

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

FOURTH SECTION

DECISION

Application no. 8923/12
Andrzej PIOTROWSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 22 November 2016 as a Chamber composed of:

András Sajó, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 25 January 2012,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the comments submitted by the European Centre for Justice and Human Rights,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Andrzej Piotrowski, is a Polish national, who was born in 1952 and lives in Łódź. He was represented before the Court by Ms M. Wentland-Walkiewicz, a lawyer practising in Łódź.

2. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

4. On 23 April 1977 the applicant married D. in a civil ceremony. In 2004 the applicant and D. married in church.

5. On 12 January 2010 the applicant filed a petition for divorce. He asked for a no-fault divorce (that is, for the court not to make any findings that either party was at fault for the breakdown of the marital relationship). The applicant stated that for a few years he could not agree with his wife on many issues touching on the basic aspects of everyday life, and that their life together had not been harmonious. This had caused a number of arguments and in May 2009 he had moved out of their flat.

6. In her reply to the petition, the respondent submitted that her marriage to the applicant was amicable, pleasant and that they used to be considered by other couples as having an exemplary relationship. She was of the opinion that the only reason the applicant had petitioned for divorce after thirty-two years of married life was because he was having an affair with another woman. The applicant had moved out of their flat in May 2009 but had returned in October of that year (despite continuing his relationship with the other woman). The respondent was of the view that this was a brief period of foolishness and that she could forgive her husband for his affair.

7. In pleadings dated 2 April 2010 the applicant changed his claim. He applied for a divorce on fault-based grounds (*wina wyłączna*). In his opinion, the respondent used to be controlling, incapable of reaching a compromise on any issue and unwilling to accept his arguments. This was, in his view, the main reason for the breakdown of their marriage.

8. During a hearing held on 16 June 2010 the applicant's aunt, M.P., testified. She said that D. was a very good wife. She cared deeply about the applicant and was very conscientious about household tasks. The witness had never heard the applicant complaining about his marriage. A second witness, B.L., the parties' friend, testified that the applicant and the respondent had complementary personalities and that she had never seen them fighting. A third witness, J.K., also their friend, recalled that the applicant used to say that he had "a wife and a mother in one" because of the good care the defendant had been taking of him. In his opinion, the applicant was satisfied with his marriage. A fourth witness, W.T., the respondent's brother, said that in his view the marriage was good.

9. During a hearing on 4 October 2010 the applicant's mother testified that she had considered her son's marriage to be good. The applicant had never complained about his wife, but she sometimes complained about his flaws. She was not convinced that her son had really carefully considered his decision about the divorce. The parties' home had been clean and well-kept thanks to the respondent's efforts and work. She recalled only minor

misunderstandings between the parties. The second witness, M.K., the applicant's cousin, stated that the applicant had been deeply in love with the respondent. She had not heard the applicant praising the quality of his married life or complaining about it.

10. During a hearing on 7 February 2011 two witnesses expressed the opinion that the marriage was good.

11. The parties to the proceedings were also heard. The applicant testified that his new partner was against his divorce. Nevertheless, his new involvement had helped him to ponder carefully his decision to divorce. The applicant accused the respondent of infidelity, which had allegedly taken place during their engagement. He described his marriage as boring. The respondent did not agree to the divorce. In her opinion the applicant's affair was just a passing period of foolishness. She declared that she loved the applicant and her willingness to give him a second chance.

12. On 16 February 2011 the Łódź Regional Court refused to grant the divorce. The court established that the applicant and D. had married in 1977. They did not have children. In 2004 they had married in church. Subsequently, the applicant had met another woman. In May 2009 he had informed D. that he had fallen in love with someone else.

13. The court held, having regard to the evidence gathered in the proceedings, that the breakdown of the marriage was complete and irretrievable within the meaning of the provisions of the Family and Guardianship Code on divorce. The financial, emotional and sexual relations between the spouses had come to end, essentially because of the applicant's relationship with another woman. The court was of the view that there was no prospect of him returning to his wife.

