



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

FOURTH SECTION

CASE OF STASIK v. POLAND

(Application no. 21823/12)

JUDGMENT

STRASBOURG

6 October 2015

FINAL

06/01/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Stasik v. Poland,

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

Guido Raimondi, *President*,

George Nicolaou,

Ledi Bianku,

Nona Tsotsoria,

Paul Mahoney,

Krzysztof Wojtyczek,

Yonko Grozev, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 1 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 21823/12) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Mirosław Stasik (“the applicant”), on 4 April 2012.

2. The applicant was represented by Mr W. Kozłowski, a lawyer practising in Warszawa. The Polish Government (“the Government”) were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the Polish authorities had failed to take effective steps to enforce his right of contact with his son and that the length of the divorce proceedings was excessive.

4. On 21 January 2013 the application was communicated to the Government.

5. On 11 March 2015 the Judge appointed as Rapporteur requested the parties pursuant to Rule 49 § 3 (a) of the Rules of Court to submit factual information concerning the course of the divorce proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1974 and lives in Sulejówek.

A. Divorce proceedings and access proceedings

7. In April 2007 the applicant's wife left the matrimonial home and moved to Zakopane with the couple's son M., who was born on 1 July 2004.

8. On 22 November 2007 the applicant lodged an application with the Zakopane District Court (*Sąd Rejonowy*) for the establishment of contact.

9. On 7 February 2008 he withdrew the application in the light of the parties' agreement to establish the contact arrangement by way of a friendly settlement. On the same date the Zakopane District Court discontinued the proceedings.

10. On 4 July 2008 the applicant again requested that the Zakopane District Court regulate his contact with his child. On 22 August 2008 he asked the same court to issue an interim contact order in that regard.

11. On 3 September 2008 the Zakopane District Court issued an interim contact order. It ruled that the applicant was allowed to visit the child at the mother's home on the first and third Saturday of each month from 2 to 7 p.m. The applicant was also allowed to take the child outside his place of residence accompanied by his mother. The court noted that the applicant had encountered difficulties in having regular contact with his son and that he had not seen his child since July 2008. The court further observed that at the material time it had not been established whether the applicant could be granted access without the child's mother's presence.

12. Meanwhile, on 29 August 2008 the applicant's wife brought an action for separation before the Nowy Sącz Regional Court (*Sąd Okręgowy*) on the basis of the applicant being the party at fault. She requested that she be granted custody of her son and that the child have his place of residence with her. She also requested that the court hear evidence from nine witnesses.

13. On 20 October 2008 the applicant filed for separation on the basis of his wife being the party at fault. He asked that the court hear evidence from twenty-two witnesses.

14. On 21 October 2008 the case was transferred to the Siedlce Regional Court.

15. On 23 February 2009 the applicant lodged a petition for divorce with the Siedlce Regional Court on the basis of his wife being the party at fault. He also requested that the court grant him custody of his son and rule that the child's place of residence was to be with him. On the same date he asked the court to issue an interim order for contact for the duration of the divorce proceedings.

16. The cases for separation and for divorce were subsequently joined and the first hearing was scheduled for 30 June 2009. At the request of the applicant's wife, the hearing was adjourned until 25 August 2009. The court instructed the court's guardian (*kurator sądowy*) to conduct a local assessment (*wywiad środowiskowy*) at the child's place of residence.

17. The first hearing in the divorce case was held by the Siedlce Regional Court on 25 August 2009. The court heard evidence from the parties.

18. On the same date the Siedlce Regional Court issued an interim contact order pending the outcome of the divorce proceedings. The applicant was allowed to have contact with his son every second and fourth weekend of the month and every Wednesday, outside the child's place of residence but in the presence of the child's mother.

19. Both the applicant and his wife lodged appeals against this decision.

20. On 14 December 2009 the applicant requested that the court authorise him to contact his son by phone three times a week.

21. On 29 December 2009 the Siedlce Regional Court issued an interim contact order and granted the applicant the right to two thirty-minute phone calls with his son per week. The phone calls were to take place every Wednesday and Friday, between 6.30 and 7 p.m.

22. Meanwhile, on an unspecified date in 2009 the applicant's wife moved to Warsaw and subsequently, in 2010, to Poznań.

23. On 19 January 2010 the Siedlce Regional Court rejected the applicant's wife's appeal against the decision of 25 August 2009.

