CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF SIEMIANOWSKI v. POLAND

(Application no. 45972/99)

JUDGMENT

STRASBOURG

6 September 2005

FINAL

15/02/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Siemianowski v. Poland,

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

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Mr L. GARLICKI,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 5 July 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 45972/99) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Andrzej Siemianowski ("the applicant"), on 29 March 1995.

2. The applicant, who had been granted legal aid, was represented by Ms Ewa Strzelczyk, a lawyer practising in Toruń. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and subsequently by Mr J. Wołąsiewicz, of the Ministry of Foreign Affairs.

3. The applicant complained, in particular, about the ineffectiveness and length of the proceedings to enforce his right of access to his daughter, determined by judicial orders.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 3 July 2003 the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. On 28 May 1992 the applicant divorced. The court declared that both spouses should retain full and unrestricted parental rights with respect to their minor daughter M., born on 3 May 1984, but it ordered that she should live with her mother.

A. First set of access proceedings

10. Since the applicant could not reach an agreement with his former wife as to the exercise of custody, on 24 November 1992 he requested the Toruń District Court to determine the access arrangements. On 11 May 1993 the court ordered that M. should visit the applicant twice a month for weekends. They were also to spend one month together during the summer holidays and one week during the winter holidays.

11. In the meantime, between June 1992 and 23 October 1993, the applicant made a number of unsuccessful attempts to see his child. The applicant therefore instituted enforcement proceedings on 8 June 1993, following the decision of 11 May 1993. On 18 October 1993 the Toruń District Court ordered the mother to give the applicant access to M. on pain of a fine. On 7 January 1994 the court imposed on the mother a fine for non-compliance with its order in the amount of 100,000 (old) złotys. [1]

B. Second set of access proceedings

12. On 8 February 1994 the Toruń District Court, upon the applicant's request, changed the access arrangements. The court ruled that the applicant should be allowed to take M. from her place of residence on every first and every third Friday of the month, as from 6.30 p.m., and bring her back on Sunday before 7.30 p.m. The court further set out detailed rules as to holidays, with reference to exact dates.

13. Following these detailed arrangements, the applicant made further attempts to see M., but again to no avail. According to the applicant, every time he went to fetch his daughter at the appointed hour, either no one answered the door bell or he was informed that his daughter was out, busy, sleeping or not willing to see him. The applicant complained to various authorities, including the Toruń Commission for the Protection of the Rights of the Child, and the Ombudsman, but was informed that only the courts had the power to enforce a judicial decision in respect of access to a child.

[1] The equivalent of 10 new PLN, i.e. EUR 2,5 at present.

C. Enforcement proceedings in respect of the decision of 8 February 1994

1. First set of enforcement proceedings

14. On 6 May 1994 the applicant instituted enforcement proceedings in respect of the decision of 8 February 1994. Hearings were held in these proceedings on 15 and 30 June, 11 July and 18 August 1994. At the hearing of 18 August the court gave an order by which M.'s mother was obliged, on pain of a fine, to grant the applicant access to the child. On 15 September 1994 she appealed, arguing that she had never impeded the applicant's access to his daughter.

15. On 28 October 1994 her appeal was dismissed. On 17 November 1994 the applicant called on her to comply with the court's decision.

16. On 5 December 1994 the applicant requested the court to impose a fine on his ex-wife for non-compliance with the access decision.

17. On 18 January 1995 a hearing was held at which the applicant maintained his motion of 5 December 1994. The child's mother requested the court to adjourn the decision pending the termination of the proceedings concerning access. On 19 January 1995 the court imposed on her a fine of PLN 10 and ordered her to give the applicant access to his daughter within one week, on pain of a further fine. On 8 March 1995 the applicant requested the court to impose another fine on his former wife.

18. On 15 May 1995 a hearing was held, which the mother failed to attend. Her lawyer asked the court to stay the proceedings, submitting that their result hinged on the outcome of the pending access proceedings, which the parties had meanwhile instituted on 29 October 1994 (paragraph 33 below). The court adjourned the hearing. At the next hearing held on 29 May 1995, the child's mother declared that the child had refused to have contact with her father. She requested the court to call witnesses. The court dismissed her request, considering that this was irrelevant to the proceedings at hand and scheduled the adoption of a decision for 31 May 1995. The hearing to be held on that date was adjourned, as on 30 May 1995 the applicant had submitted a letter from M. as evidence. On 16 June 1995 a hearing was held. The court imposed on the mother a fine of an unspecified amount and ordered her to give the applicant access to his daughter in accordance with the access arrangements.