14. The court further observed that D. was a very good partner to him and was not at fault for the breakdown of the marriage. She still loved her husband and was ready to forgive him for his affair. The court stressed that the applicant was the only person responsible for the marital breakdown. He was at fault not only because he had failed to comply with the spousal obligations enumerated in Article 23 of the Family and Guardianship Code, but also because he had not been loyal towards the respondent. He had failed to respect his obligation of fidelity and had clearly stated during the proceedings his intention to continue his relationship with another woman. Having regard thereto, the court considered that the wife's refusal to give consent had to be considered to be legitimate and compatible with the principles of social coexistence within the meaning of Article 5 of the Civil Code. In this regard the court referred to established case-law of the Supreme Court concerning situations where an innocent spouse refuses to consent to a divorce. The court stressed that a refusal of consent to a divorce was a right and could not as such be presumed to be against the principles of social coexistence (Supreme Court judgment nos. II CKN 956/99 of 26 October 2000 and III CR 278/65 of 7 December 1965). Even

considerable length of a separation between spouses did not override the presumption that a refusal to give consent to divorce complied with those rules (Supreme Court judgment no. III CR 147/65 of 18 August 1965).

15. The applicant appealed, challenging the findings of fact made by the court. He argued that his relationship with his wife had never been good. The fact that he had entered into a new relationship had been precisely because of the poor quality of their marriage. The court had been wrong in finding that his involvement with another woman had caused the marital problems. His relationship with her was viable as they had been living together for several months over the previous two years. The applicant referred to a new factor he had not raised before, namely that the respondent had not wanted to have sex with him. He changed his claim once again, asking this time for a divorce where both parties were considered at fault.

16. On 12 July 2011 the Łódź Court of Appeal upheld the first-instance judgment. It considered that the applicant's wife was not at fault for the breakdown of the marriage and that her refusal to consent therefore had to be regarded as legitimate. The court noted that even the witnesses called by the applicant had testified that their marriage had been good and generally amicable.

17. The applicant and his legal representative were present at the hearing and during the oral pronouncement of the judgment. The president of the court read out the operative part and afterwards orally explained the main grounds for the decision.

18. On 14 July 2011 the applicant's legal representative asked for the written grounds of the appellate judgment. On 5 September 2011 they were served on him.

B. Relevant domestic law and practice

1. Substantive provisions and case-law on divorce

19. Pursuant to Article 56 § 1 of the Family and Guardianship Code (*Kodeks rodzinny i opiekuńczy*), either spouse may file a petition for divorce if there has been a complete and irretrievable marriage breakdown (*zupełny i trwały rozkład pożycia*). For the purposes of establishing whether a complete breakdown has occurred, the established judicial practice is to examine *ex officio* whether the financial, emotional and sexual ties between the spouses have ended (Supreme Court decision no. III CKN 386/98 of 22 October 1999, and Katowice Court of Appeal decision no. I ACa 51/10 of 12 March 2010). The courts establish it applying the general procedural rules governing the taking of evidence, in addition to certain specific rules provided for by the Code of Civil Procedure for the purposes of divorce proceedings.

20. In particular, under Article 431 of the Code of Civil Procedure, a decision in a divorce case cannot be based exclusively on the admission of the claim or of certain facts by the respondent. Article 432 of the Code provides that both parties to a divorce case are to be heard in person. Under Article 442, if the respondent admits the divorce claim and the spouses have no minor children, the court may limit the taking of evidence to hearing the parties.

21. Under Article 56 §§ 2 and 3 of the Family and Guardianship Code, a divorce may not be granted even where there has been a complete breakdown of the marriage, if:

> "(2) ... it would be detrimental to the well-being of [the] minor children [of the marriage] or if, for other reasons, granting the divorce would be contrary to the principles of social coexistence (*zasady współżycia społecznego*);
>
> (3) ... it has been requested by the spouse who is at fault for the breakdown of the marriage, unless the other spouse has expressed his or her consent thereto, or the refusal of such consent by the other spouse is – in the circumstances at issue – contrary to the reasonable principles of social coexistence..."

