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Convention on the Rights of the Child

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Committee on the Rights of the Child

Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 75/2019*, **, ***

Communication submitted by:	M.W.
Alleged victim:	V.W.
State party:	Germany
Date of communication:	18 January 2019 (initial submission)
Date of adoption of Views:	31 May 2021
Subject matter:	Lack of enforcement of judicially established contact regime between father and child
Procedural issues:	Insufficient substantiation of claims; victim status; exhaustion of domestic remedies
Substantive issues:	Best interests of the child; separation of children from parents; effective remedy; fair trial – undue delay
Articles of the Convention:	3, 4, 5, 8, 9 (3), 12, 14, 16, 18 and 19 (c)
Articles of the Optional Protocol:	5 (2) and 7 (b), (e) and (f)

1.1 The author of the communication is M.W., a citizen of Germany born in 1973. He is submitting the communication on behalf of his daughter, V.W., born on 5 May 2008. The author is not represented by counsel. The Optional Protocol entered into force for the State party on 14 April 2014.

1.2 On 24 June 2019, pursuant to article 6 of the Optional Protocol, the working group on communications, acting on behalf of the Committee, rejected the author's request for interim measures. On the same date, the Committee decided to reject the State party's request that the admissibility of the communication be considered separately from its merits.

* Adopted by the Committee at its eighty-seventh session (17 May–4 June 2021).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho Assouma, Hynd Ayoubi Idrissi, Rinchen Chophel, Bragi Gudbrandsson, Philip Jaffé, Sopio Kiladze, Gehad Madi, Benyam Dawit Mezmur, Faith Marshall-Harris, Otani Mikiko, Luis Ernesto Pedernera Reyna, Zara Ratou, Aïssatou Alassane Sidikou, Ann Marie Skelton, Velina Todorova and Benoit Van Keirsbilck.

*** A joint opinion by Committee members Bragi Gudbransson and Velina Todorova (dissenting) is annexed to the present Views.

Facts as submitted by the author

2.1 By a court decision of 10 October 2014, the marriage of V.W.'s parents was dissolved. Prior to that, on 9 April 2014, V.W.'s mother was awarded sole parental custody by Potsdam District Court. That decision was upheld by the Brandenburg Court of Appeal on 25 March 2015.

2.2 In the context of a first set of proceedings, V.W.'s parents reached an agreement on the contact arrangements between the author and his child. However, in the context of a second set of proceedings, the mother sought a temporary injunction to reduce the contact time awarded to the author. At a court hearing of 21 December 2015, the parents agreed on a temporary derogation from the contact arrangements that were in force at the time, with the aim of finding a permanent solution by the end of May 2016. As the parents failed to reach a final agreement, temporary arrangements were agreed upon by means of a temporary injunction on an unspecified date.

2.3 On 25 July 2017, at the request of the author, Potsdam District Court decided to amend the contact arrangements and determined that the author was entitled and obligated to have parental contact with his daughter every second weekend, from Thursday after school until the following Tuesday morning, when school begins. In that determination, the District Court followed the recommendations of experts encouraging contact between the author and V.W. The District Court noted in its decision that the joint parental custody requested by the author would not be possible as it would require both parents to share, equally and responsibly, the care of the child in everyday life. In the District Court's view, that could not be foreseen in view of the fact that the parents did not communicate with each other. At the same time, the mother's request to reduce the above-mentioned contact arrangements between the author and V.W. was also rejected, as that was not considered to be in the child's best interests. In that respect, the District Court noted that V.W. was heavily burdened by the new "patchwork situation" in both parental homes and especially by the parental conflict. By contrast, the contact itself was not considered to be the source of the child's problems. The District Court further noted that, in the light of the expert evaluation, there was no doubt that the author was able to assume his parenting duties and that he spent quality time with his child. The District Court further mentioned that the child's relationship with her father was worthy of protection "even if V.W. takes her mother's side in the parental conflict". The District Court concurred with the assessment of the experts foreseeing the risks of parental alienation should the child's conspicuous behaviour persist, which could be used by her mother to further reduce or even eliminate any contact between V.W. and her father.

2.4 On an unspecified date, the author requested that the custody proceedings be relaunched. On 25 July 2017, Potsdam District Court ruled that the mother should continue to have sole custody. The author appealed that decision and submitted several complaints to accelerate the appeals proceedings.

