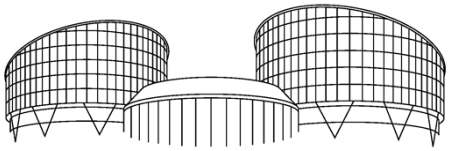

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF NECHAY v. RUSSIA

(Application no. 40639/17)

JUDGMENT

Art 8 • Respect for family life • Unjustified restriction of applicant's contact rights with his daughter leading inevitably in time to a risk of severance of their relationship • Domestic courts' failure to fairly balance all interests involved and give adequate reasons

STRASBOURG

25 May 2021

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 Nechay v. Russia,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Dmitry Dedov,
Georges Ravarani,
Anja Seibert-Fohr,
Peeter Roosma,
Andreas Zünd, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 40639/17) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Ilya Petrovich Nechay ("the applicant"), on 31 May 2017;

the decision to give notice to the Russian Government ("the Government") of the complaint under Article 8 of the Convention concerning the applicant's contact rights with his daughter and to declare inadmissible the remainder of the application;

the decision to grant the application priority under Rule 41 of the Rules of Court;

the parties' observations;

Having deliberated in private on 20 April 2021,

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

INTRODUCTION

1. The present case concerns the decision of the Russian courts to limit the applicant's contact with his daughter to twelve hours per year, at the child's place of residence and in the presence of the child's mother, upon prior agreement with the latter.

THE FACTS

2. The applicant was born in 1974 and lives in the town of Zheleznodorozhniy, Moscow Region. The applicant was represented by Ms O.D. Petrol, a lawyer practising in Moscow.

3. The Government were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. From 2007 the applicant lived with Ms E.A. and her son in Moscow.

6. On 24 July 2008 E.A. gave birth to their daughter, S.

7. In 2011 the relationship between the couple deteriorated and in March 2011 they separated. S. remained living with E.A.

8. From then E.A. started preventing the applicant's communication with S. In July 2012 she moved from Moscow to Kazan with both children.

9. The applicant lost any contact with S. in September 2012.

10. In March 2013 E.A. married a Turkish national. Later in August 2013 E.A. and S. moved to Turkey.

11. Meanwhile, after failed attempts to come to an agreement with E.A. as regards his contact with S., the applicant brought proceedings to determine his contact arrangements with the child. E.A. brought a counterclaim asking the court to determine the child's residence as being with her in Turkey.

12. On 25 April 2013 the Vakhitovskiy District Court of Kazan ("the District Court") held that S. should reside with her mother E.A. in Turkey. This conclusion was based on the following considerations: (i) from 2011 onwards S. had been living with her mother; (ii) according to an expert report, she had strong emotional ties with her mother and elder brother; and (iii) the mother provided her with adequate living and educational conditions. The District Court further held that the applicant was entitled to parental visits every Saturday and Sunday of the odd months of each year (upon prior agreement with E.A.). They were to take place at the child's place of residence and in the presence of E.A. and were not to exceed four hours. E.A. was obliged not to obstruct the applicant's contact with the child in the framework of the above arrangements. She was further obliged to inform the applicant of the child's place of residence and school in Turkey, and to inform him in advance of any trips outside of Turkey.

13. On 1 July 2013 the District Court made a ruling on correction of a clerical error, by which the words "every Saturday and Sunday of the odd months of each year" in the above judgment were replaced with the words "a Saturday and a Sunday of the odd months of each year".

14. On 28 November 2013 the Supreme Court of the Republic of Tatarstan ("the Supreme Court") upheld the above judgment on appeal, noting that it was in the best interests of the child.

15. In April 2014 E.A. and S. returned to Russia.

16. On 19 April 2014 the applicant applied to the bailiffs' service for enforcement of the judgment of 25 April 2013.

17. On 26 May 2014 enforcement proceedings were instituted. They were terminated on 29 December 2014 and resumed on 27 March 2015.