24. On 9 March 2010 the Lublin Court of Appeal (*Sąd Apelacyjny*) examined the applicant's appeal against the same decision and decided to amend the interim contact order, allowing the applicant to have contact with his son without the presence of the mother.

25. The hearing scheduled for 23 March 2010 was adjourned due to legitimate absence of the applicant's wife's lawyer.

26. On 29 April 2010 the Siedlce Regional Court held a hearing in the divorce proceedings. The court heard one witness of the eight who had been called. The applicant withdrew his application regarding the taking of evidence from all but three witnesses.

27. The hearing scheduled for 28 May 2010 was cancelled due to the absence of both the applicant's wife and the witnesses.

28. On 8 July 2010 the Siedlce Regional Court held another hearing. It heard the witnesses and the parties. It also instructed the Poznań Family Consultation Centre (*Rodzinny Ośrodek Diagnostyczno-Konsultacyjny*) to prepare an expert report as regards the family's situation.

29. Meanwhile, on 21 June 2010 the applicant requested that the interim contact order be varied. On 21 July 2010 the Siedlce Regional Court decided to grant the applicant contact every second and fourth weekend of the month from 10 a.m. on Saturday until 7 p.m. on Sunday outside the child's home and without the mother's presence. He was also authorised to spend one day with his son at Christmas and Easter, one week of the winter holidays and two weeks of the summer holidays.

30. On 26 July, 12 August and 24 September 2010 the Siedlce Regional Court issued requests for the witnesses in the divorce proceedings to be

heard under the courts cooperation scheme (*pomoc sądowa*) by the Łódź District Court, the Poznań District Court and the Wrocław District Court, respectively.

31. On 27 January 2011, in reply to a letter urging it to submit the expert report, the Family Consultation Centre informed the Regional Court that, due to the high volume of cases, the report would only be prepared some time during the following five months. The Regional Court issued further requests for acceleration of the preparation of the report on 17 March and 7 June 2011. By letter of 15 July 2011 the Family Consultation Centre informed the court that the report could not be finalised due to the failure of the applicant's wife to attend either an appointment scheduled for 15 May 2011, or further appointments that were scheduled for 29 June and 8 July 2011.

32. On 8 August 2011 the Family Consultation Centre experts issued a report on the family's situation for the purposes of the divorce proceedings. They recommended that the decision given in July 2010 should remain in force and should be respected. M. did not have any emotional problems in having contact with his father, but he was well aware that the mother reacted negatively to such contact and he wanted to obtain her approval. Both parties challenged the report's conclusions.

33. On 12 September 2011 the Siedlce Regional Court dismissed the applicant's wife's request for the interim access arrangements to be varied. Her appeal against this decision was dismissed by the Lublin Court of Appeal on 23 January 2012.

34. On 10 March 2012, in response to applications from the parties, the Family Consultation Centre experts submitted a supplementary report on the family's situation. Both parties challenged the supplementary report.

35. On 16 May 2012 the experts submitted their replies to further questions from the parties.

36. On 12 June 2012 the Siedlce Regional Court held a hearing. It decided to instruct the Siedlce Family Consultation Centre to prepare a new expert report.

37. On 3 December 2012 the Siedlce Family Consultation Centre returned the case file to the Regional Court. It informed the court that it had not been possible to prepare the requested report due to applicant's wife's failure to attend the scheduled appointments.

38. On 3 January 2013 the Siedlce Regional Court scheduled a hearing for 14 February 2013. At the applicant's wife's request the hearing was postponed until 26 March 2013.

39. On 26 March 2013 the Siedlce Regional Court dissolved the applicant's marriage. It found that both parties had been at fault in the breakdown of the marital relationship. It further held that full parental authority was to be exercised by the applicant's former wife, whereas the parental rights of the applicant were to be limited. The child's place of

residence was to be with the mother. The court authorised the applicant to have contact with his son without the presence of his mother every second and fourth weekend of the month and to spend one day at Christmas and Easter, one week of the winter holidays and two weeks of the summer holidays with him. The applicant was also authorised to contact the child by phone every Thursday and Friday between 6.30 and 7.30 p.m.