2.5 The author submits that, until February 2018, he was able to effectively exercise his contact rights. After that date, however, the mother started to prevent him from having access to his daughter on the assigned weekends without any justification. On some occasions, she insisted that two other persons, unknown to the author, accompany the child during the visits, which she limited to two hours. The author signalled these difficulties to the youth welfare office, which was unable to intervene because the mother refused to engage in a joint discussion on the matter. The youth welfare office therefore advised the author to file a judicial complaint. In July 2018, the mother moved with her husband and the child to Ettenheim, some 800 kilometres away from their previous place of residence. Ever since that date, the author has been unable to establish contact with his child. The youth welfare office of the child's new place of residence informed the author that it could not take any action as long as court procedures were pending. In the meantime, the mother continued to reject any dialogue with the youth welfare office.

2.6 In a decision of 19 July 2018, the Brandenburg Court of Appeal upheld the rejection of the father's request to have the child's custody transferred to him.

2.7 Between August and November 2018, the author submitted three complaints to the appeals court to accelerate proceedings. Some of those complaints were rejected, while others were left unanswered. On 16 January 2019, the Brandenburg Court of Appeal decided to

suspend the author's contact rights until 30 July 2019 on the ground that contact between the author and his daughter, to which the latter was explicitly opposed, would jeopardize V.W.'s welfare and mental and psychic development. The Court of Appeal underlined that, since February 2018, the child had repeatedly indicated before all relevant actors that she did not want to have any contact with her father. The Court of Appeal stated that it could not opt for a less intrusive measure given that the child strictly opposed to even supervised contact. Therefore, the Court of Appeal accepted the mother's proposal not to place the child under pressure during the first year in her new school and to resume the contact proceedings only thereafter. The author submits that no ordinary appeal was available against that decision.

2.8 On 12 February 2019, the author lodged a constitutional complaint against the above-mentioned decision. On 27 March 2019, the Constitutional Court refused to accept the author's constitutional complaint for adjudication.

Complaint

3.1 The author claims a violation of article 3 of the Convention, insofar as the best interests of the child, which are considered to take precedence over any other interests at stake, have not been taken into account by the relevant State authorities. In particular, the author argues that the youth welfare office sided with the mother and was often inactive due to structural problems in the German child welfare system (backlog of cases, poor working conditions, lack of human resources, no effective supervision).[1] He submits that, not only in his individual case but also on a more general level, family courts in Germany are unable to effectively protect the best interests of the child due to lengthy court proceedings that leave children in limbo, in the midst of parental conflicts regarding custody and contact rights.

3.2 Furthermore, the author alleges a violation of article 5 of the Convention on the ground that he has been prevented from carrying out his parental functions, rights and obligations and from contributing to the development of his child as a result of the State party's failure to enforce his contact rights despite the judicially established contact arrangements and also owing to protracted court proceedings.

3.3 The author argues that, as established by expert opinions drawn up in the court proceedings, V.W.'s mother abuses her custodial rights and the child. According to the author, V.W. is made dependent on her mother and, without any external/judicial pressure, is unable to avoid being influenced by her mother's stance and re-establish contact with her father. The child's lack of contact with her father and paternal relatives clearly interferes with her right to preserve her identity, in violation of article 8 of the Convention. He claims that it is for the State authorities to provide V.W. with appropriate assistance and protection to restore her identity as soon as possible.[2] The author also claims that he has been deprived of his right and obligation to have an impact on the child's development, in breach of article 14 of the Convention.

3.4 Relying on articles 9 and 16 of the Convention, the author reiterates that his presence in the child's life was found to be conducive to V.W's development and thus worthy of protection. Nevertheless, the relevant State authorities failed to make efforts to guarantee the right of the child to have regular contact with her non-custodial parent and to put an end to the mother's arbitrary interference with the child's right to family life – contrary to the extensive contact arrangements established by Potsdam District Court.

3.5 Furthermore, the author claims that, even though the child was free to express her will in the court proceedings, the State authorities' compliance with article 12 of the Convention

[1] The author refers to a report published by the European Parliament that identified structural problems in the German welfare system and called for urgent changes. See www.europarl.europa.eu/RegData/commissions/peti/document_travail/2009/418136/PETI_DT%282009%29418136_EN.pdf.

