



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

FIRST SECTION

CASE OF CUPIAŁ v. POLAND

(Application no. 67414/11)

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Applicant's conviction for psychological abuse of his children by means of subjecting them to allegedly excessive religious practices • Domestic courts' failure to assess applicant's specific and important arguments and thus to provide adequate reasons for decisions

STRASBOURG

9 March 2023

FINAL

09/06/2023

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

In the case of Cupiał v. Poland,

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

Marko Bošnjak, *President*,

Krzysztof Wojtyczek,

Alena Poláčková,

Ivana Jelić,

Gilberto Felici,

Erik Wennerström,

Raffaele Sabato, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 67414/11) 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 Dariusz Cupiał (“the applicant”), on 19 October 2011;

the decision to give notice to the Polish Government (“the Government”) of the complaints under Articles 6, 8, 9, 14 in conjunction with Article 9 of the Convention and Article 2 of Protocol No. 1 to the Convention and to declare inadmissible the remainder of the application;

Having deliberated in private on 14 February 2023,

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

INTRODUCTION

1. The case mainly concerns the applicant’s complaint about the breach of his right to a fair trial on account of his criminal conviction for the psychological abuse of his children by means of subjecting them to allegedly excessive religious practices.

THE FACTS

2. The applicant was born in 1962 and lives in Warsaw. He was represented by Mr M. Zaborowski, a lawyer practising in Warsaw.

3. The Government were represented by their Agent, 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 TO THE CASE

5. In 1989 the applicant married A. They had three children: M., born in 1991; Z., born in 1994; and J., born in 1996. Both parents have deeply-held religious convictions; the applicant has a Ph.D. in theology.

6. Towards the end of 2005 A. filed for divorce. About the same time, she signed her children up to undergo therapy with a certain Dr L. Subsequently, in February 2006 she moved out of the family house, taking the children with her.

7. The divorce proceedings were conducted before the Lublin Regional Court (*Sąd Okręgowy*). At a hearing held on 15 February 2008 A. asked the court to determine the children's contact arrangements with their father. She stated that the children needed contact with the applicant and that she could agree to a "no-fault" divorce.

8. On 9 September 2008 the Lublin Regional Court issued a divorce decree without ascribing blame for the breakdown of the marriage. The court also ruled that parental authority should be exercised by both parents, and that the two younger children (Z. and J.) should reside with the mother, and the eldest daughter (M.), with the father.

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

A. Investigation

9. On 27 October 2006 A. lodged a request with the Lublin District Prosecutor (*Prokurator Rejonowy*) for an investigation to be instigated into the alleged psychological abuse of her three children and herself by the applicant. She referred to the excessive religious practices to which the applicant had allegedly subjected them.

10. On 22 November 2006, when heard by the prosecutor, A. submitted a psychological report dated 2 February 2006 prepared by a Dr L. According to the report, the children displayed symptoms typical in victims of psychological abuse. She also submitted a report dated 30 October 2006 prepared by her daughters' school teacher. According to that report, the girls had a difficult relationship with the applicant.

11. During the investigation the prosecutor ordered a report from an expert psychologist, E.D. In her report, dated 6 March 2007, the expert noted that the applicant had subjected his children to excessive religious practices. She concluded that all the children showed signs of emotional and personality disorder as a result of "long term psychological abuse by their father". The children had experienced anxiety, insecurity, a sense of entrapment and fear of their father. The symptoms had been so strong that a risk of a suicide attempt could not be excluded with regard to the applicant's daughters. In particular, the expert stated that the applicant had prevented his children from being raised in a healthy and stable family. By following his religious "mission" he had caused the children to be raised in a system similar to those followed by informal religious groups. The father had impeded the children from fulfilling their basic biological needs by waking them after they had gone to bed and restricting their meal times. Moreover, he had prevented the

children's full intellectual development by imposing [his] religious manner of perceiving the world. He had administered punishment that had caused distress to the children. He had also used his children in order to create a positive image of himself within religious movements and in the media.

