



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

FIRST SECTION

CASE OF J.N. v. POLAND

(Application no. 10390/15)

JUDGMENT

Art 8 • Positive obligations • Family life • Applicant enjoyed *de facto* residence with her children throughout substantive residence proceedings rendering protracted length inconsequential • Applicant's conduct contributed to a large extent to delay in decision on contact rights • Applicant able to exercise visitation rights during contact proceedings • Reasons adduced for residence order in favour of children's father relevant and sufficient • Wide margin of appreciation

STRASBOURG

10 November 2022

FINAL

10/02/2023

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

In the case of J.N. v. Poland,

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

Marko Bošnjak, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Raffaele Sabato,

Lorraine Schembri Orland,

Ioannis Ktistakis, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 10390/15) 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, Ms J.N. (“the applicant”), on 23 February 2015;

the decision not to have the applicant’s name disclosed;

the parties’ observations;

Having deliberated in private on 11 October 2022,

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

INTRODUCTION

1. The case concerns the State’s positive obligations to carry out timely proceedings concerning children’s residence and to secure the applicant’s contact rights.

THE FACTS

2. The applicant was born in 1977 and lives in Warsaw. The applicant was represented by Ms M. Gąsiorowska, a lawyer practising in Warsaw.

3. The Polish Government (“the Government”) were represented by their Agents, Ms J. Chrzanowska and subsequently, Mr J. Sobczak, of the Ministry of Foreign Affairs.

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

I. BACKGROUND

5. The applicant had two children with her partner, M.R. – a son, born in 2002 and a daughter, born in 2006. The family lived in Warsaw. In May 2010 the applicant was taken to a psychiatric hospital after a violent dispute with her partner. She was diagnosed with adaptation disorders and psychopathy. In June 2010 she sought help from a centre for victims of domestic violence

in Warsaw. In September 2010 she moved out of her partner's house. She took up residence in Legionowo and had the children move in with her (having collected them from school). During the proceedings which are described below, the children initially moved between both parents' houses. They later settled at their mother's house, seeing their father every other weekend. Ultimately, they took up residence with him, seeing their mother every Sunday.

II. PRINCIPAL RESIDENCE OF THE CHILDREN – MAIN PROCEEDINGS AND INTERIM ORDERS (CASE NO. III NSM 291/10)

6. On 2 November 2010 the applicant (through her lawyer) applied to the Legionowo District Court (*Sąd Rejonowy*) for a residence order in her favour. She submitted that she had suffered psychological and physical abuse at the hands of her partner.

7. On 8 February 2011 the applicant filed an application for an interim residence order in respect of the children.

8. It appears that on 14 February 2011 a court guardian (*kurator sądowy*) was appointed by the court to monitor the family.

9. On an unspecified date the guardian made a visit to the applicant's house. It appears that on 28 March 2011 the guardian filed a report on the living conditions at the applicant's house with the district court. A copy of the report has not been submitted.

10. It appears that subsequently the guardian was ordered to prepare a report on the living conditions at M.R.'s house, which apparently was filed with the district court on 12 April 2011. A copy of the report has not been submitted to the Court.

11. On 30 March 2011 the applicant filed a complaint with the President of the Legionowo District Court that her applications had not been examined. On 12 April 2011 she made a complaint to the supervising department of the Warsaw-Praga Regional Court (*Sąd Okręgowy*) regarding the delay.

12. On 13 April 2011 the Legionowo District Court dismissed the applicant's application for an interim residence order on the grounds that more material had to be obtained with a view to determining which parent could provide the children with better prospects in life. However, it also decided that the shared custody arrangement which was in place should be supervised by a court guardian, who was to report to the family court once every two weeks. The family court also ordered a report from the Family Consultation Centre (*Rodzinny Ośrodek Diagnostyczno-Konsultacyjny*, "RODK"), which was to assess which parent could offer the children better opportunities for a full and balanced emotional development and better care. No deadline for the report was indicated by the domestic court.

13. The above decision resulted from the following findings made by the domestic court on the basis of the report on the guardian's visit to the applicant's house and the parties' submissions: the applicant and M.R. were in deep conflict; the applicant was in a relationship with M.R.'s brother and was often away from home; when the children were with the applicant, they came home late; and they were spending a lot of time with their father. The domestic court concluded that the children had been deprived of the stability, peace and routine which was necessary for their emotional development and education.

14. The applicant submitted that she had been served with that decision seven weeks later.

15. The assessment of the parents and the children at the RODK was scheduled for 8 November 2011.

16. On 21 June 2011 the applicant asked that her case be transferred to another court, arguing that the Legionowo District Court was biased and unfair. On 1 August 2011 the Legionowo District Court dismissed that application, because the children lived with the applicant in Legionowo, hence only that court had jurisdiction over the case.

17. On 26 May 2011 M.R.'s lawyer applied for a residence order in the father's favour and certain contact arrangements in relation to the mother. M.R. also asked that an interim order be issued to secure the children's residence at his house. He submitted that the applicant was emotionally unstable and had become physically violent towards him. In the past, she had twice been committed to a mental hospital, and more recently had provoked a number of violent incidents which had been ended by police intervention. Her relationship with the children's uncle was confusing for the children and harmful to them. Lastly, M.R. submitted that he had flexible working hours and help from the children's grandparents, and was able to offer better care prospects overall.

18. On 29 August 2011 the Legionowo District Court dismissed M.R.'s application for an interim decision, holding that, in the current circumstances, the well-being of the children was not threatened by their continued residence with their mother. Moreover, without the RODK report, the domestic court was not in a position to rule on the issue of the children's residence and the parents' contact rights without arbitrariness. It was also decided that M.R.'s and the applicant's main applications for residence should be joined under case no. III Nsm 291/10.

19. On 19 October 2011 the applicant informed the Legionowo District Court that she had not received any correspondence from the court, and communicated her lawyer's address.

20. On 7 December 2011 the RODK issued a report drawn up following the interviews and various tests with the children and the parents and consultation of the court's case file. Two expert psychologists concluded that the applicant claimed to have a positive relationship with her children.