[2] The author refers to several judgments against Germany delivered by the European Court of Human Rights establishing the violation of the applicants' rights in similar cases. See *Kuppinger v. Germany* (Application No. 62198/11); *Moog v. Germany* (Application No. 23280/08 and No. 2334/10); *Zaunegger v. Germany* (Application No. 22028/04) and *Görgülü v. Germany* (Application No. 74969/01).

is only "illusionary" because it was unequivocally established by experts that the child's persistent rejection of her father was attributable to the influence of V.W's mother on her daughter and to V.W.'s inner conflict of loyalty towards the mother, who had wilfully prevented her from having contact with her father for a long period of time. The author further submits that the legal guardian appointed to the child was biased and represented the interests of the mother instead of the best interests of the child. The author alleges that legal guardians are appointed by courts and are thus, financially speaking, dependant on the decision of the respective judge as to whether to retain them in a given case. According to the author, the scheme undermines the independency of those professionals.

3.6 In addition, the author claims a violation of article 18 of the Convention because the family laws of the State party are based on the principle of "one (parent) cares, one (parent) pays" instead of ensuring recognition of the principle that both parents are jointly responsible for the upbringing and development of the child.[3] He submits that, due to the failures of the State authorities, he and his daughter have been clearly deprived of this right.

3.7 The author contends that, despite information indicating that the mother potentially endangered V.W.'s well-being by putting her under pressure and alienating her from the author, as confirmed by experts, the courts failed to conduct an investigation into the matter, in breach of articles 4 and 19 of the Convention. The author adds that family court judges receive no adequate training and are therefore incapable of assessing, in line with the State party's international obligations, what is in the child's best interests. Many court decisions harm children and hamper the realization of their rights, as exemplified by his individual case. The author submits that the situation has been further exacerbated by the unduly delayed proceedings for determining custody and contact regimes owing to the courts' excessive workload, which is unacceptable in a country that would have the financial means to address these structural problems.

State party's observations on admissibility and the author's request for interim measures

4.1 In its submissions dated 28 March and 25 April 2019, the State party requested the Committee to declare the communication inadmissible because the author lacked the status of a victim and for non-exhaustion of domestic remedies (see arts. 5 (2) and 7 (e) of the Optional Protocol). The State party further challenges the admissibility of the complaint because it was not signed either by the author or by V.W., in breach of article 7 (b) of the Optional Protocol.

4.2 Regarding the alleged lack of victim status, the State party argues that V.W. did not consent to the submission of the communication and that the author, who is not her custodial parent to, cannot proceed on her behalf. Although it may well be that, exceptionally, a non-custodial parent can pursue a complaint, provided that doing so would be in the best interests of the child, it can be safely assumed in the present case that the complaint was lodged against the will of the child, who was explicitly opposed to having any contact with her father. That opposition also served as a basis for the contested decision of the Brandenburg Court of Appeal.

[3] The author refers to section 1687 of the Civil Code, which reads as follows:

> If parents who have joint parental custody live apart not merely temporarily, then in the case of decisions in matters the arrangement of which is of substantial significance for the child their mutual agreement is necessary. The parent with whom the child, with the consent of the other parent or on the basis of a court decision, customarily resides has the authority to decide alone in matters of everyday life. Decisions in matters of everyday life are as a rule such as frequently occur and that have no effects that are difficult to alter on the development of the child. As long as the child, with the consent of this parent or on the basis of a court decision, resides with the other parent, the latter has the authority to decide alone in matters of actual care. Section 1629 (1) sentence 4 and section 1684 (2) sentence 1 apply with the necessary modifications.

He further refers to sections 1606 and 1629 of the Civil Code.

4.3 Furthermore, the State party asserts that the author failed to exhaust all domestic remedies as his constitutional complaint was pending before the Federal Constitutional Court.

4.4 Regarding the author's request for interim measures, the State party first provides a detailed description of the reasoning set out by Potsdam District Court in its judgment of 25 July 2017. It further notes that, in view of the fact that the Brandenburg Court of Appeal suspended the author's contact rights until 30 July 2019, it is to be assumed that, after the issuance of that decision, i.e. 16 January 2019, the State authorities have not taken any measures to facilitate contact between the author and his child.

Author's comments on the State party's observations on admissibility and the author's request for interim measures

5. In his submission dated 27 May 2019, the author contests the State party's challenge to the admissibility of his complaint. He notes that, on 27 March 2019, the Federal Constitutional Court of Germany refused to accept his constitutional complaint for adjudication and that he has therefore exhausted all available domestic remedies. He further argues that the way in which family-law courts deal with the separation of children, especially from their father, is a systematic problem in Germany. He underlines that the State party failed to comment on his claim regarding the excessive length of the court proceedings. He notes that, following several judgments by the European Court of Human Rights having found violations in similar cases, the State party has recently taken certain measures to accelerate court proceedings in family-law matters. However, these measures have proven ineffective in the author's case.