18. In the meantime, E.A. brought proceedings before the District Court for a review of the contact arrangements between the applicant and S. She claimed, in particular, that the applicant had not seen S. for almost two years since September 2012 as he had not attempted to see her either when she had been living in Turkey or when visiting Russia for holidays, and therefore the contact arrangements as established on 25 April 2013 could

cause the child psychological problems. The applicant brought a counterclaim against E.A. asking the court to determine the child's residence as being with him and to determine the contact arrangements between the child and the non-custodial parent. He argued, in particular, that E.A. had made his contact with the child difficult and had subjected her to the stress of moving to Turkey and subsequently back to Russia, as well as completely excluding him from any decision making regarding the child.

19. By a letter of 25 February 2015 the childcare authority of the Sovetskiy District of Kazan *(Отдел по опеке и попечительству Администрации Советского района исполнительного комитета муниципального образования г. Казани)* informed the applicant that the child and her legal representatives (E.A. and the applicant) were referred to the Centre of Social Assistance to Families and Children "Gaile" in Kazan for the carrying out of a diagnostics of their parent-child relationships. The letter in question contained no indication of the date, the time and the venue of the above examination.

20. On 31 March 2015 the applicant sent a letter to the childcare authority of the Sovetskiy District of Kazan expressing his willingness to participate in the above examination and enquiring about its time and venue. The applicant did not receive any reply.

21. On 8 April 2015 the Centre of Social Assistance to Families and Children "Gaile" carried out an assessment of the relations between the child and E.A. The applicant was absent from the examination. Expert Ch. concluded that the child knew her father, that she displayed anxiety when talking about him, that the father figure was absent from her close family circle and was not a meaningful adult in her life. While there was no close emotional tie between the applicant and the child, an optimal psychological distance existed in the parent-child relationship with E.A. It was concluded, therefore, that the presence of the applicant in the child's life would not be beneficial for the latter's mental development.

22. On 26 May 2015 the District Court rejected the applicant's application for residence and maintained the residence order in favour of E.A. as being in the child's best interests. The District Court further determined that the applicant should be able to have contact with his daughter on a Sunday (or a Saturday) of the odd months of each year (upon prior agreement with E.A.) for two hours at the child's place of residence and in the presence of E.A. Lastly, the District Court obliged E.A. to inform the applicant of the child's state of health and school results, to involve him in the decision making process regarding choosing a school or extracurricular activities for the child, to inform him of the child's movement within the Russian Federation and to obtain his written consent for the child's trips abroad, as well as to enable him to spend additional time with the child in the event that E.A. ever needed someone to look after her.

23. In taking this decision the District Court took into account the child's age, her close emotional tie with the mother and brother and her need for constant care by the mother for proper development, the impossibility to separate the child from the mother for an extended period of time, and the fact that the mother had created all the necessary conditions for the child's development and upbringing and for her communication with close relatives. The District Court also noted that the child had had no contact with the applicant for an extended period of time. The District Court had before it the following evidence:

(i) results of an assessment of the applicant's living conditions, which met the child's need for sleep and rest;

(ii) an opinion of the childcare authority of the Zheleznodorozhniy Town Circuit of the Moscow Region *(Отдел опеки и попечительства Министерства образования Московской области по городскому округу Железнодорожный)*, which was in favour of increasing the applicant's communication with the child and enabling such communication to take place without the mother present;

(iii) the report of 8 April 2015 (see paragraph 21 above).