However, they found her to be immature, emotionally unstable, egocentric, unpredictable, inconsistent and manipulative. It was considered that M.R. had emotional ties with his children, was more focused on their needs and could offer more stability. However, it was likely that M.R. would have trouble cooperating with the children's mother. It was also concluded that the children had emotional bonds with both parents. They preferred their father, whom they perceived as a stable and calm person who was interested in them. The applicant was seen by them as erratic, impatient and attention-seeking. It was ultimately held that M.R. was more likely to provide the children with adequate care. Because of the strong conflict between the adults, it was recommended that the guardian's supervision be maintained, and that both parents attend courses on good parenting.

21. On an unspecified date the applicant and the children moved to Warsaw. The applicant asked for the case to be transferred to come under the jurisdiction of the Warsaw District Court. On 29 December 2011 the Warsaw-Praga Regional Court dismissed that application on the grounds that the family court in the area of the original place of residence had retained jurisdiction, even if the parties had moved.

22. It appears that on 8 February 2012 the judge presiding over the applicant's case scheduled a hearing for 13 March 2012 and ordered the court-appointed guardian to draw up a report on another visit to M.R.'s house.

23. On 13 March 2012 the parties were heard by the domestic court.

24. Meanwhile, on 12 March 2012 M.R. had lodged his second application for an interim residence order in his favour. On 16 August 2012 the Legionowo District Court dismissed his application on the grounds that the main proceedings were soon to be completed, as the RODK report had been produced and the parties had been heard. On 13 December 2012 the Warsaw-Praga Regional Court dismissed M.R.'s interlocutory appeal against that decision. On 17 January 2013 the case file was returned to the district court.

25. It appears that on 24 January 2013 the main case was reassigned to a new judge. A hearing was scheduled for 15 March 2013 and then, at the parties' request, rescheduled for 24 March 2013. Both parents were summoned, in addition to other witnesses, and an assessment of them in relation to their community (*wywiad środowiskowy*, "the local assessment") was ordered.

26. It appears that on 24 May, 19 July and 3 October 2013 the court heard 13 witnesses.

27. On 16 October 2013 the Legionowo District Court decided that there should be a residence order in the applicant's favour, and that, in terms of contact rights, M.R. should be able to see the children away from their home from Friday evening until Saturday at 6 p.m., and on the second day of the Christmas and Easter holidays from 10 a.m. to 7 p.m.

28. The domestic court relied on the RODK's report and evidence given by family members and friends, teachers and police officers.

29. A number of witnesses gave evidence as to incidents on 19 March and in May 2011 when the applicant had opposed M.R. having contact with the children, and as to the fact that, since the applicant had moved to Warsaw later in 2011, M.R. had regularly been exercising his contact rights by taking the children to his house every Friday after school until Saturday at 6 p.m., and by going to their school on weekdays. Moreover, a number of witnesses stated that when the couple had lived together, the applicant had claimed to have suffered physical and psychological violence at the hands of M.R., and that she had a certificate of participation in a programme for victims of domestic violence. Some of the witnesses described the applicant as unpredictable, hot-tempered, and prone to mood swings. They considered that she had difficulty coping with troublesome situations, in particular with problems in raising children. A number of witnesses were of the view that M.R. was emotional and uncooperative, and that he avoided confronting problems. A number of witnesses gave evidence as to the applicant's intimate relationship with M.R.'s brother. The man had spent summer holidays with the applicant and the children.

It was also established that the applicant cared about the children's physical and emotional development, education and health. The children had settled well into their school environment and had good living conditions in the applicant's home.

30. Overall, the district court did not have any serious reservations about the applicant's parenting. It was therefore considered that neither the applicant's close relationship with M.R.'s brother nor M.R.'s good relationship with the children could justify changing the children's residence, especially since, in the experts' opinion, M.R. was likely to hinder the applicant's right to make joint decisions about the children and make his own conditions about contact.

31. M.R. appealed against that judgment, arguing that the first-instance court had drawn incorrect conclusions about the applicant's parenting skills and her mental state. He submitted that the applicant had complained about domestic violence after their separation, and had concealed her relationship with his brother.

32. The first-instance case file was transferred to the Warsaw-Praga Regional Court on 20 January 2014.

33. The Government submitted that M.R. had also informed the regional court that the applicant had been hindering the exercise of his contact rights, and had not been cooperating with the court-appointed guardian. These submissions were to be supported by the guardian, yet no document has been presented to the Court in this connection.

34. On 27 August 2014 the Warsaw-Praga Regional Court altered the first-instance decision, holding that the lower court had erred in ruling on

M.R.'s contact with the children in the absence of an application for contact. The regional court also held that, in relation to the issue of residence, the first-instance court had disregarded the children's preference for their father, the guardian's reports and unequivocal facts which led to the conclusion that M.R. was more likely to secure safety and peace for the children's upbringing. The appellate court relied in particular on the fact that: the applicant had removed the children from their habitual environment without M.R.'s consent; from May until October 2010 the father had taken care of the children, and prior to that he had actively participated in their upbringing; and, as reported by the court guardian, the applicant had arbitrarily made a decision about M.R.'s contact with the children. The second-instance court also considered that the applicant's relationship with M.R.'s brother was reprehensible and had a negative impact on the children. Overall, despite the fact that the children were well taken care of, their removal from their home by the applicant had been an abuse of her power and contrary to their best interests.

35. The applicant did not lodge a complaint regarding the unreasonable length of the proceedings under the Law of 17 June 2004 on the right to have a case examined in judicial proceedings without undue delay (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki* – "the 2004 Act").

36. It appears that in October 2014 the case was reviewed by the Ombudsman for Children (*Rzecznik Praw Dziecka*), who did not find any flaws.

III. ENFORCEMENT (CASE NO. III NSM 440/14)

37. On 19 September 2014 M.R. applied for enforcement of the above decision and the forcible removal of the children from the applicant's house.

38. On 13 October 2014 M.R. collected his daughter from school. She has been living with him ever since.

39. On 26 November 2014 the Legionowo District Court ordered the applicant to surrender her son by taking him to M.R.'s house on 28 November 2014.

40. The applicant did not comply. On 25 February 2015 the child was forcibly removed from the mother's house and placed with M.R.

41. The applicant appealed against the decision of 26 November 2014.

42. It appears that the first hearing took place on 14 January 2016. The parties did not provide any information about the subsequent course of the proceedings.