State party's observations on the merits

6.1 In a note verbale dated 29 October 2019, the State party submitted its observations on the merits of the case.

6.2 Regarding the alleged violation of article 3 of the Convention, the State party submits that, pursuant to that provision, the concept of the best interests of the child is only one factor to consider. The best interests of the child does not therefore take absolute priority vis-à-vis other private and public interests; the best interests of the child may well take second place behind other interests protected by law in some individual cases. In any event, in the present case, the best interests of the child were given primary consideration since it was exactly the child's wish not to have any contact with the author. The fact that the will of the child, who was 11 years old at the time of the adoption of the contested decision of the Brandenburg Court of Appeal, was given due consideration by the domestic court is also in line with article 12 of the Convention. The State party submits that the allegedly excessive length of the proceedings does not lead to a different assessment. In response to the author's allegations concerning the structural shortcomings of the child welfare system in Germany, the State party contends that between 2007 and 2011 several audits were conducted that did not identify any structural problems. The State party explains that it is primarily the responsibility of parents to protect the best interests of their children and that the State has a guardian role in this respect, as it can intervene by certain means should the development of the child be jeopardized. Regarding the role of the youth welfare offices, the State party notes that such authorities constitute part of the public administration and therefore, while carrying out their duties, their officials must adhere to law. Nevertheless, it is possible to complain about any unlawfulness encountered in their actions through the supervisory organs or administrative courts. In addition, the State party contests the author's allegation that its family-laws deepen conflicts instead of promoting reconciliation. In that respect, the State party provides general information concerning its laws that purport the improvement of the child protection system and non-contentious dispute resolution between the parties. It further refers to guarantees in court procedures in the sphere of family-law, such as ex officio inquiries, the assignment of legal guardians for children and the courts' obligation to conduct hearings.

6.3 Regarding the alleged violation of article 4 of the Convention, the State party notes that that provision contains a direct obligation incumbent on States to realize all the rights set forth in the Convention. Accordingly, it only entails an "objective obligation" and does not give rise to any "subjective right" benefiting the individual. It is not possible therefore for the author to allege a violation of article 4 of the Convention in an individual complaint.

6.4 Regarding the alleged violation of article 5 of the Convention, the State party submits that that provision provides for an obligation incumbent on the family or other persons legally responsible for the child to provide the child with appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention. The State party then cites its domestic laws concerning parents' rights and obligations to care for their minor children.

6.5 With regard to articles 7 and 8 of the Convention, the State party underlines that those articles guarantee the right of the child, to the extent possible, to know and be cared for by his or her parents. However, that right may not be realized under all circumstances for justifiable reasons, for example if there is a need to remove a child from his or her family. Since, in the present case, the child refused to have any contact with her father, the State party may not be held liable in this respect and there is nothing on file to suggest that V.W. could not re-establish contact with her father should she wish to do so.

6.6 Regarding the alleged violation of article 12 of the Convention, the State party insists on the child's express refusal to meet her father.

6.7 Furthermore, the State party submits that article 9 (3) of the Convention is silent on the question of the extent to which States parties are to regulate contact between the child and the non-custodial parent. According to the State party, a well-founded refusal on the part of a child to have access to a parent may be decisive even in spite of the author's allegations that the child's position might be influenced by the stance of the mother.

6.8 In addition, the State party argues that there is nothing on file to suggest that the mother manipulated the child to such a degree as to render her no longer able to exercise her rights under article 14 of the Convention.

6.9 Regarding the alleged violation of article 16 of the Convention, the State party asserts that the concept of privacy as a "catch-all" fundamental right encompasses all manifestations of the enjoyment, expression and demonstration of what is private. While it may cover acts or omissions that might do harm to the right holder, its protection is, however, dependent on the child acting in a self-determined manner; the scope and boundaries for that emerge from articles 5 and 12 of the Convention. In regard to the present case, the State party makes reference to the child's own decision not to be in touch with her father.

6.10 Furthermore, the State party submits that no obligation incumbent on States parties to grant joint custody for separated parents follows from article 18 (1) of the Convention. Where the parents are separated, the parent with whom the child lives carries an increased responsibility for him or her for de facto reasons. At the same time, States parties must act in the best interests of the child if the separated parents are unable to come to an agreement on how to exercise their parental responsibilities. In such cases, however, joint custody may be counter to the best interests of the child. The State party reiterates that the domestic courts' decision to grant full custody to the mother is in line with the child's will in the present case.