40. Both parties lodged appeals against the first-instance judgment.

41. On 24 October 2013 the Lublin Court of Appeal dismissed the appeals.

B. Enforcement of the access arrangements

42. On 20 February 2009 the applicant applied to the Warsaw-Wola District Court for the imposition on his wife of a fine in the amount of 1,000 Polish zlotys (PLN) for failure to comply with the access arrangement of 3 September 2008 (see paragraph 11 above). He alleged that M.'s mother had repeatedly refused to comply with the access arrangement and had obstructed his contact with the child, in particular, by arranging the meetings in unsuitable places.

43. On 28 April 2009 the Warsaw-Wola District Court imposed on the child's mother a fine in the amount of PLN 500 for her failure to respect the decision of the Zakopane District Court of 3 September 2008.

44. On 7 August 2010 the applicant notified the police that the child's mother had refused to open the door when he had come to visit his son.

45. On 2 September 2010 the Warsaw-Wola District Court discontinued the enforcement proceedings concerning the decision of 3 September 2008 in the light of subsequent decisions regulating the applicant's contact with his son pending the outcome of the divorce proceedings (see paragraphs 18, 24 and 29 above).

46. On 30 December 2010 the applicant requested that the Poznań-Nowe Miasto and Wilda District Court assist him in the effective enforcement of the interim contact order of 21 July 2010 issued by the Siedlce Regional Court. He asked the court to impose on the child's mother a fine in the amount of PLN 10,000 due to her failure to comply with this order. He also requested that the court impose a fine in the same amount for the mother's failure to comply with the decision of 29 December 2009 of the Siedlce Regional Court setting out his right to contact his son by phone. He submitted that the child's mother had repeatedly failed to respect his access rights and had obstructed his contact with his son.

47. On 21 February 2011 the court returned the applicant's application as regards the enforcement of the decision of 29 December 2009.

48. On 23 May 2011 the applicant resubmitted his application in this regard.

49. The proceedings were joined on 16 June 2011.

50. Meanwhile, at the applicant's request, the hearing scheduled for 19 May 2011 was postponed until 24 May 2011. Neither of the parties attended the hearing. The applicant submitted that he had not attended this hearing because he had been informed of his wife's intended absence.

51. The parties filed their written submissions on 30 June 2011.

52. The Government submitted that the hearing scheduled for 6 September 2011 had been postponed until 20 October 2011 at the applicant's request. The applicant submitted that the hearing had taken place on that date and that he had been present.

53. Due to the applicant's absence, the hearing scheduled for 20 October 2011 was postponed until 1 December 2011.

54. On 6 December 2011 the Poznań-Nowe Miasto and Wilda District Court gave a decision. The court set a fourteen-day time-limit for the mother to allow the applicant access to M. on the terms set out by the interim order of 21 July 2010 on pain of a fine in the amount of PLN 1,000. It further held that she was to observe the same time-limit in respect of the decision concerning telephone contact on pain of a fine of PLN 500.

The court had no doubt that M.'s mother had failed to respect the access arrangements as regards the applicant's personal contact with M. The weekend visits had almost never taken place in accordance with the access arrangement. The applicant's wife had enrolled M. in fencing classes and had organised other activities for him on Saturdays, when the applicant was due to pick up the child, meaning that the applicant had been unable to collect his son and spend time with him alone. At the same time the court noted that the applicant had failed to visit his son regularly on Saturdays. However, the child's mother had also not respected the applicant's rights as regards spending parts of Christmas, Easter and summer holidays with M.

The court also found that M.'s mother had failed to respect the court's decision concerning the telephone contact between the applicant and his son. The court established that the applicant had only rarely been able to contact M. by phone.

55. On 12 March 2012 the Poznań Regional Court dismissed the applicant's wife's appeal against this decision.

56. On 29 March 2013 the Poznań-Nowe Miasto and Wilda District Court discontinued the enforcement proceedings regarding the decision of 21 July 2010 due to the applicant's inactivity in the proceedings.

57. Meanwhile, on 8 February 2012 the applicant lodged a further request for enforcement of his contact rights as set out in the decision of 21 July 2010 under the amended provisions of the Code of Civil Procedure (see paragraph 66 below). The hearing in those proceedings was scheduled for 24 September 2013. On 9 January 2015 the Poznań Regional Court discontinued the proceedings as the applicant's contact rights had meanwhile been regulated in the final divorce judgment (see paragraphs 39

and 41 above). No further information about the course of the proceedings concerning this latest request has been submitted by the parties.