43. The applicant did not lodge a complaint under the 2004 Act regarding the unreasonable length of the proceedings.

IV. PROCEDURE FOR REVISION OF THE DECISION ON THE CHILDREN'S RESIDENCE (CASE NO. III NSM 489/14)

44. On 2 September 2014 the applicant brought an action under Article 577 of the Code of Civil Procedure for revision of the decision of 27 August 2014 and for an interim residence order in her favour. She submitted that the decision to place the children with their father had caused them great distress and had also caused them to rebel and retreat emotionally to a large extent. The case was registered as case no. III Nsm 489/14.

A. Conduct of the proceedings

45. On 6 November 2014 the applicant's twelve-year-old son was heard by the family judge at the Legionowo District Court. He said that he wished to live with his sister at his mother's house because he loved both of them the most. He gave the impression that he was withdrawn and unhappy whenever he spent a weekend or holiday with his father. The boy also told the judge that his father did not pay any attention to him or his sister and did not organise any activities for them, whereas they received lots of attention from their mother, that is they played board games, visited interesting places and did homework together. The child also said that M.R. spoke badly of their mother, and that his sister's room at their father's house was not sufficiently furnished, whereas their rooms at their mother's home were nice and well furnished. Lastly, the boy said that he liked spending time with his paternal uncle.

46. On 19 November 2014 the Legionowo District Court adjourned *proprio motu* the examination of the applicant's application for revision until the completion of the proceedings for the return of the children, proceedings which had been instituted by M.R. in the meantime (case no. III Nsm 440/14, see paragraphs 37-43 above).

47. In the same decision, the court also dismissed the applicant's application for an interim residence order on the grounds that the children were not at any risk of irreversible harm. The court reasoned that M.R. had always been very active in their upbringing, that it was the applicant who had abandoned the family home, and that, irrespective of the court's ruling in that respect, since October 2014 the applicant's daughter had been living with her father and the applicant's son had been living with the applicant.

48. On 12 December 2014 the applicant lodged an interlocutory appeal against both above-mentioned points of that decision.

49. On 18 November 2015 the Warsaw-Praga Regional Court quashed the lower court's decision to stay the proceedings, holding that the outcome of the other set of the proceedings was not determinative for the proceedings at hand. The appellate court also upheld the lower court's decision in respect of the interim measure.

50. Meanwhile, on 8 December 2014 the Legionowo District Court had dismissed the applicant's application (of 30 November 2014) for the judge to whom the case had been allocated to be disqualified from dealing with the case. The court found that the applicant had not claimed that the judge in question had any personal links with the parties. The court also observed that her allegations that there had been procedural shortcomings in relation to how the judge had conducted the proceedings was not a valid ground for his disqualification, and that an appeal was an adequate procedure for such issues.

51. On 12 December 2014 the applicant lodged an interlocutory appeal against that decision.

52. On 18 November 2015 the Warsaw-Praga Regional Court upheld the lower court's decision in that matter.

B. Complaint under the 2004 Act

53. On 22 March 2016 the Warsaw-Praga Regional Court dismissed the applicant's complaint under the 2004 Act regarding the unreasonable length of the proceedings. The domestic court considered that the impugned proceedings had not been marked by unreasonable delays or inactivity on the part of the Legionowo District Court, especially since the latter had had to deal with the applicant's multiple letters and applications, and the case-file had been transferred to different courts on several occasions.

V. CONTACT RIGHTS (CASE NO. III NSM 532/14)

A. Conduct of the proceedings

54. On 17 November 2014 the applicant applied for contact with her daughter and an interim order in this respect.

55. On 24 November 2014 the first hearing was scheduled for 6 February 2015, and the court-appointed guardian was ordered to conduct a local assessment within twenty-one days.

56. As submitted by the Government, on 25 November 2014 the applicant was asked to complete her application for an interim order by submitting a schedule of the interim contact arrangements sought. On 3 December 2014 the applicant replied by submitting a schedule which ran to the end of February 2015.

57. On 30 November 2014 the applicant applied for one judge of the Legionowo District Court to be disqualified from hearing the case, and on 16 December 2014 she applied for all of its judges to be disqualified.

58. In view of those applications, the hearing of 6 February 2015 was cancelled, and the case file was transferred to the regional court.

59. On 29 December 2014 the Legionowo District Court dismissed the application for an interim contact order in respect of the applicant's daughter. The domestic court considered that it was necessary to hear the parties and obtain additional material on the applicant's relationship with her daughter. On 15 January 2015 the applicant lodged an interlocutory appeal against that decision.

60. M.R.'s lawyer informed the domestic court that the applicant was effectively exercising her contact rights on weekdays and at weekends at M.R.'s house.

61. On 6 May 2015 the Warsaw-Praga Regional Court granted the applicant's application in part and disqualified one but not all of the judges from hearing the case. The applicant appealed, and later withdrew her appeal. Consequently, on 13 July 2015 the Warsaw-Praga Regional Court discontinued those proceedings. The case file was returned to the district court.

62. On 5 or 21 August 2015 the applicant applied for contact with her son and an interim order in this respect. She claimed that she was only visiting her children at M.R.'s house every Sunday for two hours, and that M.R. interfered with the visits.

63. On 17 August 2015 a hearing was scheduled for 26 November 2015.

64. On 3 November 2015 the Warsaw-Praga Regional Court quashed the decision of 29 December 2014, as submitted by the Government, on the grounds that the first-instance court had issued its decision on contact rights *in camera*, which was against the applicable procedure, as there was no element of urgency in the case. The case was remitted to the district court.

65. On 26 November 2015 the Legionowo District Court issued an interim decision on the applicant's contact with her son and daughter. A copy of that decision has not been submitted. It appears that the applicant was granted the right to visit her children at M.R.'s house every other Sunday from 2 to 8 p.m. and on selected days during the Christmas and Easter holidays, and to telephone them for thirty minutes every day.

66. The applicant lodged an interlocutory appeal, and in January 2016 the case file was transferred to the regional court.

67. On 22 February 2016 the Warsaw-Praga Regional Court altered the first-instance interim decision by granting the applicant the right to see her children every Sunday from 2 to 7 p.m. at M.R.'s house. The court reasoned that, contrary to the applicant's arguments, restricting the visits by having them take place at M.R.'s house was in the children's best interests, because in the past the applicant had taken the children away without their father's consent and had not returned them to him. The court also stated that the applicant's informal relationship with M.R.'s brother could be difficult for the children to accept, and that the conditions in M.R.'s house allowed for free and natural contact between the applicant and her children.