2. Second set of enforcement proceedings

19. On 17 July 1995 the applicant lodged a new motion with the Toruń District Court for the enforcement of the decision of 8 February 1994, requesting that the mother be called upon to comply with the decision within a week on pain of a fine and that, in case of non-compliance, a further fine be imposed on her. As the applicant failed to pay the court fee, the court refused to deal with the motion. The fee having subsequently been

paid, a hearing was scheduled for 27 September 1995. It was adjourned as the child's mother failed to attend.

20. The next hearing was held on 3 October 1995. M.'s mother declared that her daughter kept refusing to see the applicant. On 13 October 1995 the court imposed a fine of 20 new Polish zlotys on her and ordered her to comply with the access order.

3. Third set of enforcement proceedings

21. On 22 November 1995 the applicant again requested that enforcement proceedings be instituted.

22. A hearing scheduled for 26 April 1996 was adjourned until 10 May 1996 at the applicant's request. In her pleadings of 9 May 1996, M.'s mother requested the court to dismiss the enforcement motion and to question four witnesses. On 10 May 1996 a hearing was held. The applicant requested the court to adjourn it so that he could comment on these pleadings. The court allowed his request.

23. On 25 May 1996 the applicant submitted his comments. At a hearing on 29 May 1996, the court obliged the applicant's former wife to reply to his arguments within ten days. At a hearing held on 21 June 1996, she asked the court to stay the proceedings until completion of the pending proceedings concerning the new determination of the access rights.

24. In pleadings submitted on 6 September 1996 the ex-wife requested that an expert opinion prepared in the proceedings concerning the access rights, from which it was deduced that the applicant's daughter should not be compelled to have contact with her father, be included in the case file.

25. On 24 October 1996 a hearing was scheduled for 15 November 1996. At this hearing the child's mother renewed her request for an adjournment until the proceedings concerning the custody rights were completed.

26. On 25 November 1996 she requested the court to question two other witnesses in respect of the child's attitude towards the applicant. A hearing scheduled for 13 December 1996 was adjourned upon the applicant's request until 8 January 1997. The hearings to be held on 8 January, 29 January and 14 February 1997 were adjourned on the ground that the proceedings concerning the access rights were still pending.

27. At a hearing on 14 March 1997, the court decided to take evidence by questioning the parties. By a decision of 20 March 1997, the court imposed a fine in the amount of PLN 400 on the applicant's former wife and ordered her to give the applicant, within a week, access to his daughter. She appealed, arguing that she was not responsible for the lack of contacts between the applicant and his daughter. It was M. who was reluctant to see her father. Taking into consideration the fact that the girl had reached the age of 13, the contacts were no longer dependent solely on her mother's will.

28. On 12 June 1997 the Toruń Regional Court allowed the appeal, quashed the decision of 20 March 1997 and dismissed the applicant's request, considering that, since the daughter had turned thirteen, contacts with her were no longer dependent solely on her mother's will. The evidence available to the court did not allow the conclusion that it was the applicant's former wife impeding those contacts. The provisions of Article 1050 of the Civil Procedure Code, concerning the enforcement of non-pecuniary obligations, did not oblige a mother to take steps to change her child's attitude to the father.

4. Fourth set of enforcement proceedings

29. On 16 January 1998 the applicant requested the Toruń District Court to institute a further set of enforcement proceedings. On 18 March 1998 the court held a hearing. M.'s mother failed to comply with the summons and a fine was imposed on her for her unjustified absence.

30. At a hearing held on 15 April 1998 the court questioned the parties. M.'s mother said that she had complied with the access decision at the beginning, but later M. had started to refuse to see the applicant. The court admitted evidence from the files of the other judicial proceedings between the parties.

31. On 21 April 1998 the court ordered the applicant's former wife to give the applicant access to his daughter on pain of a fine of PLN 500. She appealed, arguing that the applicant's access to his daughter did not depend solely on her will, taking into account that the child was fourteen years' old.

32. On 28 July 1998 the Toruń Regional Court allowed her appeal and dismissed the applicant's motion to have the enforcement proceedings instituted, on the same grounds as the decision of 12 June 1997 (paragraph 28 above). The court further noted that the applicant was not prevented from persuading his daughter, who had other interests than spending time with her father, to see him.

D. Third set of access proceedings

33. On 29 October 1994 both the applicant and his former wife requested the Toruń District Court to alter the access arrangements as determined in the decision of 8 February 1994. In these proceedings the court requested a report from an expert in psychology. The expert, having met both parents, the daughter and her school teacher, delivered an initial psychological report on 9 April 1996 and a supplementary report on 16 October 1996. The expert concluded that M. had emotional ties with both parents and that it was in her best interests to continue living with her mother and to maintain regular and undisturbed contacts with the applicant.