C. Proceedings under the 2004 Act

58. On 5 October 2011 the applicant lodged a complaint with the Lublin Court of Appeal under the Law of 17 June 2004 on a complaint about a breach of the right to have a case examined in an investigation conducted or supervised by a prosecutor and in judicial proceedings without undue delay (*ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i postępowaniu sądowym bez nieuzasadnionej zwłoki* – “the 2004 Act”). He submitted, in particular, that the last hearing in the divorce proceedings had been held in July 2010 and that the court had been powerless in the face of his wife’s efforts to protract and obstruct the proceedings.

59. On 9 November 2011 the Lublin Court of Appeal dismissed the applicant’s complaint. It acknowledged that the proceedings had been ongoing since August 2008, but was of the view that their length had essentially been caused by the parties’ attitude, while the court could be held responsible only for its own conduct. Both parties had repeatedly submitted numerous pleadings and applications which the court had been obliged to examine. No delays on the part of the court in examining these applications had been established. The parties had appealed against various interlocutory decisions on six occasions. Furthermore, as a result of the attitude of both parties, the issue of access to the child had become the main problem in the case. This had further protracted the proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

60. The relevant domestic law – as in force prior to 13 August 2011 – concerning enforcement of a parent’s visiting rights is set out in the Court’s judgment in the case of *P.P. v. Poland*, no. 8677/03, §§ 69-74, 8 January 2008.

61. Pursuant to a resolution of the Supreme Court, in cases where a parent who has been ordered by a court decision to respect the other parent’s contact rights refused to comply with that decision, the decision will be subject to enforcement proceedings. The provisions of the Code of Civil Procedure (*Kodeks Postępowania Cywilnego*) (“the Code”) on the enforcement of non-pecuniary obligations were applicable to the enforcement of court decisions on parental rights or contact rights (resolution of the Supreme Court of 30 January 1976, III CZP 94/75, OSNCP 1976 7-8).

62. In particular, where a court has ordered a parent with custody to ensure contact for a child with the other parent, Article 1050 of the Code of Civil Procedure was applicable to the enforcement of this obligation. This Article provides, in so far as relevant:

“1. If a debtor is obliged to take measures which cannot be taken by any other person, the court in whose district the enforcement proceedings were instituted shall, at the request of a creditor and after hearing the parties, shall set a time-limit within which the debtor must comply with his obligation, on pain of a fine

3. If the debtor fails to comply with this obligation within the prescribed time-limit, at the request of the creditor the court shall impose the fine and shall set a further time-limit within which the debtor must act, on pain of a more severe fine.”

63. Article 1052 of the Code of Civil Procedure provides as follows:

“In one decision the court may impose a fine not exceeding PLN 1,000 unless the fine has already been imposed three times and this has proved ineffective. The total amount of fines in the same case may not exceed PLN 100,000 (...).”

64. On 28 August 2008 the Supreme Court adopted a resolution (III CZP 75/08) which provided as follows:

“Decisions regulating contact between a parent and a child, ordering the parent who has the custody of the child to put the child at the disposal of the other parent, and ordering that other parent to return the child (to accompany the child back to his home), are enforced in the proceedings regulated in Article 598¹ and subsequent of the Code of Civil Procedure.”

65. Article 598⁶ of the Code provides that if a person who has been ordered to return a child does not comply with the court’s order, at the request of the creditor the court shall instruct a court-appointed guardian to forcibly remove the child in question (*przymusowe odebranie osoby*).

66. On 13 August 2011 certain amendments to the Code entered into force and Chapter 6 on “Cases concerning the execution of contact with a child” was added. The amendments are applicable only to applications lodged after that date. Articles 598¹⁵ to 598²¹ now provide for a separate procedure imposing a fine on a parent who fails to comply with the access arrangements. In accordance with these provisions, the court will first threaten to order the non-compliant party to pay a specified amount for each failure to comply with the access arrangements, and subsequently, in the event of continued non-compliance, it will order this party to pay the sum proportional to the number of their infringements of the access arrangements.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

67. The applicant complained that the Polish authorities had failed to take effective steps to enforce his right of contact with his son. He alleged a violation of Article 8 of the Convention, which reads:

“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.”

68. The Government contested that argument.

A. Admissibility

69. The Government argued that the applicant had not exhausted the domestic remedies available to him, as required by Article 35 § 1 of the Convention.