24. The District Court also questioned several witnesses and experts:

(a) K., a psychologist who examined S. at the request of E.A. and concluded that there was a close emotional connection between her and the child and that her absence could represent a stressful situation for S., whereas the father's absence would not amount to such a stress for S.;

(b) Ye., Director of Education at the school previously attended by S., who submitted that E.A. had never been against communication between the applicant and the child;

(c) Zh., who had been on the school's parental committee with E.A., who also submitted that the latter had never prevented the child's communication with the applicant;

(d) Z., the applicant's neighbour, who submitted that the applicant had been actively involved in his daughter's upbringing, that he had been suffering as a result of the lack of access to the child and had been making all efforts to restore communication; and

(e) Yen., forensic expert psychologist from the Bureau of Independent Expertise "Versiya", who submitted that in 2013 she had conducted, at the request of the applicant, his psychological expert examination, which showed that the applicant had been a good father, that his personality would stimulate the child's harmonious development even in the situation of a conflict between him and the child's mother, and that, taking into account the child's age, the mother's presence was not necessary during communication between the child and the applicant.

25. The applicant appealed. He decided not to pursue his application for residence and for his written consent for the child's trips abroad. He further insisted on the necessity to appoint a forensic psychological examination in

order to eliminate contradictory evidence in the case file material and in view of the impossibility of the psychologist Yen. to have access to the child in order to evaluate the parent-child relations between her and the applicant in a different context.

26. On 19 May 2016 the Supreme Court terminated the proceedings in so far as they concerned the parts which the applicant wished to no longer pursue and upheld the rest of the judgment on appeal. The Supreme Court agreed with the contact arrangements determined by the District Court, which had taken into account the child's interests, her age and attachment to her mother and brother. The Supreme Court further referred to the conclusions of the report of 8 April 2015, which, along with other evidence, had been given due consideration and assessment by the District Court. It noted that the childcare authority of the Sovetskiy District of Kazan had referred the child and both parents to the Centre of Social Assistance to Families and Children "Gaile" for diagnostics of their parent-child relations, of which the applicant had been informed. The report prepared by the above body could not therefore be declared inadmissible evidence. The Supreme Court further dismissed an argument by the applicant that his rights had been violated by the established contact arrangements referring to the length of time he had had no contact with the child. It considered therefore that the contact schedule determined by the District Court, in the mother's presence, had been in the best interests of the child, which was an issue of priority. The Supreme Court noted in this respect that the applicant had not provided evidence to the effect that E.A. had prevented the enforcement of the previous contact arrangements of 25 April 2013: he had never asked the bailiffs' service to organise meetings with the child and had not appeared for enforcement actions when the bailiffs asked him to do so. The Supreme Court furthermore noted that it was open to the applicant, once he re-established his contact with the child, to apply to the court for altering the existing contact arrangement, with due regard to the child's personal wishes and preferences.

27. The applicant challenged the decision in cassation appeal proceedings.

28. On 14 September 2016 a judge of the Supreme Court of the Republic of Tatarstan decided not to refer the case to the Presidium of that court for consideration.

29. On 12 December 2016 a judge of the Supreme Court of Russia decided not to refer the case to the Civil Chamber of the Supreme Court for consideration.

30. On 21 February 2017 the President of the Supreme Court of Russia found that there were no grounds to disagree with the decision of 12 December 2016 taken by the single judge.

31. Since 2012 the applicant has seen his daughter twice, on 27 September 2012 and 31 May 2015.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW AND PRACTICE

A. The Constitution of the Russian Federation

32. The Constitution provides that maternity and childhood and family are under the protection of the State. The care of children and their upbringing shall be both the right and obligation of parents (Article 38).

B. Family Code of the Russian Federation

33. A child has the right to live and to be brought up in a family in so far as it is possible; the right to know his parents; the right to enjoy their care and the right to live with them, except where it is contrary to the child's interests (Article 54 § 2).

34. A child is entitled to maintain contact with his parents, grandparents, brothers, sisters and other relatives. The parents' divorce or separation or the annulment of their marriage must have no bearing on the child's rights. In particular, in the event of the parents residing separately, the child is entitled to maintain contact with both of them. The child is entitled to maintain contact with his parents also in the event of their living in different States (Article 55 § 1).

35. A child has the right to express his opinion on all family matters concerning him, including in the course of any judicial proceedings. The opinion of a child over ten years old must be taken into account, except where it is contrary to the child's interests (Article 57).