12. On 14 March 2007 an investigation concerning the alleged psychological abuse of the applicant's children was formally instituted. On 26 March 2007 the applicant was charged with domestic abuse (under Article 207 § 1 of the Criminal Code).

13. On 17 April 2007 two expert reports concerning the applicant's mental health were submitted to the prosecutor. The experts concluded that the applicant was not suffering from any mental illnesses and was able to participate in the trial. Moreover, according to the experts, the Christian faith and religion were the most important elements of the applicant's hierarchy of values, through which he perceived the world.

14. On 27 April 2007 the applicant contested the expert psychologist's report of 6 March 2007 (see paragraph 11 above), asserting that it had been biased.

15. On 30 June 2007 the Lublin District Prosecutor lodged a bill of indictment against the applicant with the Lublin District Court. He was charged with the psychological abuse of his three children.

B. Proceedings before the Lublin District Court

16. The trial before the Lublin District Court (*Sąd Rejonowy*) began on 16 October 2007. During the proceedings the court obtained several reports concerning the children (all prepared by the expert psychologist E.D., who had also prepared the report of 6 March 2007; see paragraph 11 above) and a psychiatric opinion concerning the applicant, and heard evidence from a number of witnesses. Two of the applicant's children M. and Z. were heard by the court at a hearing. The youngest child, J., was interviewed in the so-called "blue room" procedure. He was questioned by a judge in the presence of his mother, the expert psychologist – E.D., the prosecutor and the applicant's lawyer. The interview could not have been attended by the applicant (see paragraph 38 below).

17. The applicant's eldest daughter, M. was heard by the court on 11 February 2008. She was assisted by the expert psychologist E.D.. At the applicant's request neither the applicant, his wife, nor his lawyer were present in the courtroom on that occasion. M. explicitly stated, *inter alia*, that her father had never abused his children and had always been on hand to provide support. She also said that before being heard by the prosecutor she had spoken with L., the psychologist, who had explained to her which of her father's actions had been illegal.

18. On 5 March 2008 the applicant requested the exclusion as evidence of any part of E.D.'s expert reports that concerned any conclusions reached by

E.D. in respect of M. He stated that there were doubts as to whether the expert was unbiased and impartial – particularly given the fact that E.D. had on many occasions stated that the applicant had indeed committed the offences with which he had been charged. At the court’s request, E.D. submitted a statement denying any allegations of bias and claiming that there were no circumstances that could affect her impartiality. On 3 April 2008 the court found that there were no grounds to disqualify the expert since no information undermining confidence in her knowledge or impartiality had been revealed. At a hearing held on 2 March 2009 the applicant again raised the issue of E.D.’s lack of impartiality. However, the court refused to appoint a second expert in psychology to assess the testimony given by M., noting that an opinion given by an expert who had not been present during M.’s hearing would not have been accurate

19. When questioned by the court the applicant pleaded not guilty. He stated that A. had informed him in December 2005 that she had filed a petition for divorce. He had told her that he did not consent to a divorce, and A. had replied that in that case she would formally accuse him of psychologically abusing her children. Since then, all his actions had been presented by A. as damaging, toxic and harmful to the children.

20. On 22 July 2010 the Lublin District Court convicted the applicant of psychological abuse of his children on account of the fact that:

“... [the applicant] had forced them to practice certain religious rituals and to profess their faith in a certain manner – in particular, by making public confessions during evening prayers in the presence of other people; ... he had broken their nightly rest in order to conduct evening prayers; ... he had administered punishment that had hurt their feelings; and ... he had limited the number of their meals and meal times.”

21. The court sentenced the applicant to one year’s imprisonment, suspended for three years. The court found that the applicant’s explanations were reliable only in those parts that had been corroborated by witness testimony and other evidence gathered in the case. It furthermore held that A.’s testimony was reliable, as it had been coherent, detailed and logical. On the basis of E.D.’s expert reports, the court also found the younger children’s testimony credible.