70. They submitted that the applicant should have lodged an application under Article 598⁶ of the Code for the forcible removal of his son by a court-appointed guardian (see paragraph 65 above). Had the domestic court granted such a request, a court-appointed guardian would have accompanied the applicant on each visit and would have supervised the execution of the access arrangements.

71. The applicant submitted that he had availed himself of the available remedies in that he had lodged applications for the imposition of a fine on the child's mother. He further argued that an application for forcible removal of the child by a court-appointed guardian would have been an inadequate remedy in the particular circumstances of his case. He referred to possible adverse effects of such forcible removal on his relationship with his son.

72. The Court notes that a similar objection raised by the Government in a case against Poland concerning the enforcement of access rights has already been examined and rejected by the Court (see *D. v Poland* (dec.), no. 8215/02, 8 February 2002). The applicant in the present case also instituted enforcement proceedings concerning the access arrangements in force, and the domestic courts had twice allowed his applications for the imposition of a fine on the child's mother. The arguments raised by the Government are similar to those already examined and they have not

submitted any new factors which would lead the Court to depart from its previous findings.

73. It follows that the Government's plea of inadmissibility on the grounds of non-exhaustion of domestic remedies must be dismissed.

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

B. Merits

1. The parties' submissions

(a) The applicant

75. The applicant submitted that his attempts to have regular and effective contact with his child had started in 2007. Those attempts had, however, remained for the large part ineffective. He argued that the domestic authorities had failed to apply domestic law in a way which could effectively have secured his contact rights. He emphasised that due to his wife's behaviour he had been prevented from having regular and uninterrupted contact with M. during the divorce proceedings in which the issues of custody and contact rights were also to be finally decided. The child's place of residence had been designated as that of his mother during the divorce proceedings. Accordingly, it had been of vital importance that the applicant had regular and unobstructed contact with the child in accordance with the interim contact orders. He submitted that Polish law did not afford adequate protection to a parent who had not been granted custody rights for the duration of the divorce proceedings.

76. The applicant acknowledged that the child's mother's behaviour had not amounted to a complete denial of access to the child for the whole period in question. But he pointed out that by posing obstacles to his contact with his son she had nevertheless failed to comply with the access arrangements. This fact had been confirmed by the corresponding decisions of domestic courts given in the enforcement proceedings. However, due to the delays in conducting those proceedings, the domestic authorities had failed to effectively prevent M.'s mother from obstructing the applicant's contact with the child. Moreover, the fines imposed by the domestic authorities had not been sufficient to deter her from this obstructive behaviour.

(b) The Government

77. The Government submitted that the authorities had taken all the appropriate steps to facilitate the applicant's contact with his son and to ensure the effective exercise of the applicant's right to respect for his family

life. They referred to the conflict between the applicant and the child's mother as the main reason for the applicant's problems in exercising his contact rights. They argued that the applicant's difficulties derived from the obstructive behaviour of the child's mother and, subsequently, also from the applicant's own behaviour. They stressed that the applicant himself had failed to fully comply with the relevant access arrangements. They also emphasised that the applicant had not been denied access to his son and had generally maintained regular contact with his child.

78. The Government were of the opinion that the domestic authorities had conducted the relevant proceedings in a swift and diligent manner. They noted that, in order to regulate the custody of M. and his contact with his father in accordance with the child's best interests, the domestic court had obtained an expert report on the family's situation in the course of the divorce proceedings. They further argued that the enforcement proceedings had been effective in that the domestic courts had twice decided to impose a fine on the child's mother.

2. The Court's assessment

(a) General principles

79. 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 many other authorities, *Vojnity v. Hungary*, no. 29617/07, § 28, 12 February 2013).

80. The essential object of Article 8 is to protect the individual against arbitrary interference by public authorities. There may, however, be positive obligations inherent in an effective "respect" for family life. These obligations may involve the adoption of measures designed to secure respect for family life even in the sphere of relations between individuals, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific steps (see, among other authorities, *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91, and *Zawadka v. Poland*, no. 48542/99, § 53, 23 June 2005).

81. The Court has repeatedly held that in matters relating to child custody the child's best interests must be the primary consideration (see, to that effect, *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX) and may, depending on their nature and seriousness, override those of the parents (see *Sahin v. Germany* [GC], no. 30943/96, § 66, ECHR 2003-VIII).