68. The applicant submitted that that decision had been served on her lawyer in April 2016.

B. Complaint under the 2004 Act

69. On 22 March 2016 the Warsaw-Praga Regional Court dismissed the applicant's complaint under the 2004 Act regarding the unreasonable length of the proceedings. The domestic court considered that the impugned proceedings had not been marked by unreasonable delays or any inactivity on the part of the Legionowo District Court, especially since the latter had had to deal with the applicant's multiple letters and applications.

VI. JOINT PROCEEDINGS FOR RESIDENCE AND CONTACT (CASE NO. III NSM 489/14)

70. On 22 April 2016 the Legionowo District Court decided to join case no. III Nsm 489/14, case no. III Nsm 532/14 and a case concerning restriction of the parental authority of the applicant and M.R., which it had instituted *proprio motu*.

71. On 22 April 2016 the Legionowo District Court ordered an expert report (with the involvement of a psychiatrist) on the following aspects of the family situation: the applicant and M.R.'s parenting skills; the most suitable schedule of contact with the non-custodial parent; the emotional condition of the children; and the children's emotional bonds with each parent. It appears that this report was never produced.

72. On 27 April 2016 the court guardian drew up a report which concluded that the children were living with M.R. in very good material conditions. They had regular and frequent contact with the applicant. Their family situation was stable. They had very good grades at school and there were no problems with their upbringing.

73. On 22 April 2016 the applicant lodged a new application to have the interim decision on contact with her children amended. She asked to be allowed to see the children away from M.R.'s house, in line with the following schedule: for three weekends per month, from Friday after school until Sunday evening; for one month during the summer holidays and for one week during the winter holidays, and for half of the Christmas and Easter holidays.

74. On 13 June 2016 the Legionowo District Court held a hearing during which the applicant and M.R. made contradictory submissions about the children's well-being, health and education. The applicant informed the domestic court that she was pregnant and living with a new partner (without revealing the man's identity).

75. On 17 June 2016 the Legionowo District Court dismissed the applicant's application, relying on the fact that on several occasions she had

taken the children away from M.R.'s house without his consent and had not returned them to him. The domestic court also noted that an unspecified criminal case was pending against the applicant and that she was in touch with persons who were breaching the law. It was therefore concluded that it would not be in the children's best interests for them to have contact with persons from the applicant's entourage. The district court also found that the children had been developing without any problems, and that the applicant had had free and unhampered meetings with them at M.R.'s house.

76. On 6 September 2016 the Warsaw-Praga Regional Court dismissed an interlocutory appeal by the applicant against the above interim decision. The court observed that the applicant had failed to prove that, since the last ruling on contact, the children's situation had changed to the point that different contact arrangements were required. Lastly, the court took into account the applicant's refusal to reveal the identity of her partner and to allow the court guardian to make an unannounced home visit. The court expressed the view that before the children could visit the applicant at her home, they should be made aware of their mother's family situation and accept her partner.

77. It appears that in October 2016 the Legionowo District Court transferred the case file to the local Court Consultative Team of Experts (*Opiniodawczy Zespół Sądowych Specjalistów*, "the OZSS"), which had replaced the RODK.

78. On 7 November 2016 the applicant applied for a guardian to be appointed by the court to supervise M.R.'s parenting. The applicant argued that M.R. was not providing the children with the requisite medical care and that he was neglecting and manipulating them.

79. On 22 December 2016 the Legionowo District Court dismissed that application on the grounds that the detailed local assessment report which had been drawn up by a court guardian on 16 December 2016 concluded that M.R. took good care of the children; that the children were well; and that they had regular contact with their mother (every Sunday). This report has not been submitted to the Court.

80. In January 2017 the applicant applied again to have contact with the children away from M.R.'s house. She submitted that having to take care of her baby impeded her from exercising her contact with the older children in accordance with the arrangements in place.

81. The applicant submitted that between October 2016 and July 2017 she had been seeing her older children after school.

82. On 23 January 2017 a hearing was held before the Legionowo District Court. The family court ordered that the applicant's children be heard.

83. M.R. did not bring the children to the hearings scheduled for 15 and 29 March 2017, submitting that they did not wish to be heard.

84. On 26 April 2017 the Warsaw-Praga Regional Court dismissed an appeal by the applicant against the decision in respect of the refusal to appoint a guardian. The court observed that guardian supervision was a far-reaching

measure interfering with the exercise of a parent's custody rights. As such, it was only to be ordered when the interests of a child were threatened. The court concluded that the applicant's allegations of neglect were unsubstantiated in the circumstances of the case, particularly in the light of the guardian's recent report.

85. On 22 May 2017 the Legionowo District Court held another hearing. The applicant reiterated her application for new contact arrangements and asked that the children be heard by the court. The court ordered a new report from the OZSS and decided that the children would be heard after that report was produced.

86. On 5 July 2017 the report by the OZSS was submitted to the court. The experts, having examined both parents and the children, made the following conclusions: (i) both parents had similar parenting skills which were weakened by mutual disregard of the children's need to have contact with the other parent; (ii) both children had strong emotional bonds with both parents, but the applicant's son favoured his mother; (iii) both children were seriously burdened by the conflict between their parents; (iv) in view of all the circumstances of the children's life, it was M.R. who showed better prospects for providing the children with stability and better parenting – that conclusion was conditional on his accepting the mother's importance in the children's lives and the fact that their contact with her should be developed; and (v) the children should have regular, substantial and undisturbed contact with the non-custodial parent in the absence of the custodial parent. It was recommended that the children should stay with their mother every other weekend, from Friday after school to Monday morning, every Wednesday, and during half of all school holidays.

87. On 12 July 2017 the Legionowo District Court issued an interim ruling granting the applicant's application for new contact arrangements. It was thus decided that the applicant would see her children without their father being present: on every other weekend, from Friday at 5 p.m. until Sunday at 7 p.m.; during the first week of the winter holidays; during one month of the summer holidays – in July in odd years, and in August in even years; and on selected days during the Christmas and Easter holidays.

88. On 15 November 2017 the Warsaw-Praga Regional Court dismissed an appeal by M.R. against the decision of 12 July 2017.

89. On 6 December 2017 the applicant applied for sole custody of the children, arguing that their father had neglected their psychological and medical needs.

90. On 11 December 2017 the Legionowo District Court held another hearing. The applicant asked the court to have M.R. fined for hindering the exercise of her contact rights.