34. The expert found that M. was not afraid of the applicant but that she was stressed by the fact that any encounter between her mother, her mother's new partner and the applicant might give rise to a quarrel. Having

regard to the applicant's former wife's hostility to the applicant's contacts with M., the expert recommended that the enforcement of the access rights be supervised by a court officer.

35. On 20 March 1997 the Toruń District Court, having regard to the expert's conclusions, dismissed the motions for a change of the access arrangements. As a result, the decision of 8 February 1994 remained in force. Moreover, the court appointed an officer to supervise the exercise of custody rights by the mother.

E. Enforcement proceedings after 20 March 1997

36. On 17 November 1997 the applicant instituted enforcement proceedings. However, the court informed him that his motion was inadmissible since the mother's conduct was to be supervised by a court officer appointed under that decision.

37. In 1998 he again instituted enforcement proceedings and, on 21 April 1998, the Toruń District Court imposed on the mother a fine of PLN 500. She successfully appealed, the Toruń Regional Court allowing her appeal on 28 July 1998, again referring to M.'s age and finding that the contacts between M. and the applicant no longer depended on the mother's will.

38. From May 1997 onwards, the applicant considered that all his requests to impose further fines on his former wife were bound to fail, either in the first instance or upon the mother's appeal, for the same reasons on which the courts relied in their earlier decisions - M. being over 13 years old. Nevertheless, finding it impossible to enforce his right of effective access to his child, the applicant unsuccessfully filed a number of further motions with the court.

F. Reports of the court supervision officer

39. On 20 March 1997 the court appointed an officer to supervise the exercise of custody rights by the mother (paragraph 35 above). Both the applicant and M.'s mother appealed, to no avail.

40. On 10 November and 1 December 1997 the supervision officer submitted reports to the court.

41. On 3 January 1998 the officer accompanied the applicant to M.'s apartment. She refused to go for a walk with him. The officer talked with her for 25 minutes, but the girl refused to go out.

42. On 22 January, 9 March, 9 May and 9 August 1998, the supervision officer submitted reports to the court. In an undated report submitted on 22 January 1998, it was stated that M. lived with her mother, her husband and her half-sister, had her own room and good living conditions. It was further stated that the applicant kept coming to see M. at times determined in the access order, but that the contacts were limited to brief conversations

through the entry-phone. When asked why she did not want to see her father, M. had been evasive. Her mother had said that she had nothing against M.'s contacts with her father, but that she would not force her to see him.

43. In a report of 23 January 1998, the supervision officer reported that, during the visit to be held on the first Saturday of that month, M. refused to see her father when he came to see her. She failed to explain why. Her mother reiterated that she would not force the child to see the applicant. The officer further remarked that the attitude of the mother was inflexible.

44. In a report dated 9 May 1998, the supervision officer stated that M.'s mother and her husband had declared that they had not been preventing M. from seeing her father, but that they would not oblige her to do so, given that she herself was reluctant.

45. On 8 September 1998 the officer held a meeting in which the applicant, his daughter and her mother participated. The girl said that she wished to maintain contact with the applicant, but did not want to visit him at his home. The supervision officer reported to the court that the applicant had reacted violently to this, and that the child seemed to be afraid of him.

46. In a report of 10 November 1998 it was stated that the applicant was coming to see M. twice a month, but that the child did not want to see him. Her mother did not oppose her seeing her father. It was further remarked that M. had become mature enough to see or visit her father alone, had she wished to do so.

47. On 1 December 1998 another supervision officer, Ms M.S., was appointed. On 15 December 1998 she submitted her first report to the court on the conditions of the child's upbringing. On 5 March 1999 she accompanied the applicant to the block of flats where his daughter lived. Initially the child refused to come down to see the applicant, but eventually she agreed and they talked for twenty minutes. On 15 March and 15 June 1999 the officer submitted further reports to the court.

48. On 15 October 1999 a new supervision officer, Mr J.S., submitted his report to the court. Further reports were submitted on 30 January, 30 April, 30 July and 30 October 2000.

49. On 5 December 2000 Ms R.S., the first supervision officer, was re-appointed to the applicant's case. On 2 February 2001 she went to M.'s apartment, but there was nobody at home. On 31 March 2001 she again visited the family. M. was not at home at that time. Her mother and her stepfather were verbally aggressive towards the officer, refused to co-operate and ordered her to leave the flat. Subsequently, the officer summoned M.'s mother for a meeting on 20 April 2001 and criticised her conduct during that incident. On 31 June 2001 the officer submitted a further report on the child. On 20 July, 19 August and 6 September 2001, she visited M. and submitted a report on 31 September 2001.