82. The Court's case-law has consistently held that Article 8 includes both the right for a parent to have measures taken with a view to his or her being reunited with the child and an obligation for the national authorities to take measures to facilitate that reunion, in so far as the interest of the child dictates that everything must be done to preserve personal relations and, if

and when appropriate, to “rebuild” the family; the State’s obligation is not one as to results, but one as to means (see, among other authorities, *Nuutinen v. Finland*, no. 32842/96, § 127, ECHR 2000-VIII; *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A; *Gnahoré*, cited above, § 59, ECHR 2000-IX; *Nistor v. Romania*, no. 14565/05, §§ 70, 109, 2 November 2010; and *Cristescu v. Romania*, no. 13589/07, § 57, 10 January 2012). This applies not only to cases dealing with the compulsory taking of children into public care and the implementation of care measures (see, among other authorities, *Olsson v. Sweden* (no. 2), 27 November 1992, Series A no. 250, pp. 35-36, § 90) but also to cases where contact and residence disputes concerning children arise between parents and/or other members of the children’s family (see *Hokkanen*, cited above, § 55, and *Zawadka*, cited above, § 55).

83. In such cases the obligations of the national authorities are not, however, absolute. The key consideration is whether those authorities have taken all the appropriate steps for facilitating such contact as can reasonably be demanded in the particular circumstances of each case (see, *mutatis mutandis*, *Hokkanen*, cited above, § 58). Another important factor in proceedings concerning children is that time takes on a particular significance, because there is always a danger that any procedural delay will result in the *de facto* determination of the issue before the court (see *P.F. v. Poland*, no. 2210/12, § 56, 16 September 2014). Moreover, the passage of time can have irremediable consequences for relations between the child and the parent who do not cohabit (see, for example, *Kuppinger v. Germany*, no. 62198/11, § 102, 15 January 2015).

(b) Application of the above principles to the present case

84. It is not disputed that the matters concerned in the present case relate to “family life” within the meaning of Article 8 of the Convention and that this provision is applicable.

85. In the light of the above principles the Court considers that the decisive question in the present case is whether or not the Polish authorities took all the appropriate steps that can reasonably be demanded to facilitate the enforcement of the contact arrangements as specified by the domestic courts on 3 September 2008, 25 August and 29 December 2009 and 9 March and 21 July 2010 (see paragraphs 11, 18, 21, 24 and 29 above). All these decisions authorised the applicant to have regular contact with his son, initially in the presence of the child’s mother then subsequently – from 9 March 2010 – without the mother’s presence and, from 29 December 2009, also by telephone.

86. The Court notes at the outset that the applicant and his wife separated in 2007, when their son M. was three years old. The applicant’s wife moved with the child to another town. It appears that initially the applicant and his wife managed to solve the issue of the applicant’s contact

with M. between themselves. However, difficulties in arranging the applicant's visits arose as early as 2008 and the applicant submitted a request to the domestic court to issue a contact order. On 3 September 2008 the Zakopane District Court issued an interim contact order and allowed the applicant contact with his son at the child's place of residence (see paragraphs 7-11 above). Nevertheless, the applicant's wife failed to fully comply with this order. On 20 February 2009 the applicant lodged an enforcement request, asking the domestic court to impose a fine of PLN 1,000 on her. On 28 April 2009 the Warsaw-Wola District Court imposed a fine in the amount of PLN 500 (see paragraphs 42-43 above).

87. The Court observes that the applicant's enforcement request was examined by the District Court promptly and without any delays. It notes that under the applicable law it was open to the applicant to lodge further applications for the imposition of larger fines in these enforcement proceedings (see paragraphs 62-63 above). Nevertheless, the applicant failed to make any requests and the proceedings were eventually discontinued on 2 September 2010 (see paragraph 45 above). Accordingly, given that no further applications were lodged by the applicant, the Court considers that the authorities took all the steps to enforce the access order of 3 September 2008 that could reasonably be required in these circumstances.

88. Nevertheless, the applicant continued to experience problems in having regular and uninterrupted contact with his child. On 30 December 2010 he lodged an enforcement request concerning the interim contact orders of 21 July 2010 and on 23 May 2011 – an enforcement request relating to phone contact as set out in the decision of 29 December 2009 (see paragraphs 46-48 above).