36. Both parents have equal parental rights (Article 61 § 1).

37. The exercise of parental rights must not go against the child's interests. Providing for the child's interests is the principal object of the parents' care. In exercising parental rights, the parents have no right to inflict damage on the physical and psychological well-being of the child, or on his moral development. Methods used in the child's upbringing must exclude neglectful, cruel, rude or degrading treatment, insults or exploitation. Parents exercising parental rights to the detriment of the child's rights and interests will be made answerable, in conformity with the procedure established by law (Article 65 § 1).

38. In the event of the parents' separation, the child's residence arrangements are fixed by an agreement between the parents. If no such agreement can be reached, the child's residence arrangements are fixed by a court order, having regard to the child's best interests and his or her opinion on the matter. In particular, the court must take into account the child's attachment to each of the parents and the siblings, the relationship between the child and each of the parents, the child's age, the parents' moral and

other personal qualities, and the possibilities each of them have for creating appropriate conditions for the child's upbringing and development, such as their occupation, employment schedule, and financial and family situation (Article 65 § 3).

39. The parent residing separately from the child is entitled to maintain contact with the child and to participate in his or her upbringing and education. The parent with whom the child resides may not hinder the child's contact with the other parent, unless such contact undermines the child's physical or psychological health or moral development (Article 66 § 1).

40. A court may deprive a parent of parental authority at the request of the other parent, a guardian, a prosecutor or social services if, among other reasons, the parent mistreats the child by resorting to physical or psychological violence or sexual abuse (Articles 69 and 70 § 1).

41. A court may restrict a parent's parental authority and remove the child from the parent's care in the interests of the child at the request of a close relative, social services, an educational institution or a prosecutor. Parental authority may be restricted in cases where the parent represents a danger to the child (Article 73).

C. Court practice

42. In its ruling no. 10 on courts' application of legislation when resolving disputes concerning the upbringing of children, dated 27 May 1998, as amended on 6 February 2007, the Plenary of the Supreme Court of Russia stated, in particular:

> "8. ... When determining the contact rights of a parent residing apart from the child, the court must take into account the child's age, state of health, attachment to each of the parents and to any other circumstances affecting the child's physical and psychological well-being and moral development.
>
> In exceptional cases, when communication with the parent residing apart from the child may adversely affect the child, the court may dismiss that parent's claim for contact rights on the basis of Article 65 § 1 of the Family Code. The reasons should be stated in the court's decision."

II. INTERNATIONAL LAW

43. The 1989 Convention on the Rights of the Child reads, in so far as relevant, as follows:

> **Article 3**
>
> "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
>
> ..."

Article 9

"1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child ...

...

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

44. The applicant complained that the judgment of 26 May 2015 determining the contact arrangements between him and his daughter significantly reduced his ability to preserve and develop family ties with his daughter and amounted to a violation of his right to respect for his family life as provided in Article 8 of the Convention, which reads as follows:

Article 8

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society 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."

A. Admissibility

45. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

46. The applicant submitted that the judgment of 26 May 2015 limiting his contact with his daughter to twelve hours per year on the basis of two hours every other month in the presence of, and upon prior agreement with, the child's mother had amounted to an interference with his rights to respect