22. The court furthermore considered that the testimony that M. had given during the trial, which had been favourable to the applicant, had not been entirely reliable. It noted that her statements made during the investigation had been coherent, logical and consistent with her mother’s and her siblings’ account of events. However, the statements made during the trial had contradicted her previous testimony.

23. The court established that both the applicant and his former wife had deep religious convictions. They had met as active members of the Life-Light Movement (*Światło i życie*), a movement within the Catholic church. The applicant was also a member of the Catholic Charismatic Renewal movement

(*Odnowa w Duchu Świętym*), a spiritual renewal movement within the Catholic church.

24. The court found that the applicant had lived his life in accordance with his own religious rules. In particular, he had required that every evening the family met for common prayer. At the end of such prayer time the children had had to apologise for their bad behaviour during the day and thus publicly confess to their sins. Often the applicant's friends and acquaintances from various [Catholic] religious movements had taken part in the evening prayers. In those situations, the children had been embarrassed to state their sins in public. It had also happened that when the applicant had returned home late and the children had already been asleep, he had woken them up in order to conduct evening prayers.

25. The court noted that the applicant had on several occasions invited many people who had been unknown to his then wife and children to stay at his home. Often whole families with small children had stayed in the applicant's house for days and even weeks. On those occasions the children had slept on the floor and had given the guests their beds. The children stated before the court that those situations had been difficult for them. They had also been asked to give their toys to the visiting children. Often the food that A. had prepared for the family had been given to the guests, and the children had not had any. The court furthermore observed that the applicant had required the whole family to have their meals at regular times. The children had not been allowed to have any food between meal times or after 7 p.m. Often, when the applicant had returned home late, the family had had to eat a cold meal.

26. The court also referred to the expert reports prepared by E.D., which had stated that all the children suffered from disorders in the sphere of emotional and personal development. In the expert's view, these were symptoms typical of victims of long-term psychological abuse. During the tests the children had disclosed a high level of anxiety and neuroticism. The court concluded that the acts committed by the applicant had constituted psychological abuse and had met the requirements of the statutory definition of domestic violence.

27. Lastly, the court dismissed an application lodged by the prosecutor for the applicant to be deprived of contact rights in respect of his children. The court noted that the applicant's eldest daughter, M., had already reached the age of majority and lived with the applicant. As regards the two younger children, the applicant's contact rights had been determined by the family court in the divorce decree of 9 September 2008. Consequently, the criminal court did not have authority to rule on that matter.

C. The applicant's appeal

28. On 25 October 2010 the applicant's lawyer appealed against the first-instance judgment, relying, *inter alia*, on Article 48 of the Polish Constitution and on Articles 6 and 9 of the Convention. In particular, she argued that while one could disagree with the applicant's educational methods the evidence collected in the case did not allow the conclusion that the applicant had intended to harm the children. The court's statements (to the effect that some evidence had been credible and some not) had not been sufficient. The applicant's lawyer maintained that his actions should have been examined rather by a family court and not by a criminal court. She also stated that the court of first-instance had relied only on unfavourable witness testimony (in particular, hearsay witnesses), rather than evidence given by other witnesses (such as, in particular, by the applicant's eldest daughter, M.). In that regard, she stressed that while M. could have stayed with her mother she had voluntarily decided to live with the applicant. Victims of domestic abuse usually wished to separate from the perpetrators, the fact that applicant's relationship with is eldest daughter was so good undermined the credibility of other witnesses.

29. Lastly, she submitted that the District Court had failed to address the principal issue in the case – namely, that: A. had begun a relationship with W.M. when she had still been married to the applicant; she had wished to separate from the applicant, but the applicant had objected to that wish; and the allegations regarding psychological abuse had surfaced only after the first hearing in the divorce proceedings, since when A. had begun to express objections to the applicant's educational methods. Lastly, the applicant complained that the District Court had failed to summon, of its own motion, W.M. as a witness.