89. As regards the swiftness of these proceedings, the Court notes that the domestic court examined both requests on 6 December 2011 and that the examination of the applicant's request of 30 December 2010 had therefore lasted for almost one year (see paragraph 54 above). It is true that, as argued by the Government, the delay can be partly attributed to the applicant since the hearings scheduled for 19 May and 20 October 2011 did not take place, either at his request or due to his absence (see paragraphs 50-53 above). Nevertheless, the Court observes that it took the domestic court almost five months to schedule the first hearing, and subsequently – as the hearing did not take place due to the absence of the parties – over three months to reschedule it. The Government did not submit any explanation for these delays in the examination of the applicant's requests.

90. The domestic court ultimately found that the applicant's wife had failed to comply with the contact orders of 29 December 2009 and of 21 July 2010 and set fourteen-day time-limits for her to act in accordance with those decisions on pain of fines (see paragraph 54 above). The applicant did not lodge any requests for the imposition of these fines. It appears that M.'s mother, at least for a very limited period of time, acted in

accordance with this decision (see paragraphs 55-56 above). However, as early as 8 February 2012 the applicant lodged yet another request for enforcement of his contact rights under the interim contact order of 21 July 2010. It appears that this request was also not examined promptly and that the child's mother was not ordered to pay any fines in the proceedings, which were eventually discontinued (see paragraph 57 above). The Government did not submit any explanation for the length of these proceedings either.

91. The applicant alleged that the Polish legal system did not afford adequate legal protection to a parent who has not been granted custody during divorce proceedings. The Court reiterates in this connection that it is not its task to review domestic law in the abstract, but to examine the manner in which that law has been applied to the applicant (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, § 153, Series A no. 324). Having regard to the particular circumstances of the case, the Court observes that the applicant's enforcement request led to a decision setting a time-limit for the mother to comply with the contact order on pain of a fine. In accordance with the provisions of domestic law as applicable at the material time, if the child's mother had failed to comply with this decision, upon another request from the applicant, the domestic court would have imposed the fine on her and would have set another time-limit (see paragraph 62 above). The Court therefore observes that the protracted examination of the applicant's enforcement request prevented both him and the domestic court from taking any further steps in order to execute the contact order.

92. The Court reiterates that in cases of this kind 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 paragraph 83 above). It is all the more pressing in cases such as the present one, where the passage of time may also have an impact on the outcome of a pending custody dispute. Even though, as argued by the Government, the applicant in the present case was not entirely deprived of contact with his son, he experienced considerable difficulties in having regular and uninterrupted contact with M. in the course of the pending divorce and custody proceedings. The Court further notes in this connection that at the material time, the parents' relations with M. were being assessed by the experts for the purposes of compiling a report on the family's situation (see paragraphs 31-32 above).

93. The Court acknowledges that the task of the domestic courts was rendered difficult by the particularly strained relationship between the applicant and his former wife. However, in the present case the Government referred in general terms to the conflict between the applicant and the child's mother as the source of the applicant's problems in maintaining contact with M. (see paragraph 77 above). There are no indications that this

conflict affected the course of the enforcement proceedings or was the reason for the delays therein and their lack of effectiveness (compare and contrast *P.K. v. Poland*, no. 43123/10, §§ 88-96, 10 June 2014, and *P.F. v. Poland*, no. 2210/12, §§ 60-63, 16 September 2014).

94. Having regard to the facts of the case, in particular the passage of time, and the criteria laid down in its own case-law, the Court concludes that, notwithstanding the State's margin of appreciation, the Polish authorities failed to make adequate and effective efforts to execute the interim contact order of 21 July 2010.

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

96. The applicant complained that the length of the divorce proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, 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..."

97. The Government contested that argument.

98. The period to be taken into consideration began on 29 August 2008 and ended on 24 October 2013. It thus lasted five years and some two months for two levels of jurisdiction.

A. Admissibility

99. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 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 parties' submissions*

(a) **The applicant**

100. The applicant submitted that the proceedings in the divorce case had been excessively long. He referred, in particular, to the fact that it had taken the Siedlce Regional Court over four years to give a first-instance judgment. He argued that a substantial part of that period had been taken up with the preparation of the expert reports. He further submitted that the domestic court had failed to take any measures to secure his wife's attendance at the appointment scheduled by the experts. He also argued that

he had not contributed to the length of the proceedings because he had withdrawn his request as regards most of the evidence from witnesses to be heard by the trial court.