for his family life under Article 8 of the Convention. Such contact arrangement virtually equated the applicant to a stranger in the child's life making impossible any normal development of family bonds between them. The applicant argued that the interference in question had not been in accordance with the law and not necessary in a democratic society. The domestic law provided that the parent with whom the child resided could not hinder the child's contact with the other parent, unless such contact was detrimental to the child's physical or psychological health or moral development (see paragraph 38 above). It further provided for specific cases where the measures limiting parental rights were necessary in the interests of a child – restriction of parental rights and deprivation of parental rights (see paragraphs 40-41 above) – with a view of protecting the child against any harmful behaviour of a parent. None such circumstances had been shown to exist in the applicant's case: no physical or mental illness, no alcohol or drug addiction, no negative influence on the child which could justify the disproportionately short time of contact with the child. Nevertheless, although the applicant had not been *de jure* restricted in the exercise of his parental rights, he had been made *de facto* suffer similar consequences. The District Court had therefore failed to balance the interests of all parties involved in the proceedings – both parents and the child. The applicant further argued that he had not been sufficiently involved in the decision-making process to ensure the necessary protection of his interests. In particular, he had not been given a practical opportunity to participate in the diagnostics of his parent-child relations with his daughter (see paragraphs 19-21 above), although this piece of evidence was attributed major weight by the domestic courts. Neither was he afforded an opportunity to question expert Ch., who had conducted the above diagnostics, in the course of the proceedings. The opinion of childcare authorities who had been in favour of increasing the time of the applicant's contact with his daughter and allowing for the possibility of such contact without the mother's presence were ignored. The applicant's request for a forensic psychological expert examination was rejected.

(b) The Government

47. The Government submitted that the domestic courts, having examined the parties' living conditions and having taken into account the child's age and other circumstances which could have effect on the latter's physical and mental development, proceeded with the fact that the applicant had not been in contact with his daughter for a long time and that the emotional tie between them had been lost. Their conclusions regarding the child's psycho-emotional state and her affection were based on the opinion of the psychologist from the Centre of Social Assistance to Families and Children "Gaile" in Kazan (see paragraph 21 above), which was given proper assessment together with other evidence. The applicant was duly

informed about the above examination, but failed to appear. He did not submit evidence capable of refuting the conclusions contained therein. The interference with the applicant's right to respect for his family life was, therefore, in accordance with the law, pursued the legitimate aim of securing the best interests of the child and was necessary in a democratic society. The applicant was adequately engaged in the decision-making process and used his procedural rights at his discretion. In any event, since legal relations connected with the participation of a non-custodial parent in a child's upbringing were of a continuous nature, it remained open to the applicant to apply to the domestic court for the re-assessment of his contact rights with S. in the future.

2. The Court's assessment

(a) General principles

48. The first paragraph of Article 8 of the Convention guarantees to everyone the right to respect for his or her family life. As is well established in the Court's case-law, the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by this provision. Any such interference constitutes a violation of this Article unless it is "in accordance with the law", pursues an aim or aims that is or are legitimate under its second paragraph and can be regarded as "necessary in a democratic society" (see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 202, 10 September 2019).

49. In determining whether the latter condition was fulfilled, the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify that measure were relevant and sufficient for the purposes of paragraph 2 of Article 8. The notion of necessity further implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests (ibid., § 203).

50. Consideration of what lies in the best interests of the child is of crucial importance in every case of this kind. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the people concerned. It follows that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody and access issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their margin of appreciation (see *Elsholz v. Germany* [GC], no. 25735/94, § 48, ECHR 2000-VIII; *Sahin v. Germany* [GC], no. 30943/96, § 64, ECHR 2003-VIII; *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR

2003-VIII (extracts); *Görgülü v. Germany*, no. 74969/01, § 41, 26 February 2004; and *Širvinskas v. Lithuania*, no. 21243/17, § 93, 23 July 2019).

51. 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. Thus, the Court has recognised that the authorities enjoy a wide margin of appreciation, in particular when deciding on custody. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that family relations between a young child and one or both parents would be effectively curtailed (see *Elsholz*, cited above, § 49; *Sahin*, cited above, § 65; *Sommerfeld,* cited above, § 63; *Görgülü,* cited above, § 42; and *Širvinskas,* cited above, § 94).

52. Article 8 of the Convention requires that a fair balance must be struck between the interests of the child and those of the parent and, in striking such a balance, particular importance must be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parent. In particular, the parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Elsholz*, cited above, § 50; *Sahin,* cited above, § 66; *Sommerfeld,* cited above, § 64; *Görgülü*, cited above, § 43; and *Širvinskas,* cited above, § 95).