D. Proceedings before the Lublin Regional Court

30. On 25 February 2011 the Lublin Regional Court (*Sąd Okręgowy*) upheld the first-instance conviction. The court held that the District Court had correctly assessed the evidence and established the facts of the case.

31. The court examined some of the allegations made by the applicant in his appeal. In particular, it noted that the application to admit film recordings and photographs from the applicant's family collection had been correctly dismissed as irrelevant. That material had related to the years 1992-1996 (when the children had been very young or had just been born), while the applicant's conviction had related to the period after 1998. Moreover, the decision not to summon W.M. (who had meanwhile become A's husband) had been correct, given the fact that the parties had not asked for that witness to be examined. Moreover, the charges had concerned the applicant's treatment of his children and not of his ex-wife. However, the court made no

specific response to the applicant's arguments concerning the context of the case and the timing of surfacing of the charges; it merely noted in passing that it was difficult to accept that the desire to separate from the applicant could have been a reason for A. to give false testimony as to his behaviour towards the children. The court also held that there were no grounds to doubt the assessment undertaken by the District Court of the evidence given by M. It further held that the District Court had correctly assessed the evidence given by witnesses. In that regard the Regional Court referred to the content of that testimony without however examining any connections that those witnesses might have had with the applicant or A.

32. The court observed that while everyone had the right to freedom of thought, conscience and religion and the State should respect the right of parents to ensure that their children were educated and taught in conformity with their own religious and philosophical convictions, the applicant's behaviour could not have been explained as his exercising religious practice. Notwithstanding the parents' right to educate their children in conformity with their own religious and philosophical background, one should distinguish any situations, actions and behaviour in respect of the parents/guardians that had been illegal, debasing and harmful to the children. Waking the children up at night and forcing them to pray, and forcing them to publicly confess their sins and apologise to the father in front of other people, could not be explained by means of reference to the applicant's religious convictions. Those actions could not be justified by asserting the existence of absolute and unrestricted parental rights.

33. In view of the facts established by the court of first-instance it was clear that the applicant had committed acts of psychological abuse towards his children by forcing them to behave in a certain way. Even though the children and the mother had asked the applicant to release them from some of those obligations, he had preferred to exert his authority and dominant position without taking into account their needs and emotions and had thus caused them severe emotional suffering. As a consequence of his actions the children had developed emotional and personality disorders, and displayed an aversion towards the Catholic Church and also towards religious practices in general.

34. The court concluded that bringing up a child could not be limited to imposing expectations and obligations while disregarding that child's needs and wishes.

35. The judgment is final. It was served on the applicant on 18 April 2011.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTION

36. The relevant provisions of the Polish Constitution read as follows:

Article 18

“Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.”

Article 48

“Parents shall have the right to bring up their children in accordance with their own convictions. Such an upbringing must respect the degree of maturity of a child, as well as his [her] freedom of conscience and belief and ... his [or her] convictions.

Limitation or deprivation of parental rights may be effected only in the instances specified by statute and only on the basis of a final court judgment.”

II. CRIMINAL CODE

37. The relevant provisions of the Criminal Code provide as follows:

Article 207

“1. Whoever mentally or physically mistreats a person close to him, or another person who is in a permanent or temporary state of dependence on the perpetrator, [or] a minor or a person who is vulnerable because of his mental or physical condition, shall be subject to the penalty of deprivation of liberty for a term of between three months and five years ...”

Article 76

“1. [In the event that a prisoner is released early on probation], his sentence is deemed to be spent after six months have elapsed following the termination of the probation period ...”

III. CODE OF CRIMINAL PROCEDURE

38. Article 185a of the Code of Criminal Procedure (“the CCP”), as in force at the material time, provided:

“1. In cases concerning offences described in Chapters XXV and XXVI of the Criminal Code [sexual offences and offences against morality], a victim who, at the time of the hearing, is less than 15 years old should be interviewed only once, unless there are new circumstances which need to be clarified in a separate interview or the accused was not represented by a lawyer during the first interview and so requests.