6.11 Regarding the alleged violation of article 19 of the Convention, the State party submits that that provision contains a direct obligation incumbent on States and does not give rise to any "subjective right" benefiting the individual. In any event, it is not evident from the information before the Committee that V.W. is subject to physical or emotional violence, neglect, sexual abuse or the like on the part of her mother.

Author's comments on the State party's observations on the merits

7.1 In his submission dated 1 December 2019, the author informs the Committee that neither he nor the wider paternal family has had any contact with the child up until the date of his submission in spite of having relaunched contact proceedings before the Emmendingen District Court, which has jurisdiction over the case according to the child's new place of residence.

7.2 Regarding the alleged violation of article 3 of the Convention, the author maintains that there is no legal avenue to complain about the technical deficiencies in the functioning of youth welfare offices. As regards the disciplinary complaint, he submits that such a remedy is ineffective owing to the fact that the complaint is handled by the authority concerned. He further notes that legislative reforms aimed at the acceleration of court proceedings are not satisfactory as long as they are not applied by courts in practice.

7.3 The author repeats the arguments previously adduced to substantiate the violation of his rights under article 5 of the Convention and underlines that it is a sad reality that in controversial cases children usually lose access to one of their parents in spite of the State party's obligations arising from the Convention.

7.4 Regarding the State party's statement that there is nothing on file to suggest that his daughter could not re-establish contact with him should she wish to and that there has therefore been no violation of article 8 of the Convention, the author notes that such a statement clearly reflects the lack of understanding of the situation, especially of the child's vulnerability owing to the fact that she is influenced by and dependent on her mother. Such patterns of excessive dependence are considered to be damaging to the personal development and well-being of the child and may not serve as a basis for justifying the violation of his daughter's rights under articles 9, 12 or 14 of the Convention. The author reiterates his arguments under articles 18 and 19 of the Convention and adds that the World Health Organization has recently recognized parental alienation as a clinically relevant relationship disorder by including it in the new edition of the International Classification of Diseases (ICD-11).

Additional information submitted by the author

8.1 On 11 March 2021, the author submitted additional information to the Committee according to which the decision of the Brandenburg Court of Appeal of 16 January 2019 was the last decision handed down at the domestic level. He submits that, apart from submitting the constitutional complaint, an extraordinary remedy that was not admitted for examination in March 2019, he has had no opportunity to appeal the impugned decision. He reiterates that, on 22 May 2019, he initiated new contact proceedings before the District Court of Emmendingen. At the first hearing, which was scheduled for 2 July 2019, the District Court requested an expert opinion by 1 April 2020. During the hearing, both the youth welfare office and his child's legal guardian expressed concern about the author's inability to meet his child, which might be the result of parental alienation and could have a detrimental effect on V.W.'s development. The legal guardian further expressed concern about the fact that no action had been taken by the courts since the previous decision of January 2019, which left the parties in an unfortunate situation given the total lack of contact between the father and the child.[4] The author further submits that, on 10 October 2019, the mother challenged the impartiality of the judge assigned to the case in order to delay the proceedings. Upon the author's request to accelerate a decision on the matter, the mother's complaint was rejected on 9 December 2019. Her appeal against the decision was dismissed on 19 June 2020. The author also asked for an interim order allowing him to re-establish contact with his daughter through supervised visits; however, that request has remained unaddressed to this date despite the multiple complaints submitted by the author to speed up the procedure.

8.2 On 26 May 2020, V.W.'s legal guardian informed the District Court that she had been unable to establish contact with the child for over a year due to the mother's lack of cooperation. She added that the current situation undermined the child's well-being and requested the court to take action.[5] On 7 August 2020, the author submitted a new complaint for acceleration of the proceedings under section 155 (b) of the Act on Proceedings in Family Matters, as well as a complaint about court inactivity, which was rejected on 28 August 2020. In the meantime, the District Court set a new deadline for the appointed expert to submit her expert opinion before 1 November 2020. On 5 October 2020, the expert announced that she would not be in a position to finalize the report since the mother had obstructed the expert's meetings with the child.[6] On 11 October 2020, V.W.'s guardian reported to the District Court

[4] Minutes of the court hearing dated 2 July 2019 substantiate the author's assertion.

[5] The submission of the legal guardian to the District Court dated 26 May 2020 substantiates the author's assertion.

