

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

FIRST SECTION

CASE OF BOISTEAU v. POLAND

(Application no. 19561/22)

JUDGMENT

STRASBOURG

27 June 2024

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



In the case of Boisteau 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. 19561/22) 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 6 April 2022 by a French national, Mr Johann Dephaer Boisteau ("the applicant"), who was born in 1976, lives in Muids, France, and was represented by Ms E.A. Bansleben, a lawyer practising in Sopot, Poland;

the decision to give notice of the complaint concerning the applicant's right to respect for his family life under Article 8 of the Convention to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 4 June 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's contact with his child, the enforcement of interim measures and the length of proceedings in this matter.

I. BACKGROUND

2. In 2014, the applicant was in an informal relationship with a Polish national (I.B.) who became pregnant. The couple lived together in France. In April 2015, without informing the applicant, I.B. left France for Poland where she gave birth to the couple's son the following month.

3. When registering the child's birth, I.B. did not declare that the applicant was the father. However, on 20 September 2016, on behalf of the child, I.B. petitioned the court to establish the applicant's paternity.

4. On 26 June 2018 the Dębica District Court granted the claim and determined that the applicant was the child's father.

II. CONTACT ARRANGEMENTS

5. The parents are in severe conflict and I.B. has opposed the applicant's attempts to contact the child.

6. On 22 May 2017 the applicant lodged an application with the Cracow-Śródmieście District Court in which he requested, *inter alia*, (i) that contact with his son be regulated by the court, and (ii) that his contact rights, pending the proceedings, be secured by an *ad interim* order ("contact order").

7. The case was transferred to the Dębica District Court which, on 9 February 2018, dismissed the main claim without addressing the contact order request. The court relied on the fact that, at the time, the applicant was not recognised as the child's father, as the proceedings in that regard were pending. The applicant appealed.

8. On 8 October 2018, while the appellate proceedings were pending, the applicant reiterated his request for interim measures, indicating that no decision had been taken.

9. The first contact order, authorising the applicant to contact his son *via* Internet, was delivered on 25 October 2018. It was later amended, on 19 July 2019, when the applicant was granted the right to meet his son in person.

10. On 4 December 2018 the Rzeszów Regional Court quashed the decision on the main claim of 9 February 2018 and remitted the case for review. The court relied on the fact that, after the first-instance decision, the applicant had submitted a copy of the child's birth certificate which indicated him as the father.

11. On 21 December 2020 the Dębica District Court gave its decision on the main claim and regulated the applicant's contacts with the child. Both parties appealed.

12. The proceedings lasted until 28 October 2021 when the Rzeszów Regional Court amended the above-mentioned decision of the Dębica District Court. The applicant was allowed to contact the child: (i) by videocall, three times a week for 10 minutes, and (ii) in person, every second Saturday and Sunday of each month. The in-person contacts were to be conducted, for the first four months, in the presence of the mother and a court officer, then, for three months, with the assistance of only the court officer, and, ultimately after seven months, without third parties being present.

III. ATTEMPTS AT ENFORCING THE CONTACT ORDER

13. I.B. hindered the applicant's contact with the son. In response, during the main proceedings the applicant requested, on 25 July 2019, that the mother be threatened with a fine for failure to comply with the contact order. The request was reiterated (and extended) on 8 January 2020 and on 7 September 2020, respectively.

14. The Dębica District Court joined those requests to the main case and dismissed them in the decision of 21 December 2020.

IV. PROCEEDINGS UNDER THE 2004 ACT

15. On 4 October 2021 the applicant lodged a complaint under the Law of 17 June 2004 about the breach of the right to have a case examined in an investigation conducted or supervised by a prosecutor and in judicial proceedings without undue delay (*ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i postępowaniu sądowym bez nieuzasadnionej zwłoki*).

16. On 6 December 2021 the Rzeszów Court of Appeal dismissed the complaint having held that, despite the overall length and the shortcomings in scheduling and organising hearings and handling the case file at first instance, the proceedings were not protracted given that the case had been factually complex and that the parties (particularly the child's mother) had contributed to the length of the proceedings by lodging numerous belated submissions.

V. COMPLAINT

17. The applicant complained under Article 8 of the Convention of the failure of the domestic authorities to comply with their positive obligations to protect his right to respect for his family life.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

18. The Government considered that, since the applicant's contact rights were eventually secured, he cannot be considered a victim of a violation, and that his complaint should be declared incompatible *rationae materiae*. The applicant rejected the Government's arguments and upheld his complaint.

19. The Court notes that the main issue in the instant case lies in the tardiness in dealing with the applicant's case at the domestic level, notably in (i) the time that elapsed from the applicant's first application for a contact order until the decision of 25 October 2018, (ii) the applicant's allegation that his applications to have his contact rights secured by threatening the mother with a fine had been examined with a delay, and (iii) the overall length of the proceedings regarding the applicant's contact rights. In these circumstances, the Court considers that the applicant's grievances have not been remedied and he can still be considered a victim. The Government's objection must therefore be rejected.

