

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

FIRST SECTION

CASE OF BELUCH v. POLAND

(Application no. 4065/21)

JUDGMENT

STRASBOURG

28 September 2023

This judgment is final but it may be subject to editorial revision.



In the case of Beluch v. Poland,

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

Ivana Jelić, *President*,
Krzysztof Wojtyczek,
Erik Wennerström*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 4065/21) 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") on 23 December 2020 by a Polish national, Mr Piotr Beluch, born in 1968 and living in Kraków ("the applicant") who was represented by Mr M. Warcholik, a lawyer practising in Kraków;

the decision to give notice of the application to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak of the Ministry of Foreign Affairs;

the parties' observations;

the comments submitted by the Association "Eurydyka" which was granted leave to intervene by the President of the Section;

Having deliberated in private on 5 September 2023,

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

SUBJECT MATTER OF THE CASE

1. The present application concerns enforcement of the applicant's contact rights in respect of his daughter X, born in January 2010.

2. The applicant, together with his son from a previous relationship, had lived with X's mother, M.M., for more than five years prior to X's birth. He left M.M. soon after X was born, in March 2010.

I. CONTACT ARRANGEMENTS

3. In April 2010 M.M. requested the Kraków District Court to entrust her with sole custody of X and to limit the applicant's parental authority.

4. On 10 September 2010 her requests were granted. The applicant's parental authority was limited to share in deciding, in particular, about the child's place of residence, medical treatment and choice of school, nursery and kindergarten.

5. In the meantime, in May 2010, the applicant requested that the District Court regulate his contact with X, due to M.M.'s refusal to let him be involved in the child's life.

6. In December 2014 the District Court issued a decision which was subsequently amended by the Kraków Regional Court on 28 April 2015. The

court granted the applicant contact with X for two hours on indicated days, without M.M.'s presence and away from the child's place of residence. He could also take X from her place of residence every second weekend, with a guardian appointed to protect X's interests present, and spend 3 weeks of the summer holiday with her as well as certain days at Christmas and Easter

7. The applicant had irregular contacts with his daughter, mainly at the kindergarten. On contact days, X refused to go with the applicant because, apparently, she was not emotionally prepared for the visits.

8. From 8 September 2015 onwards, additional guardian supervision was implemented but, despite all efforts, the guardian also failed to persuade X to go to the contact meetings with the applicant.

9. In July 2015 M.M. requested that the District Court alter the contact arrangements. On 22 December 2015 the court issued an interim measure for the duration of the proceedings, removing contact during weekends between the applicant and X. The applicant appealed and, on 7 March 2016, the Kraków Regional Court dismissed M.M.'s request for an interim measure, holding that the difficulties in implementing the contact had been attributable to M.M.'s attitude and that limitation of the applicant's contact by interim measure was not advisable.

10. The applicant continued to meet X irregular, on the first and third Saturdays of the month in the presence of a guardian, and in public places. These meetings were also attended by M.M., even though from 7 March 2016 onwards contact were supposed to take place without her presence. On several occasions the applicant managed to persuade X to go out with him alone, to the cinema or shopping.

11. On 8 February 2018 the District Court issued a fresh contact decision. The court pointed out that M.M. had not complied with previous orders concerning the child's contact with the father and had been isolating the child from him. The court also threatened M.M. with a fine of 3,000 Polish zlotys (PLN) for each cancelled contact meeting. The court's decision was issued on the basis of the opinion of a team of experts obtained on 28 September 2016 which indicated that X did not feel anxiety about meeting her father. However, she reproduced M.M.'s negative attitude towards the applicant and, consequently, denied her natural need to establish and maintain contact with him.

12. Upon appeal by the applicant, on 17 September 2019 the Kraków Regional Court obliged M.M. and the applicant to undergo regular family therapy at the Specialised Family Counselling Centre in Warsaw to establish correct parental attitudes and ensure the child's contact with her father. The court also established the schedule for contact between X and the applicant. M.M. was again obliged to prepare the child for contact with the father and was threatened with a fine of PLN 3,000 for each time she breached her obligations.