[6] The submission of the expert to the District Court dated 5 October 2020 substantiates the author's assertion. It further appears from the document that she was also told by the mother's counsel that no dialogue with the child was possible without the presence of her counsel. The expert further claims that, according to information received from the child's psychologist, the child was suffering from constant fatigue and needed a lot of sleep, which warranted an urgent examination to determine the

that the mother had prevented each of her attempts to meet the child. Since the guardian was unable to carry out her work in the circumstances of the present case, she requested the District Court to approve the mother's application to remove her from the case.[7]

8.3 In addition, the author alleges that some medical reports indicate that the child is suffering from constant fatigue that may be attributable to the mother, who gives drugs to the child that have strong side effects. He submits that his daughter's condition has not allowed her to attend school and other activities on multiple occasions and that the child's unsatisfactory medical condition has also been used by the mother as an excuse to cancel the meetings scheduled with the legal guardian and the court expert.[8] The author notes that the youth welfare office submitted a request to the court indicating that the child's health had deteriorated and that an expert opinion needed to be obtained without further delay. Should fulfilment of the request be prevented by either parent, it was recommended that custody rights be shared by the parents in order to avoid harm to the child.[9] Regardless, a court hearing took place on 14 December 2020 but no new deadline was set for the finalization of the expert opinion. Furthermore, the meeting held on 8 January 2021 between the child and the judge was not followed by an interim order or a decision that would regulate the situation. During that meeting, the child again expressed her wish not to have any contact with her father. On 2 February 2021, the author submitted yet another complaint to accelerate the proceedings that was rejected on 8 February 2021. The appeal against that decision was dismissed by the Karlsruhe Regional Court on 31 March 2021. The author claims that the available legal avenues are not effective remedies for accelerating court proceedings in Germany.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure under the Optional Protocol, whether the communication is admissible under the Optional Protocol.

9.2 The Committee notes the State party's position that the communication is inadmissible under article 5 (2) of the Optional Protocol and rule 13 of the Committee's rules of procedure because the alleged victim did not consent to the submission of the communication and the author does not have custody of the child. The Committee recalls that, under the referred provisions, a communication may be submitted on behalf of alleged victims without their express consent when the author can justify acting on their behalf and the Committee deems it to be in the best interests of the child. Under such circumstances, a non-custodial parent should still be considered a legal parent and can represent his or her child or children before the Committee, unless it can be determined that he or she is not acting in the best interests of the child or children. Having duly weighed the specific circumstances of each case, the Committee did not consider itself precluded from examining previous communications that raised similar issues, including in *Y and Z v. Finland*, *C.R. v. Paraguay* and *F.F., T.F. and E.F. v. Panama*.[10] However, those cases factually differ from the present one in that, in the previous cases, the State party did not object to the admissibility of the complaint on this particular ground and/or the children were younger and their views were not known to the Committee.

9.3 In the present case, the Committee notes that, according to the information in the file, since February 2018 V.W. has repeatedly indicated before all relevant actors that she does not want to have any contact with her father. The Committee further notes that, according to

underlying cause of the child's illness, which might be related to her being at the centre of the conflict between the parents.

[7] The submission of the legal guardian dated 11 October 2020 substantiates the author's assertion. It further appears from the document that she expressed concern about the mother's decision to appoint, as guardian for V.W., someone in her trust, which she finds problematic from the perspective of objectivity.

[8] The submission of the court expert dated 5 October 2020 and the submission dated 22 October 2020 substantiates the author's assertion.

[9] The submission to the District Court dated 22 October 2020 substantiates the author's assertion.

[10] CRC/C/81/D/6/2016, CRC/C/83/D/30/2017 and CRC/C/83/DR/48/2018.

the most recent information received, at a hearing that took place on 8 January 2021, V.W. again firmly expressed her wish not to have any contact with her father. The Committee further notes that V.W. is now 13 years old and that her views should be given due weight, in accordance with her age and maturity. Turning to the question of whether the circumstances of the case permit it to examine this case despite the absence of V.W.'s consent for the author to act on her behalf, the Committee takes into consideration V.W.'s recently reiterated refusal to have contact with her father and that it can reasonably be assumed that, had V.W. been given the opportunity to voice her opinion on the current case, she would not have consented to the submission of the complaint by the author on her behalf. Although the Committee acknowledges that, in some instances, there may be a conflict between the child's views and his or her best interests, the Committee observes that, in the present case, the domestic authorities have not been inactive during the period concerned. The Committee notes that, in addition to the child's recent hearing by the trial judge, a legal guardian has been appointed to represent her interests, expert opinions have already been drawn up and a new expert report is expected to be submitted in the current set of proceedings before the Emmendigen District Court. In this connection, the Committee is mindful of the mother's alleged non-cooperation, which has hindered the experts from carrying out their duties in a prompt manner. Nevertheless, the Committee considers that the situation appears to be monitored by the District Court of Emmendingen and, as it appears from the transcripts of V.W.'s hearing on 8 January 2021, a meeting between the expert and the child is envisaged in the near future. Under these circumstances, although the Committee considers that the author's decision to bring this complaint forward in the absence of his daughter's consent was justifiable, at the time when the complaint was filed, under article 13 (3) of its rules of procedure under the Optional Protocol, subsequent events lead the Committee to conclude that it is no longer in the child's best interests for it to examine the communication without V.W.'s express consent. Consequently, the Committee considers that it is precluded from examining the communication under article 5 (2) of the Optional Protocol, read in conjunction with rule 20 (4) of its rules of procedure.

