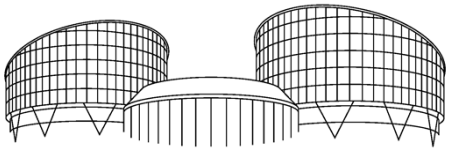

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

# CASE OF M.H. v. POLAND

*(Application no. 73247/14)*

JUDGMENT

Art 8 • Positive obligations • Family life • Unjustified seven-month delay in joint divorce and custody proceedings depriving applicant of possibility of having additional contact with young daughter over a three-month period • Domestic courts' failure to act with requisite diligence

STRASBOURG

1 December 2022

*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 M.H. v. Poland,**

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

Marko Bošnjak, *President*,
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Ivana Jelić,
Erik Wennerström,
Raffaele Sabato, *judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 73247/14) 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") by a Polish national, Ms M.H. ("the applicant"), on 19 December 2014;

the decision to give notice to the Polish Government ("the Government") of the complaint under Article 8 of the Convention;

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated in private on 8 November 2022,

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

# INTRODUCTION

1. The case concerns the outcome and the length of proceedings in a child custody case.

# THE FACTS

2. The applicant was born in 1973 and lives in Warsaw. She was represented by Ms M. Jasińska, a lawyer practising in Sosnowiec.

3. The Government were represented by their Agent, Mr J. Sobczak of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

## I. BACKGROUND

5. The applicant was married to T.H. Their daughter, H.H., was born in March 2006. The applicant suffers from an autoimmune disease which, in its acute phase, requires hospitalisation. Since the birth of her child, the applicant's health and, allegedly, mental health have deteriorated. She has received a preliminary diagnosis of delusional disorder. Her husband

attempted to have her committed to a psychiatric hospital. One of the many arguments between them ended with police intervention.

6. In August 2009, the applicant's husband, without the applicant's knowledge or consent, moved out from the family home together with the child. He claimed that such a radical measure had been necessary to protect his child from the psychological abuse inflicted by the applicant.

7. On 30 December 2011 the Konin Regional Prosecutor discontinued a criminal investigation into the applicant's allegations that T.H. had harassed her when they had lived together on the grounds that no offence had been committed.

## II. CHILD CUSTODY

8. On 14 August 2009 a custody case was registered with the Konin District Court (no. III Nsm 394/09), following an application lodged by T.H., in which the latter claimed that the applicant's mental condition had been unstable; that she had often initiated family rows and had refused to undergo therapy.

9. On 2 September 2009 a court-appointed guardian (*kurator*) issued a community interview report (*wywiad środowiskowy*). The guardian noted that the material conditions and the atmosphere in the house where the child was living together with T.H., and T.H.'s mother and sister, were very good, and the child was well taken care of. T.H. informed the guardian that the applicant had visited the child three times – initially, in the atmosphere of tension and with the assistance of the police. T.H. declared that he was not going to obstruct contact between his child and her mother.

10. On 9 October 2009 the Konin District Court, having heard the parties, validated a friendly settlement between the applicant and T.H., according to which the applicant had the right to contact with her daughter every Wednesday from 1 p.m. to 7 p.m., outside of T.H.'s house and without any supervision.

11. On 12 October 2009 the court also ordered an expert report from the Family Consultation Centre (*Rodzinny Ośrodek Diagnostyczno Konsultacyjny* – hereinafter "the RODK").

12. On 30 November 2009 the RODK's report was completed. The experts made the following observations, in so far as relevant: prior to the first court order on contact, the applicant's visits with the child had been turbulent on account of the inacceptable behaviour of both parents; since October 2009, the applicant's visits had been undisturbed despite the continued conflict between her and T.H; both adults had, in general, equally adequate parenting skills; the child had a strong emotional bond and good relationship with each parent; she clearly yearned for daily contact with her mother. The experts concluded that the material obtained in the course of their examinations was insufficient to make any definite decision on the question

of which parent should exercise custody over the child in the event of marital break down. They recommended that both parents undergo a psychiatric evaluation.

13. By letter dated 17 November 2009 the applicant's lawyer applied for an interim order for contact during Christmas 2009.

14. By a letter dated 19 December 2009 T.H.'s lawyer rectified his original application for custody. He thus asked that the applicant's parental authority be restricted; that her contact be determined; and that an interim order be issued to establish the child's residence temporarily with T.H. In addition, T.H. agreed for the child to spend 24 and 25 December with her mother.