50. In a report to the court, dated 31 June 2001, it was stated that the supervision officer had established that the applicant was coming to see M.

regularly twice a month. The form of the contacts had not changed, i.e. they talked on the staircase.

51. On 31 December 2001 the court officer submitted a further report, in which she stated that she had suggested that the applicant and M. go out together, but that he was reluctant, considering that this would be humiliating for him.

52. A further statement as to the child's unwillingness to see the applicant was made in a report of 21 March 2002.

53. On 14 May 2002 the Toruń District Court discontinued the enforcement proceedings in view of the fact that the applicant's daughter had reached majority.

G. The applicant's contacts with M

54. On 8 June 1993 the applicant informed the Toruń District Court that between 1 November 1992 and 7 June 1993 he had spent eleven days with his daughter and that he had also recently started meeting her during the school breaks. On 18 October 1993 the applicant admitted before the court that he had been meeting his daughter twice a week at school. During Christmas 1993 M. stayed with the applicant for two hours.

55. In January 1994 the applicant met M. twice during the weekends. She also visited the applicant in his apartment on 18 February 1994 and on the first weekend of March. On 18 March 1994 the applicant could not see M. because she was ill. They spent the second day of Easter together. On 3 and 18 May 1994 M. was ill and could not see the applicant. She informed the applicant thereof by a letter of 18 May. The applicant visited her in her apartment on the first weekend of June. Before the applicant's visits planned for 2 and 16 August 1994, M.'s mother informed the applicant that the girl did not wish to see him. Later on, in September, M. informed the applicant that she would not visit him on the first Friday in September. Likewise, on 7 and 21 October 1994 she refused to go with him to his apartment.

56. During Christmas 1995 M. spent two hours with the applicant.

57. On 19 April and 3 May 1996 M. refused to speak to the applicant, who was waiting for her at the entrance to her block of flats. Later on, the applicant met M. on 4, 18 and 20 September. On 6 and 22 November 1996 M. opened the door when the applicant came to see her, but refused to go out with him.

58. Apparently throughout this time the applicant was coming to the applicant's school to see her and talk to her either during the breaks or in front of the school, after she finished her lessons. During a court hearing held on 14 March 1997, the applicant declared that he had stopped doing so, as this was making M. nervous.

59. When the applicant came to see M. on 3 January 1997, she was not at home. On 17 January, 21 February and 7 March 1997 M. did not want to talk to the applicant as she was doing something else at that time. On

21 March, 18 July, 13 and 17 October 1997 the applicant and M. met and talked briefly, for several minutes, in front of the door to the apartment where M. lived. On these occasions M. was unwilling to have longer conversations with the applicant, saying that she was busy. On 18 April, 16 May, 18 July, 5 September and 5 December 1997, M. also refused to see the applicant, referring to other things she preferred or was obliged to do. On 1 August 1997 M. refused to spend holidays with the applicant. On 7 November 1997 M. and the applicant had a conversation for half an hour, at the entrance to M.'s block of flats. On 21 November 1997 when the applicant came to see her, she was not at home. On 19 December 1997 M. could not leave the apartment to talk to the applicant on the staircase, as she was taking care of her younger sister.

60. On 2 January 1998 M. refused to see the applicant when he came as she was seeing a friend. On 3 January 1998, she also refused to see him as she was busy doing something else. On 16 January 1998 the applicant and M. talked briefly on the staircase of her block of flats. She refused to see him the following weekend. On 6 February 1998 they met again in the yard of the block and talked briefly. On 20 February 1998 M. refused to leave the apartment to see the applicant, because she was busy. On 6 and 20 March and 3 April 1998, she was not at home when he came to see her. At a hearing held before the court on 15 April 1998, the applicant acknowledged that he had met M. three times at school during that year. On 14 May 1998 the applicant gave M. the maintenance payment due for this month. On 15 May they talked for fifteen minutes. On 5 June 1998 when the applicant came to see M. she was not at home. On 19 June 1998 M., the applicant and the court officer talked for several minutes at the entrance to M.'s block of flats. On 8 September 1998 the applicant talked to M. at a meeting organised by the supervisory officer.

61. On 5 March 1999 the applicant and the supervision officer met M. at the entrance to the block of flats. M. left them after few minutes. From March to June 1999 the applicant met M. once. On 17 September 1999 the applicant and M. talked for twenty minutes.