9.4 The Committee therefore decides that:

(a) The communication is inadmissible under article 5 (2) of the Optional Protocol;

(b) The present decision shall be transmitted to the author of the communication and, for information, to the State party.

Annex

Joint opinion of Committee members Bragi Gudbransson and Velina Todorova (dissenting)

On admissibility

1. We dissent from the majority decision that the communication is inadmissible under article 5 (2) of the Optional Protocol and rule 13 of the Committee's rules of procedure under the Optional Protocol.

2. We note that the events that occurred after the communication was filed led the Committee to conclude that it was no longer in the child's best interests for the Committee to examine the communication without the daughter's express consent. We recall, however, that in previous cases that raised similar issues, including in *Y and Z v. Finland*, *C.R. v. Paraguay* and *F.F., T.F. and E.F. v. Panama*,[1] the Committee held the view that a communication may be submitted on behalf of the alleged victims without their express consent when the author can justify acting on their behalf and the Committee deems it to be in the best interests of the child. We note that, in *C.R. v. Paraguay*, the child could have been considered mature enough to express her views and yet the Committee failed to examine the issue of victim status under the relevant provisions.

3. In the present case, we consider that it is difficult to establish what the child's independent views are regarding the submission of the communication by her father and that it is erroneous to deem the child's view as the determining factor for inadmissibility, as the child has been completely devoid of a safe space and support to express an opinion and there is evidence that suggests that she is under pressure from the mother to refuse contact with her father. Even her appointed legal guardian has been unable to have access to her and it is not clear if she knows that the communication has been brought before the Committee. Furthermore, concerns have been raised by professionals about the child's isolation by her mother and the apparent deterioration in her health. We therefore consider that the issue of the alleged parental alienation of the child and its potential effects on the latter's expressed will not to see her father is precisely part of the matter before the Committee. Under the circumstances, we cannot assume that the communication has been submitted contrary to the child's best interests.[2] We therefore conclude that there is no obstacle to the admissibility of the communication under article 5 (2) of the Optional Protocol.[3]

4. Furthermore, we consider that, for the purposes of admissibility, the author has sufficiently substantiated his claims regarding the State party's failure to ensure contact with his daughter and to take into account the best interests of the child, which appear to raise issues under articles 3, 9 (3) and 18 of the Convention. We further consider that this part of the complaint is not inadmissible on any other grounds. It must have therefore been declared admissible by the Committee.

On the merits

5. We deem that the Committee should have determined whether, in the circumstances of the present case, by failing to ensure contact between the author and his daughter, the State party violated the child's right under article 9 (3) of the Convention to maintain personal relations and direct contact with her father on a regular basis. The Committee further failed to consider whether the author's additional claims based on the lack of contact with his daughter also amount to a violation of articles 3 and 18 of the Convention.

[1] CRC/C/81/D/6/2016, CRC/C/83/D/30/2017 and CRC/C/83/DR/48/2018.

[2] See also Laura Lundy, "'Voice' is not enough: conceptualising article 12 of the United Nations Convention on the Rights of the Child", *British Educational Research Journal*, vol. 33, No. 6 (2007), pp. 927–942.

[3] See, e.g., *Y and Z v. Finland*, para. 9.4.

6. We recall that, under article 9 (3) of the Convention, States parties have an obligation to 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.[4] We further recall the position of the Committee that court procedures establishing visitation rights between a child and a parent who are separated must be expeditiously processed, since the passage of time may have irreparable consequences for the relationship between them. This includes the rapid enforcement of decisions resulting from those procedures.[5] In addition, we recall that, as a general rule, it is for the national authorities to interpret and enforce domestic law, unless their assessment has been clearly arbitrary or amounts to a denial of justice.[6] The Committee's role is to ensure that their assessment was not arbitrary or tantamount to a denial of justice and that the best interests of the child were a primary consideration in that assessment.