15. On 23 December 2009 the court validated the parties' friendly settlement in respect of the applicant's contact arrangements during the Christmas period.

16. On 16 January 2010 the applicant's lawyer applied for an interim measure to schedule the mother's contact with her child over the winter holidays in February 2010.

17. On 5 February 2010 the Konin District Court ruled *ad interim* that the child could stay from 7 until 12 February 2010 with her mother.

18. On 19 February 2010 the Konin District Court issued an interim decision assigning the child's official residence with her father. On 30 April 2010, the Konin Regional Court dismissed an interlocutory appeal lodged by the applicant.

19. On 19 February 2010 the Konin District Court validated a friendly settlement in which the parties agreed that the applicant would have contact with her child on Mondays from 1 p.m. to 6.15 p.m.

20. On 24 August 2010 the court-appointed expert produced written psychiatric reports, which stated that neither parent suffered from mental illness or disorder.

21. On 5 October 2010 the Konin District Court validated a new settlement authorising the applicant to have contact with the child every other weekend, from 1.30 p.m. on Saturday until 6.15 p.m. on Monday.

22. On 10 December 2010 the Konin District Court validated another settlement, authorising the applicant to have contact with the child every other weekend, from Saturday afternoon until 6.15 p.m. on Monday.

23. On 24 February 2011 the applicant's lawyer applied for a new interim decision on the child's place of residence. The applicant submitted that she had had difficulties in implementing her contact rights and that her good living conditions and flexible working hours would allow her to better care for her child than T.H., who had often been absent, leaving the child in the care of the child's grandmother and aunt.

24. On 2 March 2011 the Konin District Court decided *ad interim* that the applicant could exercise her contact rights on 23 and 25 March 2011.

25. On 4 March 2011 the court-appointed guardians produced two community interview reports, concluding that both parents provided the child with adequate living conditions and a stable financial situation.

26. On 19 April 2011 the custody proceedings before the Konin District Court were stayed in view of the divorce proceedings. They were ultimately discontinued.

## III. DIVORCE AND FURTHER PROCEEDINGS FOR CHILD CUSTODY

27. On 15 March 2011 T.H. filed for divorce with the Warsaw Regional Court (no. VI C 288/11), also asking that sole parental authority over the child be entrusted to him. The applicant filed a similar suit in her favour. The regional court took over the case files from the district court, and with them the jurisdiction over custody and contact issues.

28. On 1 July 2011 the Warsaw Regional Court issued an interim decision by which the applicant was authorised to spend some additional days (from 4 to 7 July 2011) with the child.

29. On 4 July 2011 the Warsaw Regional Court dismissed the applicant's applications of 24 February 2011 concerning parental authority and the child's residence. A copy of that decision was not submitted to the Court.

30. A hearing was held on 8 July 2011.

31. On 26 July 2011 the applicant applied for extended contact in September, on 1 November, and during Christmas 2011, Easter 2012 and summer 2012. On 27 July 2011 the president of the court instructed the applicant to complete her application and ordered an expert report from the RODK. On 17 August 2011 the applicant completed her application for contact.

32. On 26 October 2011 the RODK's report was produced. The experts, who had consulted the results of the psychiatric examination of both parents, made the following conclusions: the child was developing well; she had a strong emotional bond with both parents; she had a better intellectual connection with the father and wished, without any sign of coercion, to continue living with him; she required contact with the mother; and both parents were equally fit to have direct custody over the child. In view of the fact that the child had been living with her father for the prior three years and in view of her acceptance of that situation, it was recommended that the girl remain in T.H.'s care and that the applicant continue exercising her contact rights, including during longer holidays.

33. A hearing was held on 4 November 2011 and the parties declared that there was a possibility of friendly settlement on the issue of the applicant's contact.

34. The next hearing was adjourned, at the applicant's request, pending the latter's attempt to find a lawyer to represent her, and negotiations between the parties.

35. On 28 February 2012 the Warsaw Regional Court validated a friendly settlement by virtue of which the applicant was authorised to spend the Easter holidays (from 5 to 9 April 2012) with her daughter. The applicant withdrew the remainder of her original application. Consequently, the regional court discontinued that part of the proceedings.