91. On 6 February 2018 the family court heard the children, who expressed their wish to live with the applicant.

92. On 22 March 2018 the applicant applied for an interim residence order in her favour. She submitted that the children were in bad health, physically and emotionally, and needed help with their studies.

93. On 26 March 2018 the Legionowo District Court heard both parents on the issues of the children's health, mental condition and schooling.

94. On 27 March 2018 the court dismissed the applicant's application for an interim decision in respect of the children's place of residence. It was observed that although the children had expressed a wish to live with the applicant, they had not voiced any specific reproaches towards their father. The court did not consider that the children's home and school environment was having any negative impact on them. The applicant's daughter, who was 11, had good grades and no behavioural problems. The applicant's son, who was 16, had indeed started getting worse grades at school. Relying on the report which had been drawn up by the OZSS experts on 5 July 2017 and the local assessment report drawn up by a court-appointed guardian on 19 December 2016, the court concluded that M.R. was better suited to take care of the children on a permanent basis; that he had not been neglecting them; and that the living conditions at his home were suitable for the children to live there.

95. On 16 April 2018 the applicant lodged another application for an interim residence order in her favour. She argued that the children had been neglected by their father. On 18 May 2018 the applicant asked for those proceedings to be accelerated. She was informed that it would be impossible to decide on her application before 13 August 2018, the date for which a hearing had been scheduled.

96. The parties did not provide any information about the subsequent course of this set of proceedings.

VII. THE FAMILY'S CURRENT SITUATION

97. At the time when the application was lodged with the Court and when observations on the application were submitted, the applicant stated that while all the above sets of proceedings were on-going, the conflict between her and her former husband was severe. The domestic courts had never ordered that the parents undergo any family therapy or take part in any mediation. In these circumstances, the children's well-being was not ensured.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

98. Issues relating to custody and contact rights are regulated by the 1964 Family and Custody Code (*Kodeks Rodzinny i Opiekuńczy*, "the Custody Code").

99. Under Article 107 of the Custody Code, if parents who live apart have shared custody, the family court shall, with a view to securing a child's best

interests, determine how custody and contact rights are to be enforced. The Custody Code also provides that siblings shall be raised together unless a child's best interests require otherwise.

100. Under Article 106 of the Custody Code and Article 577 of the Code of Civil Procedure (*Kodeks Postępowania Cywilnego*), a final court decision as to parental responsibility, custody and contact arrangements can be modified at any time if the interests of the child so require, either upon an application by either parent or by a court acting of its own motion.

101. Pursuant to Article 730 of the Code of Civil Procedure, a party can apply to a court for an interim order for the purpose of securing, for instance, contact arrangements. Article 737 of this Code requires an application for such an interim order to be examined without undue delay, that is, within a week, unless a hearing is required by law. If such a hearing is required, it shall take place within one month of the registration of the application.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS CONCERNING THE CHILDREN'S RESIDENCE AND THE AUTHORITIES' FAILURE TO SECURE THE APPLICANT'S CONTACT RIGHTS

102. The applicant complained, invoking Articles 6 and 8 of the Convention, that the authorities had failed to take the necessary measures to secure respect for her family life. In particular, the domestic courts had failed to expeditiously examine her two subsequent applications for residence and contact in relation to her children.

103. The Court, being the master of characterisation to be given in law to the facts of the case, considers that these complaints fall to be examined under Article 8 of the Convention (see *Radomilja and others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018; and *Kijowski v. Poland*, no. 33829/07, §§ 40, 42 and 48, 5 April 2011). The provision in question 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.”

A. Admissibility

104. With respect to the complaint relating to the alleged delays in the proceedings concerning the children's residence and the applicant's contact rights, the Government argued that, in each set of impugned proceedings, it had been open to the applicant to lodge a complaint under the 2004 Act regarding the unreasonable length of the proceedings. The applicant had not filed such a complaint before lodging her application with the Court.

105. The Court notes that, after lodging the present application with the Court, the applicant made two applications under the 2004 Act in respect of the proceedings relating to revision of the decision on the children's residence and contact arrangements (see paragraphs 53 and 69 above).

106. Nevertheless, the Court observes that such a preliminary objection has already been examined and rejected by the Court in the similar case of *Kijowski v. Poland*. In that case, the Court held that the remedy under the 2004 Act specifically concerned the right to have one's case examined within a reasonable time, within the meaning of Article 6 § 1 of the Convention, whereas in cases such as the present one, it was not merely the excessive length of civil proceedings which was in issue, but the question of whether, in the circumstances of the case as a whole, the State could be said to have complied with its positive obligations under Article 8 of the Convention. Consequently, the adequacy of measures taken by the authorities was also to be judged according to the speed of their implementation (see *Kijowski*, cited above, §§ 42-45, with further references).

107. The Court in the circumstances of the present case, thus rejects the Government's preliminary objection, and considers that this part of the application 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

108. The applicant complained that the authorities had failed to take the necessary measures to secure respect for her family life, essentially because of the length of the two sets of proceedings to determine the residence of the children and her contact rights.

109. The Government, in their observations submitted on 14 December 2015, argued that the domestic authorities had not failed to discharge their positive obligation to secure for the applicant the effective exercise of her right to respect for her family life.

110. Firstly, the domestic courts had acted with due diligence, and the overall length of the impugned proceedings could not be considered excessive. Moreover, two of the three sets of proceedings in question (cases

nos. III Nsm 489/14 and III Nsm 532/14) had not yet been concluded, because of the applicant's unjustified and repeated applications to disqualify the judges of the Legionowo District Court from hearing the applications.

111. Secondly, the decisions which had so far been issued by the domestic courts had required at least five local assessments, a RODK report, the examination of thirteen witnesses and the examination by an expert psychologist of the applicant's son.

112. Thirdly, the applicant had never stopped having regular contact with the children. To this effect, the Government submitted that the applicant had been authorised to spend twenty-five-minute lunch breaks with the children at school and visit them at M.R.'s house.

2. The Court's assessment

(a) General principles

113. The general principles on the positive obligations inherent in effective "respect" for family life, in cases where contact and residence disputes concerning children arise between parents, are laid down in the Court's judgment in *Kijowski v. Poland*, cited above, §§ 50-52.