7. In the present case, we note the author's uncontested statement that he and his daughter have lost contact with one another since July 2018, as this has been de facto prevented by the mother despite the existence of a judicial decision establishing a visitation regime between the author and V.W. The author has argued that, by failing to enforce such a decision and to revise the contact arrangements after 30 July 2019, despite his repeated requests, the national authorities failed to guarantee V.W.'s right to have regular contact with her non-custodial parent, even though his presence in his daughter's life was found to be worthy of protection. We further note the author's position that the child's express wish not to meet him cannot justify a blanket ban on any contact between them in the light of the fact that the child is exposed to parental alienation. On the other hand, we note the State party's view that a well-founded refusal on the part of a child to maintain contact with a parent may be decisive in regulating contact rights despite the allegation that the child's position might be influenced by the stance of her mother.

8. We observe that, despite the judicial decision dated 25 July 2017 establishing contact arrangements between the father and the child, the author started to face difficulties in exercising regular and unsupervised contact with his daughter as early as March 2018 and that he brought this information to the attention of the State authorities. However, his complaints were not addressed because of the pending contact procedure before the Brandenburg Court of Appeal and the mother's refusal to engage in any dialogue with the author and the youth welfare office. The situation was further exacerbated by the fact that the mother decided to move to a different town, some 800 kilometres away from the former place of residence, which resulted eventually in the total loss of contact between the father and his daughter in July 2018 despite of the author's persistent requests. We note that the State party has failed to identify any measures taken by the national authorities to facilitate contact between the author and V.W. and, in particular, to mitigate the difficulties created by the physical distance resulting from the relocation of the child, either during the period between March 2018 and January 2019 (when the decision of the Brandenburg Court of Appeal was issued) or after July 2019 (after the expiry of the period for which the author's contact rights were suspended). In that regard, we are concerned that, even though that decision contained only a temporary arrangement valid until 30 July 2019, the courts failed to ensure, ex officio, an urgent revision of the contact arrangements on or after that date. Over and above that, to this day, not even a temporary order has been issued in the new set of contact procedures launched by the father at his daughter's current place of residence notwithstanding the explicit concern expressed by the legal guardian before the Emmendingen District Court to that effect.

9. With regard to the State party's argument referring to the express wish of the child not to meet her father, we acknowledge the importance of judicial authorities giving due weight to a child's views. It should be noted, however, that the delays in dealing with this matter have permitted a situation where the child has been cut off from her father and is solely under the influence of her mother. We are further mindful of the information brought before the Committee that, in the context of the new set of contact proceedings launched by the

[4] General comment No. 14 (2013), para. 70.

[5] *C.R. v. Paraguay*, para. 8.7.

[6] Ibid., para. 8.5; and *L.H.L. and A.H.L. v. Spain* (CRC/C/81/D/13/2017), para. 9.5.

author on 22 May 2019, both the court expert assigned to draw up an expert opinion and the legal guardian of the child signalled on numerous occasions to the Emmendingen District Court that they could not establish contact with the child because of the lack of cooperation on the side of the mother and that given the circumstances they are unable to carry out their duties to protect the child's best interests. We note in this respect that, even though the child was heard by the District Court on 8 January 2021, no expert opinion has been drawn up and no decision has been delivered up to this day.

10. We recall the Committee's general comment No. 14 (2013), in which it established that article 3 of the Convention gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. Inaction or failure to take action and omissions are also "actions", for example, when social welfare authorities fail to take action to protect children from neglect or abuse.[7]

11. In the light of the foregoing, we consider that the State party's failure to take effective steps, from March 2018 until the suspension of the author's contact rights, to enforce the contact arrangement set up by the Potsdam District Court in 2017 and to revise the contact arrangements after the expiry of the contact ban, which presumably remained in force even after 30 July 2019, violates V.W.'s right to maintain personal relations and direct contact with her father on a regular basis under article 9 (3) of the Convention and to have her best interests taken into account under article 3. We further consider that the State party's inaction amounts to a breach of the State party's obligation to use its best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child under article 18 of the Convention.

12. We are of the view that the facts of the case as submitted to the Committee reveal violations of articles 3, 9 (3) and 18 of the Convention.

[7] See, in particular, paras. 1 and 18.