53. Whilst Article 8 of the Convention contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8. The Court cannot satisfactorily assess whether the reasons adduced by the national courts to justify these measures were "sufficient" for the purposes of Article 8 § 2 of the Convention without at the same time determining whether the parent has been involved in the decision-making process, seen as a whole, to a degree sufficient to provide him with the requisite protection of his interests (see *Sahin*, cited above, § 68; *Sommerfeld,* cited above, § 66; *Görgülü*, cited above, § 52; and *Širvinskas,* cited above, § 96).

(b) Application of these principles to the present case

54. The Court finds, and this is common ground between the parties, that the relationship between the applicant and his daughter amounted to "family life" within the meaning of Article 8 § 1 of the Convention.

55. The Court further observes that by the judgment of 26 May 2015 the District Court determined the contact arrangement between the applicant and his daughter as follows: a Sunday (or a Saturday) of the odd months of each year, upon prior agreement with the child's mother, for two hours at

the child's place of residence and in the presence of the child's mother (see paragraph 22 above). The overall yearly duration of the father-daughter contact was limited, therefore, to twelve hours. The Court finds, and it was not disputed between the parties, that the above judgment hindered the enjoyment by the applicant and his daughter of each other's company, thereby amounting to an interference with the applicant's right under Article 8 of the Convention.

56. As regards the issue of whether the interference in question had been "in accordance with the law", the domestic law provided that the parent with whom the child resided could not hinder the child's contact with the other parent, unless such contact was detrimental to the child's physical or psychological health or moral development (see paragraph 38 above). The domestic practice further elaborated that when determining the contact rights of a parent residing apart from the child, the court was to take into account the child's age, state of health, attachment to each of the parents and to any other circumstances affecting the child's physical and psychological well-being and moral development. It further provided that in exceptional cases the court could deny contact rights when communication with the parent residing apart from the child might adversely affect the child (see paragraph 42 above). It appears, therefore, that the judgment of 26 May 2015 had its basis in domestic law and that the domestic courts pursued what they considered to be a legitimate aim of protecting the best interests of the child. It remains to be examined whether the interference can be regarded as "necessary in a democratic society" (see *Cînța v. Romania*, no. 3891/19, §§ 43-45, 18 February 2020).

57. The Court has to consider, therefore, whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention.

58. In proceeding with its analysis, the Court will be mindful of the importance of the child's interests in preserving and developing his or her ties with both parents, in so far as practicable, on an equal footing, save for lawful limitations justified by considerations regarding the child's best interests (see *Kacper Nowakowski v. Poland*, no. 32407/13, § 81, 10 January 2017). The same rationale underpins Article 9 § 3 of the Convention on the Rights of the Child (see paragraph 43 above).

59. The Court observes that the decision to limit the applicant's access to his daughter to twelve hours per year on the basis of two hours once every two months, upon prior agreement with, and in the presence of, the child's mother, was based largely on the fact that the applicant had not had any contact with the child for an extended period of time – two years and almost eight months from 27 September 2012 – and had, therefore, lost close emotional tie with her. It further relied on the child's age, her attachment to her mother and brother and the impossibility to separate the child from the mother for a long time. While the reasons adduced by the

domestic courts to justify their decision may be considered relevant, the Court is not convinced that they can be viewed as sufficient.

60. The Court observes, firstly, that the domestic courts gave no due consideration to the reasons for the absence of any contact between the applicant and the child for over two and a half years. It observes in this respect that the prevention by the child's mother of the applicant's contact with his daughter as of September 2012 had been the very reason why the applicant had initiated the first set of contact proceedings in early 2013 (see paragraph 11 above). It further observes that before the judgment of April 2013 determining the applicant's initial contact rights with his daughter had become final and enforceable in November 2013, the mother and the child had left for permanent residence in Turkey (see paragraph 15 above), and that as soon as they returned to Russia in April 2014 the applicant applied for institution of the enforcement proceedings in order to secure his contact rights (see paragraph 16 above).