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

(i) The substantive proceedings concerning the children's residence

114. As regards the length of the substantive proceedings concerning the children's residence, the Court notes that the applicant first applied for a residence order in her favour on 2 November 2010. On 26 May 2011 the children's father, M.R., applied for a residence order in his favour. On 29 August 2011 both applications were joined. On 16 October 2013 the first-instance court ruled in the applicant's favour. On 27 August 2014 the appellate court reversed that decision and made a residence order in favour of the father (see paragraphs 6, 17, 18 *in fine*, 27 and 34 above).

115. In the course of those proceedings the domestic courts dismissed three applications for interim residence orders – one lodged by the applicant and two lodged by M.R. (see paragraphs 7, 12, 17, 18, and 24 above).

116. The following actions were also carried out by the authorities in the course of the first-instance proceedings. In February 2011 a guardian was appointed by a court to supervise the shared custody arrangement, prepare reports on the living conditions of both parties and carry out local assessments (see paragraphs 8, 9, 10, 22 and 25 above). In December 2011 the RODK report was produced following the assessment of the children and the parents (see paragraphs 12, 15 and 20 above). It appears that between March 2012 and October 2013 five hearings were held and the domestic court heard thirteen witnesses (see paragraphs 23, 25 and 26 above). Several decisions were issued by the district and regional courts in respect of the applicant's

applications to have the case transferred to a different venue or assigned to a different presiding judge (see paragraphs 16, 21 and 25 above).

117. It appears that no applications for interim orders or any further procedural applications were lodged in the course of the appellate proceedings.

118. The Court notes that the domestic courts took nearly four years to determine the residence of the children, which admittedly undermines the requirement to act expeditiously in such proceedings, notwithstanding the fact that the parental dispute in question was of a complex nature and the first-instance court had to issue multiple procedural orders and three interim decisions, as described above.

119. This observation, however, is inconsequential in the circumstances of the present case, because the applicant enjoyed *de facto* residence with her children up to and beyond the conclusion of the impugned proceedings (see paragraphs 5, 38 and 40 above). The Court therefore considers that the delay on the part of the domestic courts in fact benefited the applicant, even if the children's residence with her had not been legalised which could have caused the applicant some anxiety (see *Kijowski v. Poland*, cited above, § 54).

(ii) Proceedings for revision of the decision on the children's residence

120. As regards the length of the proceedings relating to revision of the 2014 decision of the Warsaw-Praga Regional Court, the Court notes that they have been ongoing before a court of first instance since September 2014, having been joined to the proceedings in respect of parental authority and contact on 22 April 2016 (see paragraphs 44, 70 and 96 above).

121. In that time, the Legionowo District Court has carried out the following actions. On 6 November 2014 it heard the applicant's son (see paragraph 45 above) and on 6 February 2018 it heard both children (see paragraph 92 above). On 19 November 2014 it temporarily adjourned the examination of the case (see paragraph 46 above). On 8 December 2014 it dismissed the applicant's application for a judge to be disqualified from hearing the case (see paragraph 50 above). It also ruled on her applications to have a guardian appointed to monitor M.R.'s parenting (on 22 December 2016; see paragraph 80 above) and to have an interim residence order in her favour (on 19 November 2014 and on 27 March 2018; see paragraphs 46 and 95 above). Since the joinder of the proceedings, the district court has also ruled twice on the applicant's contact with the children (on 17 June 2016 and 12 July 2017; see paragraphs 75 and 87 above and 134 and 135 below). Moreover, the family court obtained three reports on the family situation: two from the court guardians (of 27 April and 16 December 2016) and one of 5 July 2017 from the OZZS experts (see paragraphs 72, 79 and 86 above). Lastly, the court scheduled at least eight hearings involving the parties and witnesses, and held five of them (see paragraphs 74, 82, 83, 85, 90, 93 and 95 above).

122. It appears that for various lengthy periods the case file was not in the possession of the district court, as it was being consulted by the experts who were drawing up their reports and by various superior courts which had to examine the parties' interlocutory appeals, applications and the application under the 2004 Act (see paragraphs 48, 49, 51, 52, 53, 58, 69, 76, 77, 84, and 88 above).

123. The Court considers that, like the substantive proceedings concerning the children's residence, the proceedings for revision of the 2014 decision involved a great degree of complexity, as a result of the obvious and persistent conflict between the parties. Lengthy transfers of the case file to higher courts which were required to rule on the applicant's numerous applications and appeals were another objective obstacle to the speedy examination of the case.

124. It is clear to the Court that the nature of the case required a rapid decision-making process (see *Diamante and Pelliccioni v. San Marino*, no. 32250/08, § 177, 27 September 2011; *Endrizzi v. Italy*, no. 71660/14, § 48, 23 March 2017; *Improta v. Italy*, no. 66396/14, § 45, 4 May 2017). This was the case especially because the domestic court was faced with an allegation that the children had retreated emotionally to a large extent and were in great distress, and if as early as 2014 it had been presented with an unambiguous statement by the applicant's twelve-year-old son that he wished to live at the applicant's home (see paragraphs 44 and 45 above). Such a wish was reiterated by both children almost four years later (see paragraph 91 above). The Court also observes that that a conflict between separated parents is not something which, of itself, exempts the authorities from their positive obligations under Article 8 (see, *mutatis mutandis*, *K.B. and Others v. Croatia*, no. 36216/13, § 144 *in fine*, 14 March 2017; *Nicolò Santilli v. Italy*, no. 51930/10, § 74, 17 December 2013; *Lombardo v. Italy*, no. 25704/11, § 91, 29 January 2013; *Zavřel v. the Czech Republic*, no. 14044/05, § 52, 18 January 2007; and *A.T. v. Italy*, no. 40910/19, §§ 79-83, 24 June 2021).

125. These principles, however, cannot be interpreted as to only mean that a family court must rapidly issue a final ruling on the merits on a case. The decisive point is whether the national authorities have taken all the necessary measures to facilitate the parental visits which could reasonably be required of them in the circumstances. In this type of case, the adequacy of a measure is judged by the speed with which it is implemented (see *Endrizzi*, cited above, § 48; and *Improta*, cited above, § 45). Where proceedings are driven by severe hostility between the parties, where no cooperation between the parents or their compliance with court's orders can be successfully ensured, and where no final solution can be offered on account on the ever-changing family circumstances, a family court is under a duty to swiftly react to the situation by means of *ad interim* decisions.