36. On 8 March 2012 the Warsaw Regional Court issued an interim decision ordering the applicant to pay child support. The applicant's interlocutory appeal was dismissed by the Warsaw Court of Appeal on 10 September 2012.

37. A hearing was held on 3 April 2012. The court obtained an additional report from an expert of the RODK who concluded that giving custody to the child's father and thus limiting the child's daily contact with the applicant was not going to affect the mother-child emotional bond.

38. On 28 June 2012 the Warsaw Regional Court validated a new friendly settlement in accordance with which the child was to spend half of the summer holidays with the applicant.

39. On 10 January 2013 the applicant applied for an interim order on contact during the Easter and summer holidays of 2013.

40. On 27 May 2013 the Warsaw Regional Court pronounced a mutual-fault divorce between the applicant and T.H. and ordered that the parents would have joint custody and the child's residence would be with the father. The applicant's contact was scheduled as follows: every other weekend from Friday at 8 p.m. until Sunday 7 p.m. and every other winter holiday; in alternate years, between the first and the second half of the summer holidays (either from 1 to 31 July or from 1 to 31 August); in alternate years, the first or the second part of the Easter holidays and in alternate years, the first or the second part of the Christmas holidays.

41. The first-instance court established the following facts on the basis of the witness testimony, the RODK reports and a report by experts in psychiatry. The child, who was due to start primary school, was neat, calm and cheerful. She had not been negatively affected by her relocation to another town with her father in 2009. She had a strong bond with both parents but she considered her father as her primary caretaker. The girl liked spending time with her mother but wished to live in Konin, in the more familiar environment where she had friends. She had got used to her life with separated parents. T.H., who was a university teacher, had adequate parenting skills and a good emotional bond with his daughter. He had regularly been in conflict with the applicant and had reproached her for neglectful parenting. He lived in his own flat in Konin, which measured 60 sq. m. The applicant also worked as a university teacher. She had adequate parenting skills and had a good relationship with her daughter. In the past, the applicant had reacted to stress with acts of self-mutilation, depression and anxiety. The psychiatric report concluded that the applicant was not suffering from any mental illness or other psychiatric disorders. She was at that time under

permanent medical supervision for her autoimmune disease. She resented T.H. and presented him in a negative light. The applicant did not have a permanent residence and was at that time living in a university residence, which was located in Warsaw on the university campus.

42. The court ordered shared custody as sought by both parties in view of their similar parenting skills and their cooperation driven by the best interest of their daughter. On the other hand, the child's residence was fixed with her father because he was considered to offer better guarantees of carrying out the parenting duties. In particular, T.H. had his own flat and he was occasionally helped by his mother and sister. The applicant's living situation on the other hand, was less stable and she might find it difficult to adequately care for her daughter in the event of a relapse of her illness. Moreover, during her examination at the RODK, the child had expressed a clear wish to continue living with her father in Konin, as that place had been the centre of her life for the previous four years. The schedule of the applicant's contact with her daughter was in line with her own application in the event she did not obtain the child's residence.

43. The applicant appealed, arguing that there had been a generally wrong assessment of evidence and that the wrong conclusions had been reached in the first-instance court's judgment, and reiterating that the child's residence should be with her.

44. On 14 May 2014 the Warsaw Court of Appeal partly overturned the above judgment, declaring that T.H. had been at fault for the divorce. The court also entrusted parental authority to the father, restricting the applicant's authority to co-decide about significant issues in the child's life, and decided that the child would continue to live with T.H.

45. The appellate court disagreed with the first-instance court on two points. Firstly, it found that T.H. had failed to prove, despite the applicant having undergone two psychiatric examinations, that the latter had had mental health issues and thus, that his fears for the well-being of the child had been justified. Secondly, the appellate court considered that the applicant could care for her daughter as well as T.H., despite the fact that she lived in a university residence and did not have family or neighbours who could help in the event of illness. On the other hand, the appellate court upheld the lower court's decision that the child should continue living with her father because that was in line with the child's wishes and because Konin was the centre of her life. Changing the child's place of residence at that moment would not have been in the girl's interest. This ruling was without prejudice to any future decision should the child life circumstances change. Lastly, the applicant's custody had to be formally limited because the parties had failed to present the domestic courts with an agreement on the implementation of joint custody after divorce whereas there was an ongoing conflict between the parties. It was, therefore considered unlikely that the parents would correctly cooperate in matters related to the child's upbringing.