22. Article 5 of the Civil Code reads:

> "No one shall exercise any right of his in a manner contrary to its socio-economic purpose or to the principles of social coexistence (*zasady współżycia społecznego*). An act or omission [fulfilling this description] on the part of the holder of the right shall not be deemed to be the exercise of the right and shall be protected [by law]."

23. The courts have developed ample case-law addressing situations where a respondent spouse refuses to consent to a divorce. In particular, they have held that an innocent respondent has a right to refuse to consent. A presumption of good faith was therefore applicable to such a refusal, until it was demonstrated, with reference to the specific circumstances of a case, that the refusal ran counter to the principles of social coexistence within the meaning of Article 5 of the Civil Code (Supreme Court decision nos. II CKN 956/99 of 26 October 2002 and I CKN 305/01 of 26 February 2000). In particular, the respondent spouse's intention to frustrate the petitioner's plans to formalise his or her extramarital relationship should not, by itself, be regarded as being incompatible with these principles, if it has been shown that the refusal was inspired by a wish to continue the marriage, consistent with ethical and social standards (Supreme Court decision no. CKN 305/01 of 26 February 2002).

24. The courts are obliged to assess whether or not a refusal to consent to a divorce amounts to an abuse of rights in the light of the spouses' situation and conditions caused by the breakdown of their marriage, both of the innocent respondent and the petitioner. It is only in the light of these findings that a thorough assessment can be made whether a refusal is consonant with universally accepted morality rules (*reguły moralności*) and whether or not it is detrimental to other interests worthy of legal protection (Supreme Court decision no. I CKN 871/00 of 4 October 2001). The factors

to be taken into account include, *inter alia*, the spouses' health, age and ability to earn a living and the length of the marriage (Supreme Court decision nos. I CR 565/57 of 22 May 1958 and III CKN 573/98 of 9 October 1998, and Białystok Court of Appeal decision no. I ACa 48/97 of 6 March 1997). The fact that the petitioner has children born from an extramarital relationship is also of relevance (Supreme Court decision no. C 1115/52 of 8 July 1952).

25. The refusal of an innocent spouse should be overridden if it is shown that the respondent is motivated merely by a wish to harass the petitioner and to prevent him or her from formalising his or her new relationship (Supreme Court decision no. III CKN 665/00 of 21 November 2002).

The respondent's conduct after the marriage breakdown also has to be taken into consideration; if it is spiteful and reprehensible, the refusal of consent can be overridden (Supreme Court decision no. II CKN 1270/00 of 21 March 2003). Likewise, the causes of the breakdown and the circumstances which have arisen thereafter, including the existence of other relationships and extramarital children, have to be taken into consideration by the court (Supreme Court decision no. III CKN 1032/99 of 10 May 2000).

2. Public delivery of a judgment

26. Under Article 326 § 3 of the Code of Civil Procedure, the president of a judicial panel reads out the operative part of the judgment in open court. Afterwards the president or judge rapporteur orally explains the main grounds for the decision (*podaje ustnie zasadnicze powody rozstrzygnięcia*).

27. Under Article 328 of the Code, written grounds for a judicial decision may be prepared at a party's request submitted within one week of its delivery. Written grounds must consist of a summary of the facts established by the court, refer to the evidence relied on by the court, indicate the reasons why the court considered that evidence to be credible and give legal reasons for the decision adopted.

COMPLAINTS

28. The applicant complained under Articles 8 and 12 of the Convention that by refusing to grant him a divorce, the authorities had breached his right to respect for his private life and prevented him from marrying someone else.

THE LAW

29. The applicant complained about a breach of his rights under Articles 8 and 12 of the Convention.

The relevant provisions read as follows:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 12

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

30. The Government argued that the case should be considered inadmissible because the applicant had failed to submit his complaint to the Court within the six-month time-limit specified in Article 35 § 1 of the Convention. They submitted that the hearing before the Łódź Court of Appeal had been held on 12 July 2011. On the same day the court had delivered its judgment in open court, giving an oral summary of its grounds to the parties in accordance with Article 326 § 3 of the Code of Civil Procedure. The applicant and his legal representative had attended the hearing. Under Article 387 § 3 of the Code of Civil Procedure, neither the applicant nor the lawyer had been entitled to be served *ex officio* with the copy of that judgment.