2. The interview shall be conducted at a court hearing with the participation of an expert psychologist. The prosecutor, defence lawyer and the victim's representative shall have the right to attend the interview.

3. The record of the interview shall be read out at the trial; if a video or audio recording was made, it shall be played back at the trial as well."

IV. INTERNATIONAL DOCUMENTS

39. Interim report of the UN Special Rapporteur on freedom of religion or belief of 5 August 2015 (A/70/286) provides, in so far as relevant:

"34. In practice, the right of the child to freedom of religion or belief and parental rights to provide direction to the child in that regard should be seen as largely, although not always, consonant. ... Moreover, situations may emerge in which the best interests of the child may actually require State interventions to protect him or her, for example against neglect, domestic violence or harmful practices. Intervening measures must always be carried out with empirical and normative diligence and furthermore they are connected to substantive and procedural safeguards" ...

"76. The rights of children and parental rights in the area of freedom of religion or belief, although in practice not always consonant, should generally be interpreted as being positively interrelated. They cover various spheres of life, from the child's religious initiation into the family and his or her participation in religious community life to religious instruction given in the context of school education. While State interventions may sometimes be necessary, for instance to protect the child from neglect, domestic violence or harmful practices, unjustified State interference with parental rights in the area of freedom of religion or belief will in many cases simultaneously amount to violations of the rights of the child."

THE LAW

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

40. The applicant complained that given a number of procedural defects, the criminal proceedings against him had been in breach of Article 6 § 1 of the Convention. The relevant part of Article 6 § 1 of the Convention reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

42. The applicant submitted that the domestic courts had failed to take into consideration the main issue of his case – that is to say its background. They had overlooked his assertions that A. had threatened to lodge a criminal complaint against him if he refused to consent to a divorce. That general context had not been taken into account by the courts when they had evaluated A.'s testimony. In that regard it was important to note that in the course of the divorce proceedings, A. had clearly stated that the children needed contact with their father and for that reason she had agreed to a “no-fault” divorce. In any event, for many years A. had participated in the family religious practices, playing guitar and joining in evening prayers. It was only when she had entered into another relationship that she had begun to perceive those practices as abusive in respect of the children.

43. In the applicant's view, there had been a breach of the right to a fair trial, given the numerous procedural errors committed by the domestic courts. He noted that W.M. (his wife's new partner) had not been heard by the trial court. The courts had refused to admit as evidence photographs and letters that had showed the nature of the relations between the members of the applicant's family. In addition, the statements made by the applicant's daughter, M., during the trial had been disregarded; so too had statements made by certain other witnesses who had testified in the applicant's favour. In the present case the domestic courts had failed to explain why this evidence had not been taken into account.

44. The applicant also submitted that the expert reports prepared by E.D. – on which the courts had based their decisions – had been erroneous and that that expert had been biased. On many occasions he had asked that E.D. be excluded from the proceedings, but to no avail. The statements made by E.D. had not been confirmed by any other evidence, and the courts had not appointed any other expert.

45. Lastly, the applicant stressed that he was deeply religious. He was a member of the Catholic church's Life-Light movement and the founder of a fathers' rights movement, Tato.Net. He had merely wished to bring up his children in accordance with his values and the principles of the Catholic faith. When raising his children in the spirit of the Catholic religion he had acted within the framework of his parental authority and had expressed the values in which he believed.

(b) The Government

46. The Government submitted that the proceedings in the present case had met the requirements of a fair trial. The applicant had been able to exercise his defence rights at all stages of the proceedings. The criminal proceedings against the applicant had been fair, the facts had been diligently established, and the applicant – who had been assisted by a defence lawyer – had been able to present arguments countering the charges.