61. Secondly, the Court observes that the alleged alienation between the applicant and his daughter was established on the basis of the report of diagnostics of parent-child relationships carried out by the Centre of Social Assistance to Families and Children "Gaile", of which the applicant was informed, but not given a practical opportunity to participate. The Court notes that while the applicant had expressed his willingness to take part in the above diagnostics and enquired about its time and the venue, he received no reply and the examination took place in his absence (see paragraphs 19-21 above).

62. Thirdly, the Court observes that the domestic courts ignored the opinion of the childcare authority that was favourable to increase the applicant's contact with his daughter and to enable such contact to take place without the mother being present, as well as the submissions by the forensic expert psychologist Yen. to the effect that the results of applicant's psychological expert examination conducted at his request in 2013 had shown that he had been a good father, that his personality would stimulate the child's harmonious development even in the situation of a conflict between him and the child's mother, and that, taking into account the child's age, the mother's presence was not necessary during communication between the child and the applicant (see paragraphs 23 and 24 above).

63. In the Court's opinion, the contact arrangement determined by the domestic courts was inevitably to entail, with the passage of time, a risk of the severance of the applicant's relationship with his daughter (compare to *Kacper Nowakowski*, cited above, § 92, where the same conclusion was reached by the Court in respect of the contact arrangement providing for the applicant's contact with his son on the basis of two hours every week in the presence of the child's mother), and the possibility for the applicant to have this schedule reviewed to his advantage at a later stage relied on by the Supreme Court (see paragraph 26 above) remained purely theoretical.

64. In the light of the foregoing, the Court is not satisfied that the domestic courts fairly balanced the interests of all parties involved in the proceedings – both parents and the child – in a decision-making process which provided the applicant with the requisite protection of his interests safeguarded by Article 8. They failed to give sufficient reasons commensurate with the seriousness of the interests at stake to justify their interference for the purposes of paragraph 2 of Article 8. The interference with the applicant's right to respect for his family life was therefore not "necessary in a democratic society".

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage as compensation for the emotional distress that he had suffered as a result of the violation of his rights under Article 8 of the Convention.

68. The Government considered that the applicant's claim for non-pecuniary damage was excessive, unreasonable and not corresponding to the Court's case-law.

69. The Court considers that the applicant must have suffered and continues to suffer profound distress as a result of his inability to enjoy his daughter's company and to participate in her life and upbringing. In such circumstances it considers that sufficient just satisfaction would not be provided solely by a finding of a violation. In the light of the circumstances of the case, and making an assessment on an equitable basis as required by Article 41 of the Convention, the Court awards the applicant EUR 12,500 in respect of non-pecuniary damage, plus any tax that may be chargeable. The Court further holds that the Government should take, as a matter of urgency, all appropriate measures to ensure respect for the applicant's family life, duly taking into account the best interests of the child.

B. Costs and expenses

70. The applicant also claimed 169,980 Russian roubles (RUB) for the costs and expenses incurred before the domestic courts, comprising legal

fees and travel expenses necessary for his and his lawyer's participation in court hearings in Kazan. These expenses were supported by copies of electronic itinerary receipts, printouts confirming hotel reservations, copies of the powers of attorneys issued by the applicant. The latter further claimed RUB 319,840 for costs and expenses incurred before the Court, comprising legal fees in the amount of RUB 312,500 and postal expenses in the amount of RUB 7,340. The legal fees were supported by the Legal Services Agreement between the applicant and his lawyer of 3 April 2017 and Act No. 1 of the delivery of services. The postal costs were supported by relevant DHL receipts.

71. The Government submitted that the applicant's claims for costs and expenses were unsubstantiated and that no award should be made.

72. 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 and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,500 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

73. 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 complaint concerning the applicant's contact with his daughter admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *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, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,500 (five thousand five hundred euros), 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 25 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Paul Lemmens
Registrar	President