31. The Government were of the opinion that the six-month time-limit for submitting the application to the Court had started running on 12 July 2011 and expired on 12 January 2012. The application had been submitted to the Court on 25 January 2012, six months and thirteen days after the public delivery of the final judgment. The applicant had failed to comply with the requirement to submit his application to the Court within the six-month time limit.

32. The applicant submitted that the oral grounds given by the Court of Appeal contained only a very brief summary of the grounds for its decision. Neither the applicant nor his representative had therefore been able to obtain a full picture of the reasons the judgment of the lower court was upheld. That purpose could only be served by the full written grounds for the judgment. The applicant was therefore of the view that the six-month time-limit had started to run on 5 September 2011, when the written grounds had been served on the applicant's lawyer.

33. According to the Court's well-established case-law, where an applicant is entitled to be automatically served with a copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the decision (see *Worm v. Austria*, 29 August 1997, § 33, *Reports of Judgments and Decisions* 1997-V). Where domestic law does not provide for service, it is appropriate to take the date when the decision was finalised as the starting point, that being when the parties were definitely able to find out its content (see *Papachelas v. Greece* [GC], no. 31423/96, § 30, ECHR 1999-II, and *Jakelaitis v. Lithuania* (dec.), no. 17414/05, 16 December 2008). In the context of proceedings governed by the Polish Code of Civil Procedure, the Court has held, having regard to the fact that only the written grounds for the judgment contained a detailed summary of the facts of a case and the court's reasoning as to the law, that it was only on the date of service that the applicant had been able to find out the content of the judgment given in his case and that it was that date of service that had triggered the running of the six-month time-limit (see *Piętka v. Poland*, no. 34216/07, §§ 44-46, 16 October 2012).

34. In the present case, at the hearing of 12 July 2011 the appellate court read out the operative part of the judgment and briefly explained orally the grounds on which it had based its assessment. It was not obliged either to serve a copy of its judgment on the parties as a matter of course, or to prepare its written grounds *ex officio*. It was open to the applicant to request that detailed written grounds be prepared in order to acquaint himself with the court's reasoning in its entirety, including the findings of fact as established by the court, the reference to the relevant evidence before the court and the legal reasoning justifying its decision. The applicant availed himself of that right. The written grounds prepared in accordance with the provisions of Article 328 of the Code of Civil Procedure were served on his lawyer on 5 September 2011, while the case was later lodged with the Court on 25 January 2012.

35. The Government's objection concerning the applicant's alleged failure to lodge the application with the Court within the six-month time-limit must therefore be dismissed.

36. The Government further argued that the applicant's complaint fell outside the scope of Article 12 and was incompatible *ratione materiae* with the provisions of the Convention. They were of the view that there had been no breach of the State's obligations under Article 8. The authorities had not interfered with the applicant's desire to marry, with his married life or, last but not least, with his decision to move out of the matrimonial home and start an affair with another woman. The sole fact that formalised judicial divorce proceedings existed under national law and that certain conditions had to be met for a divorce to be legally available did not *per se* contradict Article 8 of the Convention. Such a view would run counter to the very

foundations of the European concept of family law, since such matters were regulated in every legal system of the Contracting Parties to the Convention.

37. It was further argued that the rights guaranteed under Article 8 of the Convention were not absolute in nature and interference with these rights was permissible under certain conditions. In the present case interference was prescribed by Article 56 §§ 2 and 3 of the Family and Guardianship Code. This interference pursued at least two legitimate aims: the protection of the rights and freedoms of others, namely the interests and well-being of the applicant's wife, and the protection of morals. They counteracted the menace of arbitrary and unilateral terminations of marriages, in a society adhering to the principle of the monogamy (see *Johnston and Others v. Ireland*, 18 December 1986, § 52, Series A no. 112).