20. The Court notes that this 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.

21. The general principles concerning positive obligations inherent in effective "respect" for family life as regards the contacts between a parent and a child have been summarised in *P.K. v. Poland* (no. 43123/10, §§ 81-86, 10 June 2014) and *Ribić v. Croatia* (no. 27148/12, §§ 92-94, 2 April 2015).

22. The Court reiterates that in cases concerning a person's relationship with his or her child, there is a duty to exercise exceptional diligence in view of the risk that the passage of time may result in a *de facto* determination of the matter (see *Süß v. Germany*, no. 40324/98, § 100, 10 November 2005). This duty, which is decisive in assessing whether a case concerning access to children has been heard within a reasonable time as required by Article 6 § 1 of the Convention (see, *inter alia*, *Nuutinen v. Finland*, no. 32842/96, § 110, ECHR 2000-VIII), also forms part of the procedural requirements implicit in Article 8 (see, *inter alia, Hoppe v. Germany*, no. 28422/95, § 54, 5 December 2002).

23. The decisive question is thus whether or not the Polish authorities took all appropriate steps that could reasonably be demanded (i) to secure expeditiously the applicant's contact with his child pending the proceedings on the merits, (ii) to facilitate the enforcement of the contact order, and (iii) to deliver a decision on the merits within a reasonable time.

24. Firstly, the Court will examine the time necessary for the domestic authorities to issue the first contact order.

25. The Government contended, in that respect, that the applicant could not reasonably have expected to have his rights secured before 26 June 2018, that is before the decision determining his paternity (see paragraph 4 above). The Court notes, however, that Article 8 may protect family life notwithstanding the existence or absence of a legally established parent-child relationship (see *Chavdarov v. Bulgaria*, no. 3465/03, § 40, 21 December 2010).

26. That said, and taking into consideration that, in the particular circumstances of the case, at the time when the request for interim measures was introduced, both parents had acknowledged the applicant's paternity (the applicant by lodging the request, and the mother by lodging an action to establish his paternity), the Court finds that the applicant's expectation to have contact rights secured between 22 May 2017 and 26 June 2018 had a sufficient basis.

27. Consequently, the Court finds that the time which elapsed between the original request for interim measures and the first decision in that respect was exceptionally long, as it took the domestic authorities over one year and five months to secure the applicant's initial contact with his child (see paragraphs 6 and 9 above; compare and contrast with *Süß*, cited above, §§ 19-20 and 101). The Court further notes that the protracted actions of the domestic authorities in this respect surely had a negative impact on the applicant's bond with his son at a very early age.

28. Concerning the enforcement of the contact arrangements, the Court notes that, despite the pressing nature of the matter and the applicant lodging three requests to threaten I.B. with a fine for failure to comply with the contact order, no decision was taken by the Dębica District Court on those requests until the final determination of the contact arrangements at first instance (that is for over one year and four months since the first request – see paragraphs 13 and 14 above).

29. The Government did not submit any explanation for the delays in the examination of the applicant's requests. They contended, however, that the applicant failed to satisfy formal requirements when lodging his requests. The Court does not find that argument persuasive as it was not invoked by the domestic courts. Moreover, the main issue in this respect is not the content of the decision itself but the time the domestic courts needed to issue any decision in that regard.

30. In the circumstances of the case, the Court finds it striking that, despite having a binding decision securing his contact with the child, which had not been entirely complied with, the applicant's requests aimed at enforcing the contact order were not examined at all for over a year. The Court finds that the protracted examination of those requests contributed to the further difficulties for the applicant to establish an emotional bond with his son.

31. The overall length of the domestic proceedings concerning the contact arrangements, between 22 May 2017 and 28 October 2021, exceeded four years and five months at two instances.

32. The Court acknowledges that the parents were in a heated conflict and the overall duration of the proceedings was, at least in part, attributable to their own actions. However, lack of cooperation between separated parents is not a circumstance which can of itself exempt the authorities from their positive obligations under Article 8 (see *Z. v. Poland*, no. 34694/06, § 75, 20 April 2010).

33. Overall, the Court finds that the protracted actions of the domestic courts resulted in a *de facto* determination of the matter and prevented the applicant from developing a meaningful relationship with his son during the first years of the child's life, gravely affecting the latter's possibility to know his father, form a bond with him or even learn his language.

34. Having regard to the facts of the case, in particular the passage of time and the child's very young age, and the criteria laid down in its own case-law, the Court concludes that, notwithstanding the State's margin of appreciation, the respondent State failed to satisfy the procedural requirements of expedience inherent in the right to respect for family life under Article 8 of the Convention.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. The applicant made no claims in respect of pecuniary damage. He claimed only non-pecuniary damage, leaving the exact amount to the Court's discretion.

37. He further claimed 25,827.71 euros (EUR) in respect of costs and expenses incurred before the domestic courts, including (i) EUR 13,750 for travel costs for court hearings and contacts with the son, (ii) EUR 4,980 for accommodation in Poland on those occasions, and (iii) EUR 7,097 for legal services. Finally, he claimed EUR 2,460 for costs and expenses incurred before the Court.

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

39. The Court awards the applicant EUR 6,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

40. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 8,000 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:
      (i) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 8,000 (eight thousand 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 27 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Ivana Jelić
Deputy Registrar	President