47. As regards the preparatory proceedings, the authorities had conducted the investigation in accordance with the applicable procedural requirements and had clarified all the circumstances of the case. All seven witnesses called by the applicant had been questioned in the course of the investigation. Furthermore, the applicant had been informed of his rights at every stage of the proceedings and had exercised his defence rights either himself or with the assistance of his two defence lawyers. He had been given adequate and proper opportunities to challenge the evidence against him and to question the witnesses testifying in his case.

48. The domestic authorities had evaluated the evidence in accordance with the principles of the Polish criminal procedure and had taken into consideration all circumstances that were either favourable or unfavourable in respect of the applicant. The Government confirmed that several applications for fresh evidence to be admitted that had been lodged by the applicant had not been allowed. However, on all of these occasions the courts had analysed whether the applications had been sufficiently reasoned and relevant to the subject matter of the case and then had provided sufficient reasons for their decision not to allow them. In particular, the Government referred to the decisions not to admit as evidence various film recordings and photographs, not to question a witness who had been a psychologist and not to summon A.'s second husband (W.M.).

49. Furthermore, the applicant's request for the exclusion from the proceedings of the expert E.D. had been duly examined by the trial court, which had concluded that there were no grounds to exclude her, since there no information had come to light that could undermine confidence in her knowledge or impartiality. The applicant's request for a second psychological expert opinion to be ordered regarding the testimony given by his eldest daughter had been thoroughly examined by the domestic court. Although a second expert had not been appointed, the courts had agreed to ask the Polish Psychological Association whether the methods which had been used by the expert were suitable in respect of children.

50. The first-instance court had conducted a thorough, diligent and comprehensive analysis of the entire evidentiary material and had established the applicant's guilt on the basis of an objective and thorough assessment of the evidence. The appeal proceedings had been conducted with respect to the principle of equality of arms and adversarial procedure. The court of appeal had addressed all pleas made by the applicant. In view of the overall conduct

of the proceedings the Government submitted that in the determination of the criminal charge against him the applicant had had a fair hearing.

(c) Third-party interveners

(i) ADF International

51. ADF International submitted comments relating to Article 9 of the Convention and the rights of parents. The intervener noted that, according to the Court's case-law, the State was obliged to respect minority religious practices and to adopt a neutral and non-discriminatory approach towards such practices. While the right to manifest one's belief (as protected by Article 9) applied within a community setting and a public setting, it also applied, *mutatis mutandis*, to a family setting. Pluralism and religious freedom (which were at the heart of human rights in Europe) required that authorities respect religious traditions and practices, even where they might appear idiosyncratic or unusual.

52. In addition, intervention in family life constituted an interference with the rights protected by Article 8 of the Convention and should not be undertaken lightly. The sole justification for any such interference was evidence of a pressing social need in the face of weighty evidence of abuse of the rights of others. If the domestic authorities were to deem longstanding religious rituals and practices to be illegitimate when applied to children and applied criminal law against parents who brought up their children in a religiously observant environment, the safeguards of Article 9 would be eroded.

53. ADF International also referred to the findings presented in the report by the UN Special Rapporteur on Freedom of Religion or Belief dated 5 August 2015.

(ii) Ordo Iuris

54. The Ordo Iuris Institute for Legal Culture submitted that the right of parents to rear their children in accordance with their own views and convictions was specified in the Polish Constitution and in the Family and Custody Code (*Kodeks rodzinny i opiekuńczy*). That right was protected in order that parents might be able to convey to their children their own beliefs. Public authorities were required to maintain their impartiality in matters of religious and philosophical convictions. That principle also excluded a judicial assessment of the validity or appropriateness of a person's religious beliefs and practices. Moreover, Article 18 of the Constitution included a principle concerning the protection of the family that related to the support of a family by the State and constituted an interpretive context for the principle of respect for private life.