38. Nevertheless, the weight of these limitations was reduced by the possibility of obtaining a divorce under certain conditions defined by law. The Government averred that the Convention neither imposed a positive obligation on the Contracting States to permit a divorce, nor positive duties on the State to refrain from introducing substantive or procedural conditions on which marriages could be legally dissolved.

39. In the present case the defendant had exercised her right to oppose the applicant's petition for divorce. However, it had been the applicant himself who had failed to comply with the obligation of fidelity. He had also failed to recognise that he had been solely at fault for the breakdown of the marriage as a result. Moreover, he had applied for a divorce on fault-based grounds. The Government stressed that the respondent's perception of having been seriously wronged by the applicant was, in the circumstances of the case, justified. The respondent's refusal therefore had to be regarded as being in compliance with the principles of social coexistence within the meaning of Polish civil law.

40. The Government concluded by stating that there had been no violation of the Convention in the present case.

41. The applicant disagreed. He submitted that his marriage had been childless. As a result, continuing the legal existence of that marriage in the absence of any real relationship did not serve any family interests. In any event, even the protection of the family under the Convention was not absolute. In these circumstances, it was his individual interests and rights which deserved protection. His wife's refusal to divorce could not be said to have been based on good faith. Nor had it been compatible with the principles of social coexistence within the meaning of Polish civil law. The refusal to divorce had caused the applicant severe anguish and depression. Family life should not be protected in law when it did not exist in fact.

42. The third party, the European Centre for Justice and Human Rights (*Centre européen pour la justice et les droits de l'homme*), which was granted leave to intervene in the proceedings before the Court under Rule 44 of the Rules of Court, submitted that it was important to society that

marriages remained stable and that they could fulfil their social role, in particular in the context of raising children. Family was universally recognised as a fundamental element of society and as such should be protected by law. The right to marry originated essentially in the individuals' wish to found a family and should, as such, be protected. European law did not recognise the right to divorce. The legal prohibition of divorce was not contrary to either Article 8 or Article 12 of the Convention. In any event, there was no European consensus as to the possibility of obtaining a divorce when an innocent party opposed it, even in situations where there had been a definitive breakdown of marital relations. An approach which would confer on a party at fault a right to divorce despite the opposition of an innocent party would be tantamount to upholding a purely individualistic concept of liberty, understood essentially as having no societal and family obligations.

43. The Court observes that the applicant's complaint about the alleged breach of his rights guaranteed by Articles 8 and 12 of the Convention is based on the same fact, namely the courts' refusal to grant him a divorce (see, *mutatis mutandis*, *Ivanov and Petrova v. Bulgaria*, no. 15001/04, §§ 55 *et seq*., 14 June 2011).

44. In so far as the applicant relies on Article 8 of the Convention, the Court reiterates that while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *Mikulić v. Croatia*, no. 53176/99, § 57, ECHR 2002-I). 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 (see *S.H. and Others v. Austria* [GC], no. 57813/00, § 87, ECHR 2011-V); and in both contexts the State enjoys a certain margin of appreciation (see, among other authorities, *Mizzi v. Malta*, no. 26111/02, § 106, ECHR 2006-I (extracts), and *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 106, ECHR 2014). In the area of framing their divorce laws and implementing them in concrete cases, the Contracting Parties enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (compare and contrast, *Johnston and Others*, cited above, § 55).

45. As regards Article 12 of the Convention, the Court reiterates in this connection that this Article secures the fundamental right of a man and woman to marry and found a family. The exercise of the right to marry gives rise to social, personal and legal consequences. It is subject to the laws of the Contracting States but the limitations thereby introduced must not restrict or reduce the right in such a way or to such an extent that the very essence of the right to marry is impaired (see *Rees v. the United Kingdom*, 17 October 1986, § 50, Series A no. 106; *F. v. Switzerland*, 18 December 1987, § 32, Series A no. 128; and *B. and L. v. the United Kingdom*, no. 36536/02, § 34, 13 September 2005).