13. In the meantime, in April 2015 M.M. married and, in August 2016, moved with X from Kraków to Warsaw. She informed the applicant of this almost one month later, despite the fact that she was obliged to obtain the applicant's prior consent to any change of the child's place of residence. The applicant was not informed of his daughter's new address in Warsaw until 7 September 2016.

14. In 2014 the applicant married. He continued to live with his wife and children in Kraków. Because M.M. had moved with X to Warsaw, since August 2016 he had had to give up his attempts to have contact with his daughter, previously established for Wednesdays. Since 17 September 2019, the date of the most recent decision regulating contact, the applicant has managed to meet his daughter three times (once in 2019 and twice in 2022). None of these meetings took place in accordance with the court's contact order and each lasted approximately one hour.

II. ENFORCEMENT PROCEEDINGS

15. On 3 November 2015 the applicant requested that the District Court threaten M.M. with a fine for each cancelled contact meeting.

16. On 7 June 2016 the District Court stayed the enforcement proceedings, holding that their outcome depended on another set of pending proceedings for contact arrangements. The applicant and the Ombudsman for Children, who had joined the proceedings and supported the applicant's position, appealed. On 30 June 2016 the Kraków District Court quashed the challenged decision.

17. On 9 August 2016 the District Court threatened M.M. with an order to pay the applicant PLN 1,500 for each further breach of her obligations. Despite the above-mentioned order, contact between the applicant and his daughter were not enforced.

18. On 19 December 2016 the applicant filed an enforcement application to order M.M. to pay a designated sum of money for her continued failure to cooperate with his contact rights with X.

19. On 3 October 2017 the District Court ordered M.M. to pay the applicant PLN 13,500 for violations she had committed and ordered her to reimburse expenses incurred by the applicant in preparing for contact with X.

20. On 29 June 2018 the applicant filed a second enforcement application to impose an order of payment on M.M. for her continued failure to comply with her obligations for the period between 21 December 2016 and 6 January 2018.

21. The first hearing in this case was set for 20 September 2018, but no evidence was taken. Subsequent hearings were cancelled. On 12 March 2019 the applicant asked the court to take action in his case. The next hearing was held on 23 May 2019.

22. On 14 January 2020 the Kraków District Court discontinued the enforcement proceedings, holding that issuing a decision on the merits would be groundless. The reason for such decision was that the enforceable title, which was the final court order on contact issued by the Kraków Regional Court on 28 April 2015, and which was the basis for the applicant's application in question, no longer existed since a new decision amending the contact arrangement had been issued on 17 September 2019.

23. The applicant appealed and, on 29 June 2020, the Kraków Regional Court dismissed his appeal.

III. COMPLAINT

24. The applicant complained under Article 8 of the Convention that his right to have contact with his daughter had been violated.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

25. The Government considered that the applicant had failed to exhaust the available domestic remedies in that he had failed to lodge a third request to impose a fine on M.M. for her failure to comply with the contact order.

26. The applicant submitted that he had exhausted all domestic remedies.

27. The Court notes that the applicant twice requested the domestic court to impose fines on M.M. for her failure to comply with contact orders. The first set of proceedings ended with M.M. being fined and the second set of proceedings was discontinued (see paragraphs 19 and 22 above). In these circumstances the Court considers that the applicant was not required to embark on another set of similar proceedings. The Government's objection must therefore be rejected.

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

29. The general principles concerning respect for family life, positive obligations of the State and the importance of the interests of a child in matters concerning child custody were summarised in the judgment in *P.K. v. Poland*, no. 43123/10, §§ 81-86, 10 June 2014, and in *Malec v. Poland*, no. 28623/12, §§ 66-67, 28 June 2016.

30. It is not disputed that the matters concerned in the present case relate to "family life" within the meaning of Article 8 § 1 of the Convention and that this provision is applicable.