62. On the first Friday of January 2000, the applicant and M. met for several minutes. On 24 July 2000 the applicant met M. walking down the street and they talked for fifteen minutes.

63. On 31 September 2001 M. told the supervision officer that she was normally seeing the applicant twice a month.

64. On 17 January, 1 February, and 1 and 15 March 2002, the applicant and M. talked on the staircase, in front of her apartment.

II. RELEVANT DOMESTIC LAW

65. Article 58 § 1 of the Family and Custody Code *(Kodeks Rodzinny i Opiekuńczy)* provides:

> "In a decision on divorce, the court is competent to issue orders concerning the manner in which the care of the parties' minor children should be carried out (...). The court may grant custody rights to one parent and limit the custody rights of the other."

66. Article 557 of the Code of Civil Procedure *(Kodeks Postępowania Cywilnego)* provides:

> "The custody court can change its decision if the best interests of the person concerned so require. "

67. According to the Supreme Court's resolution, if a parent called upon by a court decision to respect the other parent's access rights refuses to comply therewith, that decision is liable to enforcement proceedings. The provisions of the Code of Civil Procedure on the enforcement of non-pecuniary obligations are applicable to the enforcement of court decisions on parental rights or access rights (resolution of the Supreme Court of 30 January 1976, III CZP 94/75, OSNCP 1976 7-8).

68. Article 1050 of the Code of Civil Procedure provides:

> "1. If the debtor is obliged to take measures which cannot be taken by any other person, the court in whose district the enforcement proceedings were instituted, on a motion of a creditor and after hearing the parties, should fix the time-limit within which the debtor shall comply with his [her] obligation, on pain of a fine (...).
>
> 2. If the debtor fails to comply with this obligation, further time-limits may be fixed and further fines may be imposed by the court."

69. If the court obliges a parent who has been exercising custody rights to ensure access to a child for the other parent, Article 1050 of the Code of Civil Procedure is applicable to the enforcement of this obligation.

70. The maximum fine which can be imposed in one decision is set by the Code of Civil Procedure; this figure has changed several times within the relevant period because of inflation and monetary reform. Following the amendment which entered into force on 30 April 1996, the courts are not bound by any limit if three previous fines have proved ineffective.

THE LAW

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

71. The applicant complained that the proceedings had been excessively lengthy. The Court examined this part of the application under Article 6 § 1 of the Convention which reads, in so far as relevant, as follows:

> "In the determination of his civil rights ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal established by law. ..."

72. The Government submitted that the proceedings had not been unreasonably lengthy, bearing in mind the complexity of the case and the

conduct of both the applicant and the relevant authorities. The complexity originated from the delicate nature of the issues involved. The parties significantly differed in their submissions, which necessitated the taking of extensive evidence. The conduct of the enforcement proceedings was rendered difficult by the parallel proceedings on the merits of the access issue. The Government further contended that the applicant himself had been partly responsible for the delay, because twice in the enforcement proceedings he had submitted requests to examine fresh evidence after the hearing had already been closed.

73. The applicant disagreed with these submissions.

74. The Court considers that the enforcement proceedings must be regarded as the second stage of the access proceedings (see, for instance, the *Di Pede v. Italy* judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1384, § 24).

75. The Court observes that the first set of access proceedings commenced on 24 November 1992, while the enforcement proceedings in respect of the decision of 11 May 1993 given in these proceedings came to an end on 18 October 1993. Another set of the enforcement proceedings concerning the same decision came to end on 7 January 1994. These proceedings have therefore lasted one year and a month for one level of jurisdiction.

76. The Court further observes that in the second set of access proceedings the Toruń District Court gave a decision on the merits on 8 February 1994. Subsequently, on 6 May 1994 the applicant requested that enforcement proceedings in respect of this decision be instituted. He subsequently instituted three other identical proceedings in respect of the same decision. They ended on 28 July 1998. These proceedings have therefore lasted over four years and five months for two levels of jurisdiction.

77. As regards a third set of access proceedings, they started on 29 October 1994. The court gave a decision on the merits on 20 March 1997. Eventually the enforcement proceedings in respect of this decision were discontinued on 14 May 2002. The overall length of these proceedings was therefore over seven years and six months for two levels of jurisdiction.

78. The reasonableness of the length of proceedings is to be considered in the light of the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and that of the relevant authorities. On the latter point, the importance of what is at stake for the applicant in the litigation has to be taken into account. It is thus essential that child custody cases be dealt with speedily (*Nuutinen v. Finland*, no. 32842/96, p. 78, § 110, ECHR 2000-VIII), although a delay at some stage may be tolerated if the overall duration of the proceedings cannot be deemed excessive (see, for example, *Pretto and Others v. Italy,* judgment of 8 December 1983, Series A no. 71, p. 16, § 37).

