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

FIRST SECTION

DECISION

Application no. 6771/16
Jarosław PODSIADŁO
against Poland

The European Court of Human Rights (First Section), sitting on 19 September 2024 as a Committee composed of:

Alena Poláčková*, President*,
Krzysztof Wojtyczek,
Gilberto Felici*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 6771/16) 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 28 January 2016 by a Polish national, Mr Jarosław Podsiadło ("the applicant"), who was born in 1968 and lives in Warsaw;

the decision to give notice of the complaints concerning the applicant's right to exercise parental authority and ensure his daughter's education in conformity with his own religious and philosophical convictions to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak and subsequently Ms A. Kozińska-Makowska, of the Ministry of Foreign Affairs, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the respondent State's positive obligations in ensuring expedience in the actions of the domestic courts in matters relative to the applicant's right to exercise parental authority and ensure his daughter's education in conformity with his own religious and philosophical convictions.

2. The applicant and his former wife have a daughter, J., born in 2004. The couple divorced in 2012. Both parents kept parental authority and the child's residence was established with the mother.

3. During the divorce proceedings the parents agreed in writing, *inter alia,* that: (i) they would cooperate and agree on the most important elements of their daughter's upbringing (to this end, they were to inform each other, by telephone or in writing, of any intention to make changes in the child's education); (ii) the applicant would pay 5,000 Polish zlotys (approximately 1,130 euros) in monthly child support, notably to cover the costs of the child's private school.

4. Until the end of the divorce proceedings J. attended a private, non-denominational primary school near the original family residence. After the divorce the mother and J. moved to a different part of the city.

5. Without consulting the applicant as per the parents' written agreement, the mother enrolled J. in a private Catholic school starting from the school year 2012/2013. The mother also influenced J. not to tell the applicant about the change of school during the summer holidays, which the applicant and J. spent together. The applicant only learned of the change of school on 1 September 2012, the first day of the school year.

6. On 7 September 2012, represented by a lawyer, the applicant requested that the Warsaw-Mokotów District Court deliver a decision on important issues regarding the child (*wniosek o rozstrzygnięcie o istotnych sprawach dziecka*), that is for J. to be transferred to her previous primary school.

7. The applicant modified his request twice, on 18 February and 22 March 2013 respectively, listing private primary schools where he agreed that J. could be transferred.

8. The applicant did not lodge a request for an interim order (*wniosek o zabezpieczenie*) to regulate the matter pending the proceedings at any point.

9. The applicant's request was refused at first instance on 4 July 2013. Following the applicant's appeal, the Warsaw Regional Court quashed, on 25 November 2013, the first-instance decision and remitted the case for review.

10. On 15 December 2014, upon review, the Warsaw-Mokotów District Court refused the applicant's request again. The applicant appealed.

11. The proceedings ended on 28 July 2015 when the Warsaw Regional Court dismissed the applicant's appeal.

12. The courts ultimately found that the mother's actions had been in breach of law as well as the parents' agreement and that they had infringed the applicant's right to exercise parental authority and to ensure his child's upbringing in conformity with his own religious and philosophical convictions.

13. Nevertheless, despite these findings, the courts concluded that – for the sake of stability, comfort and well-being – J. should remain in her new school, notably due to the passage of time. The Warsaw-Mokotów District

Court explicitly stated that its assessment of the case would have been different at the beginning of the school year 2012/2013.

14. The applicant complained under Article 8 of the Convention as well as, in essence, under Article 2 of Protocol No. 1 to the Convention, that the lack of expedition in the domestic proceedings violated his right to family life, notably the right to exercise parental authority and his right to ensure his daughter's education in conformity with his own religious and philosophical convictions.

THE COURT'S ASSESSMENT

15. The Government objected to the application on various grounds, including the alleged failure to exhaust all effective domestic remedies. The Court does not need to rule separately on all of the Government's objections, as the present application is in any event inadmissible for the reasons set out below.

16. The Court considers that the case may raise an issue of whether the State complied with its positive obligations to protect the applicant's right to respect for his family life under Article 8 of the Convention and to ensure his daughter's education in conformity with his own religious and philosophical convictions under Article 2 of Protocol No. 1 to the Convention, as regards the overall length of proceedings relating to the applicant's request for a decision on important issues regarding the child.

17. The Court points out that, although Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and expedient, as the passage of time may result in a *de facto* determination of the matter (for details see the case-law cited in *T.C. v. Italy*, no. 54032/18, § 57, 19 May 2022, and *Ribić v. Croatia*, no. 27148/12, § 92, 2 April 2015). Similarly, although Article 2 of Protocol No. 1 to the Convention does not contain any specific procedural requirements, the decision-making process regulating the exercise of the right to education must be fair and such as to afford due respect to the interests protected by this provision (see *C.P. v. the United Kingdom* (dec.), no. 300/11, § 47, 6 September 2016).

18. In that regard, the Court acknowledges that the decision-making process in the case initiated by the applicant's request for a decision on the school his daughter was to attend (see paragraph 6 above) was exceptionally long, as it took the domestic courts over 2 years and 10 months to deliver a final decision on the merits, by which time J. had already adapted to the new school and another transfer was found to be against her best interests.

19. Nevertheless, while the length of the impugned proceedings may be an important factor, the main issue in the case lies in the question of whether, in the circumstances of the case as a whole, the State could be said to have complied with its positive obligations under the relevant Convention

provisions (see, *mutatis mutandis*, *J.N. v. Poland*, no. 10390/15, § 106, 10 November 2022).

20. The Court observes that while the provisions regulating the procedure initiated by the applicant do not contain any specific time-limit for the court to act, the applicant nevertheless had at his disposal a measure aimed at securing expedience of the court's response. A request for an interim order (*wniosek o zabezpieczenie*), which was available in the proceedings at issue, could have been lodged along with, or at any point after, the main request on the merits. Such a request, which must be dealt with within a week of being lodged, could have been aimed at transferring J. back to her original school pending the proceedings. The applicant, however, failed to lodge such a request and did not explain the reasons for this omission in the proceedings before this Court.

21. Against that background, while the Court accepts the domestic courts' assessment of the mother's actions (see paragraphs 5 and 12 above) which undoubtedly put the applicant in a difficult situation in which he had to take swift remedial action, the Court finds it striking that the applicant, who was represented by a lawyer from the very beginning of the domestic proceedings, failed to make use of the available procedural safeguard which, by design, could have prevented the passage of time from influencing the outcome of the proceedings.

22. In view of the above, the Court considers that, in the circumstances of the case, the procedural framework available to the applicant was sufficient for protecting his interests in preventing the passage of time from determining the matter at issue. Consequently, the Court considers that the respondent State sufficiently discharged its positive obligations under Article 8 of the Convention and Article 2 of Protocol No. 1 to the Convention.

23. It follows that this application is manifestly ill-founded and must be rejected pursuant to 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 10 October 2024.

Liv Tigerstedt Deputy Registrar	Alena Poláčková President