126. As regards the applicant's complaint that the authorities failed to secure her contact rights, the Court notes at the outset that the applicant

enjoyed unlimited contact with the children until the enforcement of the 2014 decision on their residence, that is until October 2014 in respect of her daughter, and until February 2015 in respect of her son (see paragraphs 38 and 40 above).

127. In the absence of an application for contact, no order for contact was issued in the course of the main proceedings concerning the children's residence (see paragraph 34 above).

128. In November 2014 and in August 2015 the applicant lodged formal applications for contact and interim contact orders in respect of her daughter and son respectively (see paragraphs 54 and 62 above).

129. The following actions were carried out by the district court in the course of the proceedings relating to the applicant's application for contact with her daughter. A community assessment was ordered and, presumably, carried out (see paragraph 55 above). In December 2014 the applicant's application for an interim order was dismissed (see paragraph 59 above). The first hearing which had been scheduled for February 2015 was adjourned in view of the applicant's two applications for judges to be disqualified from hearing the case (see paragraph 58 above). In relation to the applicant's applications for such disqualification, the case file was transferred to various higher courts (see paragraph 58 and 61 above).

130. In the course of those proceedings, the Warsaw-Praga Regional Court disqualified one judge of the bench from hearing the case (in May 2015), and quashed the December 2014 interim decision (in November 2015) (see paragraphs 61 and 64 above).

131. In the proceedings relating to the applicant's application for contact with her son, the first hearing was scheduled for November 2015 (see paragraph 63 above).

132. Subsequently, the cases in respect of each child were joined, and since April 2016 they have been pending, together with the cases in respect of parental authority and the children's official place of residence (see paragraph 70 above).

133. On 26 November 2015 the Legionowo District Court issued an interim decision, granting the applicant the right to visit her children at M.R.'s house every other Sunday from 2 to 8 p.m. and on selected days during the Christmas and Easter holidays, and to telephone them every day (see paragraph 65 above). On 22 February 2016 the Warsaw-Praga Regional Court extended the applicant's visits to every Sunday from 2 to 7 p.m. (see paragraph 67 above).

134. On 17 June 2016 the Legionowo District Court, having heard the applicant and M.R. on 13 June 2016, dismissed the applicant's application for new interim contact arrangements (see paragraphs 74 and 75 above). On 6 September 2016 the appellate court upheld that decision (see paragraph 76 above). The courts found that because a criminal case was pending against the applicant, and because she had refused to reveal the identity of her partner

and to allow an unannounced home visit by the court guardian, exercising her contact rights in her home environment would be against the children's best interests (see paragraphs 75 and 76 above).

135. Later, on 12 July 2017 the Legionowo District Court granted the applicant's application for new extended contact arrangements and authorised her to see her children every other weekend without M.R. being present, from Friday evening until Sunday evening, and during half of the school holidays (see paragraph 87 above). That decision was upheld on appeal on 15 November 2017 (see paragraph 88 above).

136. The Court observes that, in the light of the fact that the children's unrestricted day-to-day contact with their mother was abruptly curtailed and restricted to taking place at either M.R.'s house or school for only several hours per week, it was incumbent on the domestic authorities to deal with the case speedily.

137. The Court observes that the first interim decision on the applicant's contact with her children was issued on 26 November 2015 (see paragraph 65 above), that is almost one year from her lodging a complete application for contact with her daughter (see paragraph 56 above), and three months from her lodging a similar application concerning her son (see paragraph 62 above).

138. The Court, however, cannot overlook the fact that the applicant's conduct resulted in the proceedings concerning her contact with her daughter being lengthy, or at least contributed to the length of those proceedings to a large extent (see paragraphs 57-59 and 61 above), and throughout the period when no court decision on contact was in force, the applicant nevertheless visited the children regularly and relatively frequently (see paragraphs 60 and 62 above). Taking these factors into consideration, the Court finds that the applicant's right to respect for her family life in the context of her contact rights has not been breached.

(c) The Court's conclusion

139. Regard being had to the above considerations, the Court finds that there has been no violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE RESIDENCE ORDER IN FAVOUR OF THE CHILDREN'S FATHER

140. The applicant also complained under Article 8 of the Convention that the domestic court's decision of 27 August 2014 to have the children moved to their father's home was unjustified and contrary to their best interests.

A. Admissibility

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

B. Merits

1. The parties' submissions

142. The applicant argued that the residence order in favour of the children's father was unjustified and contrary to their best interests. In particular, she submitted that the domestic courts had not been diligent, as the impugned 2014 ruling had been based on an outdated RODK expert report.

143. The Government submitted that the domestic court had assessed the family situation thoroughly and fairly, aiming to protect the children's best interests and the rights of each parent. No objections had been made by the Ombudsman for Children as a result of his review of the proceedings concerning the principal residence of the children and the decisions of the domestic courts.

2. The Court's assessment

(a) General principles

144. The general principles applicable in cases in which the interference with an applicant's right to respect for his or her family life may be attributed to an action by a respondent State are summarised in the Court's judgment in *Buchs v. Switzerland*, no. 9929/12, §§ 49-51, 27 May 2014.

145. The Court would also stress that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance which has to be struck between the general interest and the interests of the individual; and in both contexts the State enjoys a certain margin of appreciation (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 114, ECHR 2014 (extracts) with further references).

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

146. The Court must therefore consider whether, in the light of the circumstances of the case as a whole, the reasons adduced to justify the measure in question were “relevant and sufficient”, and whether the decision-making process was fair and afforded due respect to the applicant’s rights under Article 8 of the Convention (see *mutatis mutandis*, *Buchs*, cited above, § 49).

147. The Court observes that, in deciding the issue of the children’s residence, the family courts relied on evidence which consisted of: multiple reports prepared by the court-appointed guardian, who had gained first-hand experience of the family over the years; the RODK report drawn up in December 2011 following the assessment of the children and the parents; the submissions of the applicant and M.R.; and the evidence of thirteen other witnesses (see paragraphs 9, 10, 15, 20, 23, 26, 28, 29, and 34 above).

148. As affirmed in the interim decision issued by the Legionowo District Court on 13 April 2011, the following information had emerged at the initial stage of the impugned proceedings from the report produced following the guardian’s visit to the applicant’s house and the parties’ submissions. The applicant and M.R. were in deep conflict. The applicant was in a relationship with M.R.’s brother and often stayed away from home. When the children were with the applicant, they came home late at night. They were also spending a lot of time with their father (see paragraph 13 above). In view of this information, the district court concluded that the children had been deprived of the stability, peace and routine necessary for their emotional development and education (*ibid.*).