79. The Court accepts that the present case, although not particularly complex at the outset, became increasingly complicated due to the

difficulties encountered at the enforcement stage. However, these difficulties did not arise out of the inherently complex character of the legal issues involved in the case, but from the passage of time.

80. As to the first access proceedings of over a year, the Court considers that they were not unduly long. There has accordingly been no violation of the Convention in this respect.

81. Turning to the second set of the access proceedings of over four years and five months, the Court notes that they were instituted in respect of the decision of 8 February 1994. The Court further notes that the third set of enforcement proceedings was initiated on 22 November 1995, but the first hearing in the matter was not to be held before 26 April 1996. Subsequently, after a hearing held on 21 June 1996, there was a period of inactivity during which the applicant's former wife submitted a number of pleadings, but no steps were taken by the domestic court. The Court observes that hearings scheduled for 8 January, 29 January and 14 February 1994 were adjourned pending the renewed determination of the merits of the access case.

82. However, the Court is of the view that the decisions to adjourn the enforcement proceedings on this ground are open to criticism, given that they only concerned the effective execution of the access decision of 8 February 1994, which remained valid throughout that time. The fact that new proceedings concerning access arrangements had been instituted did not have any incidence on the validity of this decision. Consequently, there was no convincing justification for the successive adjournments of the enforcement proceedings. On the whole, the Court considers that such a long period in which there was no progress in the case must be regarded as being remarkably long for enforcement proceedings of this kind.

83. As to the third set of the proceedings, they were instituted on 29 October 1994. On an unspecified later date a psychology expert was appointed to prepare a report on the case. The preparation of this report was, in the Court's view, lengthy, as the final version was submitted to the court on 16 October 1996.

84. As for the conduct of the applicant in the second and third set of proceedings, the Court sees no indication that he contributed to their length.

85. In the light of the criteria laid down in its case-law and having regard to the particular circumstances of the case, the Court therefore concludes that the overall length of the second and third set of proceedings exceeded a "reasonable time". Accordingly, there has been a violation of Article 6 § 1 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

86. The applicant complained that the Polish authorities had failed to take effective steps to enforce his right of contacts with his daughter. He

alleged a violation of Article 8 of the Convention, which provides insofar as relevant:

> "1. Everyone has the right to respect for his private and family life, ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of the rights and freedoms of others."

A. The submissions of the parties

87. The Government submitted that, since the applicant had actually managed to see his daughter on numerous occasions, he was not denied access to her. In particular, the applicant had met his daughter between 23 and 25 April 1993 and between 1 November 1992 and 7 June 1993. He also saw her on several occasions in 2001. Those meetings took place either at his daughter's elementary school or in front of the block of flats where she lived.

88. The Government emphasised that the supervisory officers were active in the case. From 10 November 1997 to 31 March 2002 they regularly met the applicant's daughter and her parents and submitted 17 reports to the court. In addition, one officer organised a joint meeting of the applicant, his daughter and his former wife to discuss the situation (paragraph 45 above). The officer accompanied the applicant twice to meet his daughter and, when the child refused to see him, she went upstairs to persuade the child to meet her father (paragraphs 41 and 47). On the whole, the court officers took all available steps to change the daughter's reluctant attitude to meeting her father. If the applicant considered their handling of the case insufficient, he could have informed the court thereof.

89. The Government emphasised that the right to maintain personal relations and direct contact with both parents on a regular basis is, first and foremost, a right of a child and not of her/his parents. The parents' right of access to their children are protected but should not be given priority over a child's best interests. Under Article 8 of the Convention a balance should be struck between the interests of all members of the family and, when those interests are at variance, the interests of the child should prevail. Legal regulations, and in particular law enforcement procedures, should not bring about results contrary to the child's best interest. The Government were of the opinion that in the present case the interests and rights of the child might have been violated if the father's access to his daughter had been enforced by more coercive measures than those actually applied.

90. The Government further noted that on numerous occasions the applicant's daughter had refused to see him. In this connection, the Government drew the Court's attention to the expert opinion that the child had had ambivalent feelings about her father. This was also confirmed by the reports of the supervisory officers. As was observed in the officer's

report of 10 November 1997, the girl was mature and independent enough to visit her father after school if she wished. The fact that the applicant, when seeing his daughter, frequently talked about the family's problems, the judicial proceedings concerning access, and had often spoken ill of her mother, had certainly contributed to the child's reluctance.