2. *The Court's assessment*

(a) General principles

55. The Court reiterates that while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence, which is primarily a matter for regulation under national law (see *Jalloh v. Germany* [GC], no. 54810/00, § 94, ECHR 2006 IX, and *De Tommaso v. Italy* [GC], no. 43395/09, § 170, ECHR 2017 (extracts)). It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair (see *Jalloh*, cited above, § 95, and *Bykov v. Russia* [GC], no. 4378/02, § 89, 10 March 2009).

56. Furthermore, the right to a fair trial cannot be seen as effective unless the requests and observations of the parties are truly “heard” – that is to say properly examined by the tribunal (see *Carmel Saliba v. Malta*, no. 4221/13, § 65, 29 November 2016, and the cases cited therein).

57. Lastly, according to the Court's established case-law – reflecting a principle linked to the proper administration of justice – judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case in question (see *Moreira Ferreira v. Portugal* (no. 2) [GC], no. 19867/12, § 84, 11 July 2017). In examining the fairness of criminal proceedings, the Court has held in particular that by ignoring a specific, pertinent and important point made by the accused, the domestic courts fall short of their obligations under Article 6 § 1 of the Convention (see *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 280, 21 April 2011).

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

58. Turning to the circumstances of the present case the Court notes that at the core of the applicant's complaints lies the issue of whether the religious practices to which he had subjected his children constituted sufficient grounds for his conviction. The question that was determined by the domestic courts was thus whether these practices amounted to “dangerous practices” (see *Vojnity v. Hungary*, no. 29617/07, §37, 12 February 2013).

59. The applicant's case was examined at two judicial instances – that is to say by the District Court and the Regional Court. Throughout the proceedings the applicant was assisted by a defence lawyer. He was able to make statements, put questions to the witnesses and adduce evidence.

60. The Court observes that in finding the applicant guilty the domestic courts established that his educational methods constituted dangerous

practices and had caused psychological harm to his children (see paragraphs 20 and 33 above). In that regard they referred to expert opinions, according to which the children suffered from disorders in the sphere of emotional and personal development, typical of victims of psychological abuse (see paragraph 26 above) and to witness statements.

61. The Court further notes that the applicant stressed that A. had lodged her request for an investigation to be instituted into the alleged psychological abuse of her three children only after seeking a divorce, to which the applicant had refused to give his consent (see paragraphs 6, 9 and 42 above). The applicant raised this argument during the proceedings before the first-instance court and repeated it during the appeal proceedings (see paragraphs 19 and 29 above). Referring to the conflict between himself and A., the applicant maintained that the allegations regarding psychological abuse had only surfaced when A. had begun her relationship with W.M. However, the Court observes that the domestic courts failed to address this allegation.

62. The Court reiterates in that regard that it is not its task to review the manner in which forensic and witness evidence is assessed by the domestic courts. Nor is it called upon to rule on the guilt or innocence of a person convicted by the domestic courts, that matter being within the jurisdiction of the domestic courts (see, *mutatis mutandis*, *Rohlena v. the Czech Republic* [GC], no. 59552/08, § 55, ECHR 2015, and *Popov v. Russia*, no. 26853/04, § 188, 13 July 2006). However, as already stated above (see paragraphs 55-57 above) it is within the Court's jurisdiction to assess whether the proceedings as a whole, including the obligation of the domestic courts to give reasons for their judgments, were in compliance with the Convention (see also *Rostomashvili v. Georgia*, no. 13185/07, § 58, 8 November 2018). It is against this background that the Court will proceed with its assessment of the applicant's complaint under Article 6 § 1 of the Convention.

63. The Court considers that this argument, raised by the applicant before the domestic courts, related to the core of the criminal case against him and called for a very specific and explicit reply. However, the domestic courts failed to make any assessment regarding that point. This issue was not addressed in any manner by the District Court. While the Regional Court responded to some specific allegations made by the applicant (as regards, for example, the failure to admit photographs and film recordings as evidence and the decision not to summon W.M.), no response was given to his principal allegation about the general context of the case and no efforts were made to analyse this issue.