149. Soon afterwards, the same domestic court dismissed M.R.’s application for an interim residence order, finding that the well-being of the children would not be threatened if they continued living at their mother’s home (see paragraph 18 above).

150. In December 2011, the RODK experts made the following observations in their report. The applicant was immature, emotionally unstable, egocentric, unpredictable, inconsistent and manipulative. M.R. had emotional ties with his children; he was more focused on their needs and could offer more stability. It was likely that M.R. would have trouble cooperating with the children’s mother. The children had emotional bonds with both parents. They preferred their father, whom they perceived as a stable and calm person who was interested in them. The applicant was seen by them as erratic, impatient and clamant. The experts also concluded that M.R. was more likely to be able to provide the children with adequate care. Because of the strong conflict between the adults, it was recommended that the guardian’s supervision be maintained, and that both parents attend courses on good parenting (see paragraph 20 above).

151. The decision of the Legionowo District Court of 16 October 2013 confirmed that the following information about the family had come to light over the two years preceding the judgment.

152. On two occasions, in March and May 2011, the applicant opposed M.R. having contact with the children. Otherwise, M.R. had been regularly exercising his contact rights by taking the children to his house every Friday after school until Saturday at 6 p.m. The applicant was unpredictable, short-tempered and had mood swings. She had difficulty coping with troublesome situations, in particular problems relating to raising children. Otherwise, the applicant's parenting had not raised any serious concerns. She cared about the children's physical and emotional development, education and health. The children had settled well into their school environment and had good living conditions in the applicant's home. The applicant continued to have a relationship with M.R.'s brother. M.R. was emotional and uncooperative. He might have subjected the applicant to psychological and physical violence when the couple had lived together (see paragraph 29 above).

153. The above details came from: the guardian's report on the visit to M.R.'s house; the submissions of the parties, who were heard in March 2012; the community assessment, which was apparently conducted in the spring of 2013; and the evidence of the witnesses who were heard by the district court between May and October 2013 (see paragraphs 22, 23, 25, 26, 28 and 29 above).

154. In view of the above considerations, the first-instance court held that neither the applicant's close relationship with M.R.'s brother nor M.R.'s good relations with the children could justify changing the children's residence, especially since, in the experts' opinion, M.R. was likely to hinder the applicant's right to make joint decisions about the children and make his own conditions about contact (see paragraph 30 above).

155. During the appellate proceedings, M.R., supported by the court-appointed guardian, informed the authorities that the applicant had been hindering the exercise of his contact rights and not cooperating with the guardian (see paragraph 31 above).

156. On 27 August 2014 the Warsaw-Praga Regional Court reviewed the events and the evidence described above, and reached the opposite conclusion, namely that M.R. was more likely to offer safety and peace for the children's upbringing, and that the applicant had been acting contrary to the children's best interests.

157. The appellate court attached the utmost importance to the children's preference for their father, which had been expressed by the children at the RODK interview in December 2011, and to M.R.'s active participation in the children's upbringing prior to the couple's separation. The regional court also considered that the applicant had abused her power, because she had removed the children from their habitual residence without M.R.'s consent and had

arbitrarily been deciding what contact M.R. had with the children. Lastly, the domestic court judged the applicant's relationship with M.R.'s brother to be detrimental to the children (see paragraph 34 above).

158. The Court notes, at the outset, that the applicant was duly involved in the proceedings. The alleged shortcomings in relation to the service of one interim decision and court correspondence (see paragraphs 14 and 19 above) did not render the decision-making process unfair.

159. The Court also observes that the Warsaw-Praga Regional Court undeniably faced a difficult task in resolving a particularly sensitive parental dispute over children's residence, and was guided by the principle of the best interests of the child. It weighed various factors in order to determine which parent could provide the children with better care and a balanced emotional development. The latter element included consideration of which parent was less likely to hinder the shared custody arrangement and the exercise of the other parent's contact rights.

160. The appellate court based its decision on evidence which was substantial and relevant, even though it had for the most part been obtained in 2011 and 2012 (see paragraphs 9, 10, 15, 20 and 23 above), with the testimony of the parties and a number of witnesses dating back to the second half of 2013 (see paragraphs 25 and 26 above).

161. Turning to the next point, the Court finds that the consideration of which parent was less likely to hinder the shared custody arrangement and the exercise of the other parent's contact rights was admittedly a very important element of the domestic court's assessment.

162. The following information was disclosed to the Court in this connection. The applicant twice prevented M.R. from visiting the children, in March and May 2011 (see paragraph 29 above). Later in 2011 M.R. exercised his contact rights regularly and without any hindrance (*ibid.*). In December 2011 the RODK experts warned that M.R. was likely to have difficulty cooperating with the applicant (see paragraph 20 above), and in October 2013 the Legionowo District Court anticipated that M.R. would make his own conditions in relation to the applicant's contact with the children (see paragraphs 27 and 30 above). M.R.'s later submission, which appears to have been corroborated by the court-appointed guardian, that the applicant had been hindering the exercise of his contact rights, was not addressed at all by the Warsaw-Praga Regional Court or supported by any document presented to this Court by the Government (see paragraph 33 above).

163. The incomplete material in the file of the present case makes it impossible for the Court to scrutinise the regional court's finding that the applicant had arbitrarily been deciding what contact M.R. should have with the children.

164. Lastly, making a residence order in M.R.'s favour was not a radical measure, because he had never become estranged from the children.

165. In conclusion, the Court observes that that the present case concerns a very unclear family situation, and that the domestic authorities enjoy a wide margin of appreciation in such cases. In the circumstances of the case as a whole, the reasons relied upon by the national authorities must be considered relevant and sufficient and the national authorities acted within the margin of appreciation afforded to them in such matters.

166. Accordingly, there has been no violation of Article 8 of the Convention in the present case.

III. REMAINING COMPLAINTS

167. Lastly, the applicant essentially complained, without invoking any provision of the Convention, that biased judges had been assigned to decide her application for revision of the 2014 decision on the children's residence.

168. The applicant did not submit any documents to substantiate this complaint.

169. Accordingly, 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.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 8 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 8 of the Convention;

Done in English, and notified in writing on 10 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Marko Bošnjak
President