46. The Court has already held that neither Article 12 nor Article 8 of the Convention can be interpreted as conferring on individuals a right to divorce (see *Johnston and Others*, cited above, § 57). Moreover, the *travaux préparatoires* of the Convention indicate clearly that it was an intention of the Contracting Parties to expressly exclude such right from the scope of the Convention (ibid., § 52). Nevertheless, the Court has reiterated on many occasions that the Convention is a living instrument to be interpreted in the light of present-day conditions (see, among many other authorities, *Marckx v. Belgium*, 13 June 1979, § 41, Series A no. 31, and *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32). It has also held that, if national legislation allows divorce, which is not a requirement of the Convention, Article 12 secures for divorced persons the right to remarry (see *F. v. Switzerland*, 18 December 1987, § 38, Series A no. 128).

47. Thus, the Court has not ruled out that the unreasonable length of judicial divorce proceedings could raise an issue under Article 12 (see *Aresti Charalambous v. Cyprus*, no. 43151/04, § 56, 19 July 2007). The Court did not rule out that a similar conclusion could be reached in cases where, despite an irretrievable breakdown of marital life, domestic law regarded the lack of consent of an innocent party as an insurmountable obstacle to granting a divorce to a guilty party (see *Ivanov and Petrova,* referred to above, § 61). However, that type of situation did not obtain in the present case, which concerns neither a complaint about the excessive length of divorce proceedings nor legal impediments on the possibility to remarry after divorce.

48. The circumstances of the case differ also from those examined in the context of the case of *Johnston and Others* (cited above), as it concerns neither a blanket restriction nor a blanket prohibition imposed by the domestic law. The applicant's argument is not based on an absolute impossibility to obtain a divorce under family law in Poland but on a dismissal of his divorce action by the domestic courts.

49. The Court notes that Polish divorce law provides detailed substantive and procedural rules which can lead to a divorce being granted. In particular, Article 56 § 3 of the Family and Guardianship Code can be seen as intended to be a safeguard to protect one party, usually the weaker,

against the machinations and bad faith of the other party. There is also ample domestic case-law on the application of the relevant substantive provisions to situations where an innocent party and, on the other hand, a party at fault for the breakdown of marital relations are involved in the divorce proceedings, providing further clarification and guidance to the courts (see Relevant domestic law).

50. The Court further notes that in the present case the courts examined the facts in detail and in the proper context of domestic law. During the divorce proceedings comprehensive evidence was gathered by the court. The Lublin Regional Court heard witnesses proposed by the applicant and by his wife. The applicant had an opportunity to present his position to the court and put questions to the witnesses. The first-instance judgment was subject to a review by the appellate court. The reasoning of the judgment of the Lublin Regional Court contained a detailed explanation of whose interests were taken into account, how the evidence was assessed and what the grounds were for its decision to dismiss the applicant's petition for divorce.

51. In so far as the applicant complained in his application that the refusal to divorce had made it impossible to him to remarry, it is noted that no submissions were made either in the divorce proceedings or before the Court to show the existence of a stable and long-lasting relationship with another woman. The applicant merely referred to his relationship with her as viable. Nor did he refer before the Court to any concrete marriage plans frustrated by the refusal to obtain the divorce. On the contrary, in his observations he stated that he was not willing to marry again. It has not been shown that failure to obtain a divorce and the legal fiction of his continuing marriage prevented him from enjoying his personal life to the full.

52. The Court further notes that it has not been argued that under Polish law a refusal to divorce creates *res iudicata*, thereby preventing the applicant from submitting a fresh petition for divorce to the courts at a later stage if and when circumstances change.

53. In the Court's view, if the provisions of the Convention cannot be interpreted as guaranteeing a possibility, under domestic law, of obtaining divorce, they cannot, *a fortiori*, be interpreted as guaranteeing a favourable outcome in divorce proceedings instituted under the provision of that law allowing for a divorce.

54. In view of all the above, the Court considers that there has been no appearance of violation of the applicant's right to marry and that in the circumstances of the present case the positive obligations arising under Article 8 of the Convention (see paragraph 44 above) did not impose on the Polish authorities a duty to accept the applicant's petition for divorce.

55. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 December 2016.

Andrea Tamietti
Deputy Registrar

András Sajó
President