31. The decisive question is whether or not the Polish authorities took all appropriate steps that could reasonably be demanded to facilitate the enforcement of contact arrangements as defined in the contact orders. All

those decisions authorised the applicant to have regular contact with his daughter, although the arrangements changed somewhat over time.

32. The Court notes that the applicant and M.M. separated in March 2010, when X was about two months old. Already in April 2010 M.M. requested the court to grant her sole custody and parental authority. Moreover, directly following the separation, the applicant's contact with his daughter became irregular and the conflict between the parents escalated. Subsequently, after August 2016 when M.M. moved with X to Warsaw, the applicant had to give up his attempts to see his daughter on Wednesdays as he could travel from Kraków to Warsaw only at weekends. Since 2019 the applicant has only managed to see his daughter on three occasions, once in 2019 and twice in 2022 (see paragraph 14 above).

33. The difficulties in arranging contact were admittedly due in large measure to the animosity between M.M. and the applicant. The Court also notes the growing reluctance of the child to meet with her father which the expert opinion of 28 September 2016 attributed to M.M.'s negative attitude towards the applicant (see paragraph 11 above). In this respect, it is mindful of the fact that contact and residence disputes are by their very nature extremely sensitive for all parties concerned, and it is not an easy task for the domestic authorities to ensure enforcement of a court order where the behaviour of one or both parents is less than constructive or, as in the present case, M.M. kept obstructing the contact. However, a lack of cooperation between parents who have separated is not a circumstance which can of itself exempt the authorities from their positive obligations under Article 8; it rather imposes on the authorities an obligation to take measures that would reconcile the conflicting interests of the parties, keeping in mind the paramount interests of the child (see *Z. v. Poland*, no. 34694/06, § 75, 20 April 2010, and *G.B. v. Lithuania*, no. 36137/13, § 93, 19 January 2016).

34. The Court observes that when M.M. failed to comply with the contact orders, the applicant began to file applications with the District Court to threaten M.M. with fines and then to impose fines and the obligation for her to reimburse his travelling expenses. The applicant made two enforcement requests on the basis of a final decision on contact arrangements issued by the Kraków Regional Court on 28 April 2015 (see paragraphs 18 and 20 above).

35. However, the Court notes that the domestic court examined the first request of 3 November 2015 on 9 August 2016, when it threatened the mother with a fine of PLN 1,500 for each failure to comply with her obligations. Since she continued to prevent the applicant from having any contact with X, on 19 December 2016 the applicant filed an enforcement application which was examined on 3 October 2017, that is, almost ten months later and almost two years after the original request was lodged (see paragraph 19 above). Moreover, the enforcement proceedings initiated by the applicant on 29 June

2018 were eventually discontinued two years later, on 29 June 2020 (see paragraph 22 above).

36. Here, the Court reiterates that in cases of this kind the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent who do not cohabit. It further observes that the Government did not submit any explanation for the delays in the examination of the applicant's requests. The Court finds that even though the applicant's initial enforcement requests eventually led to one decision imposing a fine on the mother, the protracted examination of those requests contributed to the further deterioration of the applicant's emotional bond with his daughter.

37. The Court acknowledges that the task of the domestic courts was rendered difficult by the particularly strained relationship between the applicant and M.M. However, there are no indications that this conflict affected the course of the enforcement proceedings. The reason for the delays therein appears to be due to the lack of effectiveness and diligence on the part of the domestic courts (see *Stasik v. Poland*, no. 21823/12, § 93, 6 October 2015).

38. Having regard to the facts of the case, in particular the passage of time, and the criteria laid down in its own case-law, the Court concludes that, notwithstanding the State's margin of appreciation, the Polish authorities failed to make adequate and effective efforts to enforce the applicant's right to contact with his child.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. The applicant claimed 10,500 euros (EUR) in respect of pecuniary and EUR 15,000 in respect of non-pecuniary damage as well as EUR 3,200 in respect of costs and expenses incurred before the domestic courts and before the Court.

41. The Government considered these claims unsubstantiated and unreasonably high.

42. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

43. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 2,500 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 28 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Ivana Jelić
Deputy Registrar	President