91. The Government concluded that there was no violation of the applicant's right to family life, as the applicant was not entirely deprived of the possibility of seeing his daughter.

92. The applicant did not contest the fact that throughout the period concerned he had managed to see his daughter from time to time. These meetings were not, contrary to the Government's submissions, in the execution of the court orders on access. These were isolated incidents when the applicant managed to see M. at school, during breaks between classes or in front of the block of flats where she lived, or on the staircase in front of the door to the apartment where she lived with her mother.

93. The applicant emphasised that such furtive contacts were not of the kind to which he was entitled under the access orders. Seeing his daughter in a crowd of other children, clandestinely and in a rush, could not and did not really contribute to the applicant's maintaining family ties with his daughter. As a result, emotional ties between the applicant loosened and he became in fact excluded from the process of bringing up his child.

94. As to the measures taken by the court officers, appointed by the court order of 20 March 1987, the applicant stressed that they had limited their activities to visiting the mother's apartment and talking to her and to M. They did not, however, contact the applicant on a regular basis and did not co-operate with him in a manner which would have made it possible to react adequately to the mother's attempts to prevent the applicant from seeing M. The reports they submitted to the court should have alerted the court to the fact that the access orders were not complied with. The court should have undertaken steps which would have changed the mother's attitude. The court officers often communicated only with the mother and reported to the court about the child's alleged unwillingness to see the applicant. They failed, however, to take the matter further, to verify the information concerning the child's alleged unwillingness to see the applicant and to consult with him with a view to facilitating his contacts with the child.

95. The applicant submits that the court officers, despite the Government's submissions to the contrary (paragraphs 45 and 89 above) had never organised a meeting in which the mother, the applicant himself and the child had participated.

96. On the whole, the applicant was of the view that the supervisory officers failed to guarantee the applicant his right to see his daughter in conditions specified in the access orders. They had also failed in their duty to inform the court of the necessity of taking further steps in order to make the child's mother more co-operative in the enforcement of the access decisions.

B. The Court's assessment

1. The applicable principles

97. The Court recalls that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, even if the relationship between the parents has broken down, (see, amongst others, the *Johansen v. Norway* judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, pp. 1001-1002, § 52, and *Elsholz v. Germany* [GC], no. 25735/94, § 43, ECHR 2000-VIII). The essential object of Article 8 is to protect the individual against arbitrary action by the public authorities. There may in addition be positive obligations inherent in effective "respect" for family life.

However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole (see *Ahmut v. the Netherlands*, judgment of 28 November 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2031, § 63).

98. In its case-law the Court has consistently held that Article 8 includes a right for the parent to have measures taken with a view to his or her being reunited with the child and an obligation for the national authorities to take such action. However, the national authorities' obligation to take measures to facilitate reunion is not absolute, since the reunion of a parent with children who have lived for some time with the other parent may not be able to take place immediately and may require preparatory measures to be taken. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and co-operation of all concerned are always an important ingredient. Whilst national authorities must do their utmost to facilitate such co-operation, any obligation to apply coercion in this area must be limited, since the interests as well as the rights and freedoms of all concerned must be taken into account and, more particularly, the best interests of the child and his or her rights under Article 8 of the Convention. Where contacts with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them, having regard to the general interest in ensuring respect for the rule of law (see *Hokkanen,* cited above, p. 22, § 58; *Ignaccolo-Zenide v. Romania*, no. 31679/96, p. 265, § 94, ECHR 2000-I; *Nuutinen v. Finland*, no. 32842/96, § 129, ECHR 2000-VIII).

99. The Court, therefore, has to ascertain whether the national authorities took all necessary steps to facilitate execution as could reasonably be demanded in the special circumstances of the case (see

Hokkanen, cited above, § 58; *Ignaccolo-Zenide*, cited above, § 96; *Nuutinen v. Finland*, cited above, § 128).

100. In this connection, the Court reiterates that, in a case like the present one, the adequacy of a measure is to be judged by the swiftness of its implementation. Proceedings relating to the granting of parental responsibility, including execution of the decision delivered at the end of them, require urgent handling as the passage of time can have irremediable consequences for relations between the children and the parent who does not live with them (see *Ignaccolo-Zenide,* cited above, p. 267, § 102).

2. Application of the above principles to the circumstances of the case

101. The Court first observes that it is true that the measures undertaken by the authorities in order to make M.'s mother comply with the access arrangements, as determined by the court orders, were not particularly effective. In this connection the Court makes reference to the fact that very often the applicant saw his daughter furtively, either at school or outside her apartment, on the staircase or in the yard.