(b) The Government

101. The Government were of the opinion that there was no violation of Article 6 of the Convention, as the domestic courts had acted with due diligence and expediency. They argued that responsibility for the overall length of the divorce proceedings should be attributed to the applicant and his wife. They considered that the case had been of a complex character due to the voluminous pleadings of the parties and their numerous applications. They submitted that the proceedings had been further protracted by the parties' appeals against various interim decisions of the trial court. They also argued that – referring to the personal conflict between the applicant and his wife – the former had significantly contributed to the length of the proceedings.

102. They acknowledged that the applicant's wife had failed to attend the appointments scheduled by the experts and that the trial court had been notified of her behaviour. They, however, considered that the behaviour of the applicant's wife had been a consequence of the strong animosity between the parties. They stressed that the domestic courts could be only held responsible for their own conduct.

2. The Court's assessment

103. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

104. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of justifying the delay in the present case.

105. The Court acknowledges that the proceedings were of a certain complexity, given that they concerned petitions for separation and divorce and that the domestic court had to rule on custody of the parties' child, who was a minor, and contact arrangements with a non-custodial parent. A significant number of interim decisions had also been given by the trial court.

106. However, in cases relating to civil status, what is at stake for the applicant is also a relevant consideration, and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (*Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

107. As to the conduct of the authorities dealing with the applicant's case, the Court notes that, whereas the second-instance proceedings were concluded fairly speedily, the case was examined by the first-instance court over a period in excess of four years (see paragraphs 12 and 39 above). A substantial part of this period – approximately eighteen months - elapsed awaiting the preparation of the expert reports (see paragraphs 28-32 and 36-37 above). The second report could not be completed in the end, as the applicant's wife failed to attend the scheduled appointments, but the domestic court failed to take any measures to discipline her or the experts. The Court reiterates in that context that, contrary to the Government's view, the State is responsible for delays in the presentation of the opinions of court-appointed experts (see, for instance , *Capuano v. Italy*, 25 June 1988, § 32, Series A no. 119, and *Nibbio v. Italy*, 26 February 1992, § 18, Series A no. 228 A). Moreover, the parties' attitude does not dispense the courts from ensuring the expeditious trial required by Article 6 § 1 (see, for example, *Guincho v. Portugal*, 10 July 1984, § 32, Series A no. 81).

108. The Court further notes that the Government did not submit any information or evidence to substantiate their contention that the applicant had substantially contributed to the length of proceedings.

109. Having regard to the above circumstances and to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

110. The applicant complained under Article 12 of the Convention that, due to the excessive length of the divorce proceedings, he had been deprived of the right to re-marry.

Article 12 provides:

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

111. However, the Court observes that the applicant has not shown that he actually wanted to and was prevented from re-marrying (see *Capoccia v. Italy*, no. 16479/90, decision of the Commission of 13 October 1993; *S.D.P. v. Italy*, no. 27962/95, decision of the Commission of 16 April 1996; *Bolignari v. Italy*, no. 37175/97, decision of the Commission 22 April 1998; *Truszkowska v. Poland* no. 52586/99 (dec.), 11 December 2001, compare and contrast *V.K. v. Croatia*, no. 38380/08, 27 November 2012).

Therefore, this part of the application is unsubstantiated and must be rejected as being manifestly ill-founded, pursuant to Article 35 § 3 and 4 of the Convention.

112. Lastly, the applicant complained under Article 13 of the Convention that he had had no ‘effective remedy’ against the alleged breach of his rights under Article 8 of the Convention. Article 13 provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

113. However, the word “remedy” within the meaning of Article 13 does not mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, *mutatis mutandis*, *Bensaid v. the United Kingdom*, no. 44599/98, § 56, ECHR 2001-I).

114. In the light of the foregoing, the Court considers that in the circumstances of the present case it cannot be said that the applicant’s right to an effective remedy under Article 13 of the Convention has not been respected.

115. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

116. 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

117. The applicant claimed 500 euros (EUR) for every month of the violation of his rights under the Convention in respect of non-pecuniary damage.

118. The Government found this sum exorbitant.

119. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,200 under that head.

B. Costs and expenses

120. The applicant did not make any claim for costs and expenses involved in the proceedings

C. Default interest

121. 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 under Article 8 of the Convention about the enforcement of the applicant's contact rights and the complaint under Article 6 § 1 of the Convention concerning the excessive length of the divorce proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 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, EUR 4,200 (four thousand two hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (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 6 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Guido Raimondi
President