64. In addition, and in this regard, the Court observes that in their decisions the courts referred to expert reports prepared by the same expert – E.D. The Court notes that the applicant at the domestic level unsuccessfully and on many occasions criticised that expert, submitting that she was biased (see paragraphs 14 and 18 above). He also repeated those arguments in the proceedings before the Court (see paragraph 44 above). The Government, for

their part, maintained that the applicant's allegations had been duly examined and rejected by the domestic courts (see paragraph 49 above). The Court is not convinced by the Government's arguments. It observes that nearly all psychological evaluations in respect of the applicant's children, were prepared by E.D. and were repeatedly challenged by the applicant. However, the domestic court simply rejected the applicant's challenge briefly noting that there were no doubts as to E.D.'s impartiality and competence. When the applicant requested a second expert opinion on M.'s testimony this request was also refused with an evidently succinct reasoning (see paragraph 18 above). The Court notes in that context that E.D. submitted her first expert report in the investigation, following the prosecutor's order (see paragraph 11) and subsequently gave evidence and assisted the court in taking evidence during the trial (see paragraphs 16 and 17 above). In particular, while the applicant's daughters were questioned at a hearing by the trial court, his youngest child, J., was interviewed in the so-called "blue room" procedure" in the presence of the very same psychologist – E.D. (see paragraph 16 above). Given all these circumstances, and in view of the fact that the applicant and his former wife remained deeply conflicted, there was a need for an increasingly careful assessment of the expert opinions which appear to have been one of the decisive elements for the conviction. Nevertheless, the domestic courts chose not to doubt the credibility of that evidence without addressing the arguments raised by the applicant.

65. Furthermore, the Court observes that the Regional Court dismissed the defence's objections and found that testimony given during the trial by M., the applicant's eldest daughter, which had portrayed the applicant in a positive light, had not been reliable. However, the domestic courts seemingly did not address the fact that following her parents' divorce M. voluntarily decided to live with the applicant and that that arrangement was accepted by the domestic courts (see paragraphs 8 and 28 above). In that regard the Court also notes that the domestic courts did not examine thoroughly any possible connections between the other witnesses and the applicant and his former wife (see paragraphs 28 and 31 above).

66. In view of the above considerations, the Court observes that the domestic courts at two levels of jurisdiction failed to give any assessment regarding the applicant's specific and important arguments and thus failed to fulfil one of the requirements of a fair hearing – namely to provide adequate reasons for their decisions. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 8, 9, 14 OF THE CONVENTION AND ARTICLE 2 OF PROTOCOL NO. 1 TO THE CONVENTION

67. The applicant also complained that his conviction for psychologically abusing his children on account of his having subjected them to allegedly excessive religious practices amounted to a separate breach of Articles 8, 9 and 14 of the Convention and also, in substance, Article 2 of Protocol No. 1 to the Convention.

68. The Court observes that at the heart of this part of the application is the manner in which the domestic courts admitted and evaluated evidence before convicting him of the psychological abuse of his children on account of his having subjected them to allegedly excessive religious practices. The Court has examined these issues above under Article 6 of the Convention and has found a violation of this provision (see paragraph 66 above). Having regard to those findings the Court considers it unnecessary to examine the same facts separately under Articles 8, 9 and 14 of the Convention and in substance, Article 2 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed 100,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. As regards pecuniary damage he claimed that he had suffered damage to his reputation and that he had consequently not been able to secure funding for the functioning of his website, tato.net. Moreover, he had been ordered to pay the costs of the proceedings in the amount of 4,940 Polish zlotys (PLN).

71. The Government contested these claims.

72. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, having regard to the parties’ submissions and its case-law on the matter it awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

73. The applicant did not make any claim for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is not necessary to examine separately the complaints under Articles 8, 9 and 14 of the Convention and, in substance, Article 2 of Protocol No. 1 to 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 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 9 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Marko Bošnjak
President