102. The Court also notes that the four sets of proceedings conducted in respect of the decision of 8 February 1994 were in breach of the requirements of Article 6 of the Convention (see paragraph 85 above).

103. However, the Court emphasises that in all access proceedings due regard had to be had to the child's best interests. In the present case the courts examining the applicant's request for enforcement of the original access decisions, took steps to assess what measures, in the circumstances of the case and in the light of changes which might have resulted from the passage of time, were appropriate (paragraphs 33-35 above).

104. The Court appreciates that the courts took measures designed to make the mother respect the access arrangements. Firstly, additional orders were given in order to make M.'s mother comply with the access orders on pain of a fine (paragraphs 14, 17, 19 and 31 above). It is noted that the applicant's requests to impose fines on her were granted.

105. The Court further observes that on 20 March 1997 the court appointed a court officer to supervise the exercise of the parental authority by the child's mother on an ongoing basis. The supervision exercised by the successive officers remained in force until 14 May 2002 when M. reached the age of majority. The supervisory officers regularly submitted their reports to the court and kept it informed about developments (paragraph 88 above). The Court is of the view that nothing indicates that the supervisory officers were negligent in their duties.

106. The Court notes that on 8 September 1998 the supervisory officer organised a meeting in which M. and both her parents participated (paragraph 45 above). Further, the officers kept in touch with M. and repeatedly talked to her about her relationship with her father, trying to persuade her to see his point of view. The court officers maintained regular

contacts with M.'s mother. Efforts were also made to convince her to be more co-operative.

107. The Court observes that, as time went by, M. matured and was able to take her own decisions in respect of her contacts with her father. It is noted that the domestic authorities were also aware of the fact that the nature of the applicant's contacts with M. became increasingly dependent not only on the attitude of her mother, but also on the child's own wishes (paragraph 28 above). The Court does not find this consideration arbitrary or inappropriate; neither does it consider that it was relied on by the authorities in such a way as to negate his access rights.

108. The Court is aware that the arrangements in the access orders were not fully respected, except as regards the fortnightly visits. However, the Court stresses that throughout the period under examination the applicant did not lose all access to the child. He kept visiting her until she reached the age of majority. Thus, the emotional ties were not destroyed.

109. In the light of the above considerations, the Court finds that there has been no violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

110. 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

111. The applicant sought compensation for pecuniary and non-pecuniary damage which he claimed to have suffered in the total amount of PLN 75,000 (around 18,285 euros [EUR]).

112. The Government submitted that this claim was excessive. They requested the Court to make a finding that a violation of the Convention constituted sufficient just satisfaction.

113. The Court finds that no pecuniary damage has been shown. However, it considers, in the circumstances, that the applicant must have suffered feelings of frustration which cannot be compensated solely by the finding of a violation. Making an assessment on an equitable basis, as required by Article 41, the Court awards the applicant EUR 2000 in respect of non-pecuniary damage.

B. Costs and expenses

114. The applicant claimed EUR 1,288 in reimbursement for the costs he had borne in the domestic proceedings.

115. The Government submitted, firstly, that the costs claimed by the applicant were irrelevant for the case at hand. They further invited the Court to make an award, if any, only in so far as the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum. They relied on the *Zimmerman and Steiner v. Switzerland* judgment of 13 July 1983 (Series A no. 66, p. 36, § 6).

116. According to the Court's case-law, domestic costs will only be awarded if they were incurred in seeking to prevent or rectify the violation of the Convention which has been established by the Court (*Venema v the Netherlands*, no. 35731/97, §117, ECHR 2002-X). In this respect the Court recalls that it has only found a breach of the reasonable time requirement of Article 6 § 1 of the Convention. Whilst it is true that protracted proceedings will involve greater expense for the litigant, this would not explain all the expenses incurred. Making an assessment on an equitable basis, the Court awards the applicant EUR 500 under this head

C. Default interest

117. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been no violation of Article 6 § 1 of the Convention in respect of the first set of enforcement proceedings;

2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention in respect of the second and third sets of enforcement proceedings;

3. *Holds* by 6 votes to 1 that there has been no violation of Article 8 of the Convention;

4. *Holds* unanimously

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State on the date of settlement:

   (i) EUR 2000 (two thousand euros) in respect of non-pecuniary damage;

   (ii) EUR 500 (five hundred euros) in respect of costs and expenses;

   (iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 6 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Section Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the statement of dissent of Mr Popović is annexed to this judgment.

J.-P.C.
S.N.

STATEMENT OF DISSENT BY JUDGE POPOVIĆ

I am unable to follow the finding of the majority that there has been no violation of Article 8 of the Convention.