 2006-VII). However, in proceedings in which the length of the proceedings has a clear impact on the applicant's family life (and which thus fall to be examined under Article 8 of the Convention) the Court has considered that a more rigid approach is called for, which obliges the States to put into place a remedy which is at the same time preventive and compensatory (see *Macready*, cited above, § 48; and *Bergmann*, cited above, §§ 45-46). The Court has observed in this respect that the State's positive obligation to take appropriate measures to ensure the applicant's right to respect for family life risked becoming illusory if the interested parties only had at their disposal a compensatory remedy, which could only lead to an *a posteriori* award for monetary compensation (see *Macready*, *ibid.*).

(b) Application to the instant case

138. Turning to the circumstances of the instant case, the Court observes that the proceedings at issue concerned the applicant's contact rights with his young child. It is thus clear that the case falls within the category of cases which risk being predetermined by their length. Under the principles set out above, it thus has to be determined whether German law provided, at the relevant time, a remedy against the length of proceedings which did not only offer monetary redress, but which was also effective to expedite proceedings before the family courts.

(i) The Remedy Act

139. With regard to the effectiveness of the remedy introduced by the Remedy Act, the Court observes at the outset that this remedy only became available in December 2011 and thus at a time when the instant proceedings had already continued for one and a half year and were pending before the Court. The applicant chose not to avail himself of the possibility to request monetary compensation under its transitory provisions. The Court reiterates that it has previously found that there were no reasons to believe that the new remedy would not afford an applicant an opportunity to obtain adequate and sufficient compensation for his grievances (see *Taron*, cited

above, § 40). It has not, however, examined the question of whether the Remedy Act could also be regarded as effectively expediting the proceedings if the right to respect for family life otherwise risked becoming illusory.

140. With regard to the warning function attributed by the respondent Government to the objection to delay, the Court accepts that such an objection may, in a specific case, encourage a trial court to expedite proceedings. It notes, however, that the Remedy Act does not attach any sanction to the failure to comply other than the possibility to lodge a compensation claim. The Court is, furthermore, not convinced that the possibility to lodge a compensation claim can be regarded as having a sufficient expediting effect on pending proceedings in cases concerning contact rights to young children, if this is necessary to prevent a violation of the right to respect for family life.

141. In the light of these considerations, the Court is not convinced that the provisions introduced by the Remedy Act meet the specific requirements for a legal remedy designed to meet the State's positive obligations under Article 8 of the Convention in proceedings relating to a parent's contact rights with his young child.

(ii) The complaint alleging inaction

142. The Court has previously considered that the complaint alleging inaction, which did not have a statutory basis in domestic law, but had been accepted by a number of appeal courts prior to the entry into force of the Remedy Act, could not be regarded an effective remedy against the excessive length of civil proceedings, having regard to the uncertainty about the admissibility criteria for such a complaint and to its practical effect on the specific proceedings (see *Sürmeli*, cited above, §§ 110-112). The Court observes that the Government have not put forward any arguments which would allow a different conclusion to be drawn in the instant case. It follows that the complaint alleging inaction cannot be regarded as an effective remedy in this specific case.

(iii) Section 155 of the Act on Procedure in Family Matters

143. The Court finally observes that the Government submitted in a different context that section 155 of the Act on Procedure in Family Matters, which obliging family courts to treat contact proceedings as a priority and expediently, was merely a recommendation and did not stipulate swiftness "at all costs" (see paragraph 114, above). They did not allege that this provision could serve as an effective remedy within the meaning of Article 13 of the Convention. The Court appreciates that this provision may encourage the courts to comply with their duty to exercise special diligence in contact proceedings. However, in the absence of any statutory sanction for non-compliance, the Court agrees that this tool cannot

be regarded as an effective preventive remedy against the excessive length of contact proceedings.

144. Accordingly, the applicant did not have an effective remedy within the meaning of Article 13 of the Convention which could have expedited the proceedings on his contact rights.

145. There has therefore been a violation of Article 13 in conjunction with Article 8 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

146. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

147. The applicant claimed the sum of at least EUR 30,000 in respect of non-pecuniary damage. The applicant submitted that he had suffered non-pecuniary damage because of the excessively long and ineffective proceedings on contact rights which had been pending before the family courts since 2005 and which led to his permanent separation from his child. The applicant considered as an aggravating factor that the Court's judgment of 21 April 2011 (see *Kuppinger*, cited above) did not have an enduring effect on the processing of the proceedings by the family court.

148. The Government pointed out that the excessive length of the original proceedings had already been considered by the Court in its previous judgment (see *Kuppinger*, cited above). In the present case, only the proceedings on review of contact regulations were of an exceptional length which was, however, still justified under the circumstances of this particular case. By way of an alternative, the Government drew attention to the fact that the Court had previously decided not to award any compensation for non-pecuniary damage in a comparable case (the Government referred to *Berlin v. Luxembourg*, no. 44978/98, § 72, 15 July 2003).

149. The Court notes that the applicant has been awarded EUR 5,200 in respect of non-pecuniary damage for the length of the proceedings between the years 2005 and 2010 (see *Kuppinger*, cited above, § 61). Ruling on an equitable basis, it awards the applicant EUR 15,000 in respect of non-pecuniary damage for the violation of his rights under Articles 8 and 13 of the Convention in the instant case.

B. Costs and expenses

150. The applicant also claimed a total of EUR 4,524.61 for costs and expenses incurred before the domestic courts (including costs for the proceedings before the Federal Constitutional Court in the amount of EUR 2,032.40) and EUR 4,404.13 for those incurred before the Court. He submitted that the child's mother had failed to reimburse him the costs of the first administrative fine proceedings.

151. The Government affirmed that the applicant had failed to submit fee agreements justifying the bills relating to the costs of the proceedings before the Court and before the Federal Constitutional Court. They further submitted that the costs before the family courts were not incurred in an attempt to redress the violation of Article 8. Furthermore, the applicant had an enforceable claim against the mother for reimbursement of the costs of the first administrative fine proceedings.

152. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred in an attempt to redress the violation of the Convention rights and are reasonable as to quantum. The Court observes that it has found a violation of Article 8 of the Convention only with respect to the first administrative fine proceedings and that the applicant has obtained an enforceable title against the child's mother for reimbursement of the costs incurred by these proceedings. In the light of this, the Court considers it reasonable to award the sum of EUR 2,032.40 for costs and expenses in the domestic proceedings and of EUR 4,404.13 for the proceedings before the Court.

C. Default interest

153. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 8 and 13 concerning the proceedings before the Frankfurt/Main District Court which took place after 22 March 2010 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention as regards the execution of the interim decision of 12 May 2010;

3. *Holds* that there has been a violation of Article 13 in conjunction with Article 8 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following amounts:

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 6,436.53 (six thousand four hundred and thirty-six euros and fifty-three cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President