## IV. UNREASONABLE LENGTH OF PROCEEDINGS UNDER THE 2004 ACT

46. On 22 June 2012 the Warsaw Court of Appeal issued a decision acknowledging that the divorce proceedings had been unreasonably lengthy and awarded the applicant 2,000 Polish zlotys (PLN) (approximately 500 euros (EUR)).

47. In particular, it concluded that the only flaw of the impugned proceedings was that an unreasonable delay had occurred between 26 July 2011 – when the applicant had lodged her application for new contact dates – and 28 February 2012 – when the Regional Court had decided on the issue, accepting the parties' friendly settlement. As a result, the applicant had not obtained additional contact dates in September, November and December 2011. Because of the proximity of the dates in question, the regional court should have ruled on contact without seeking the RODK report, especially since the material in the case file had been sufficient. Other than that, the appellate court found that hearings had been scheduled frequently enough, that the regional court had ordered a number of reports and ruled on the applicant's application for legal-aid and for the adjournment of the hearing of 4 November 2011, and that the overall length of the proceedings had been attributable to the fact that case files had had to be transferred from the Konin District Court.

## V. DEVELOPMENTS SINCE THE DATE OF THE INTRODUCTION OF THE APPLICATION

48. After the appellate court's judgment in respect of divorce and custody, T.H. moved with the child to Warsaw.

49. On 27 October 2014 the applicant applied for child custody (no. VI Nsm 1197/14). T.H. lodged an objection on the grounds that the child had been living with him and his new family (T.H.'s partner and her child) and had maintained uninterrupted contact with the applicant.

50. On 13 March and on 8 April 2015 a court guardian produced two community interview reports concerning each parental home. The expert noted that the applicant had been exercising her contact rights without any problems, in line with the judgment of 27 May 2013; that the parties had agreed to extend those contact arrangements to Monday afternoons; that the applicant had been taking good care of her daughter; and that she considered that the contact with the child was insufficient.

51. At the court hearing of 15 June 2015, T.H. declared that, in principle, he agreed that the applicant should be able to exercise her contact rights more frequently, but he wished to protect the child from any stress. A witness, T.H.'s partner, submitted that the child had had regular contact with the applicant but did not wish to meet with her more often or to live with her. It

had been T.H. who had urged his child to meet with her mother as per schedule.

52. On 22 June 2015 the applicant withdrew her application for parental authority over H.H. At the hearing on 2 September 2015 she explained that she had a good relationship with her child and that she considered their contact sufficient.

53. On 2 September 2015 the Warsaw District Court decided that no grounds existed to change the previous ruling on parental authority. The applicant did not appeal.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

54. Relying on Article 6 of the Convention the applicant complained of the unreasonable length of the proceedings in which her custody rights and the residence of her daughter had first been decided. She also complained, under Article 8 of the Convention, about the outcome of these proceedings.

55. The Court, being the master of characterisation to be given in law to the facts of the case, considers that both aspects of the applicant's complaint fall to be examined under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his ... 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 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."

### A. Admissibility

56. The Government argued that, viewing the case as a whole, it cannot be said that the State authorities had failed in discharging their positive obligations to secure to the applicant the effective exercise of her right to respect for her family life. They submitted that, consequently, the case should be declared inadmissible as manifestly ill-founded.

57. Given that the applicant's specific grievance was the excessive length of the proceedings for custody and parental rights, the Court observes that, in the particular circumstances of the present case, the complaint under the 2004 Act, a remedy which the applicant has used, was capable of remedying directly the impugned state of affairs. In that respect the applicant's case may be distinguished from other cases where it has been held that the applicants were not required to have recourse to that remedy (see *Kijowski v. Poland*, no. 33829/07, § 44, 5 April 2011, and *Oller Kamińska v. Poland*,

no. 28481/12, § 75, 18 January 2018; see also *mutatis mutandis*, *Leszniewska v. Poland* (dec.), no. 5313/12, § 67, 22 October 2019).

58. Moreover, the Court reiterates that an applicant's status as a "victim" within the meaning of Article 34 of the Convention may depend on compensation being awarded on the basis of the facts about which he or she complains before the Court. The general principles applicable in cases concerning complaints of length of proceedings are set out in the Court's well-established case-law, namely *Scordino v. Italy* (no. 1) ([GC], no. 36813/97, §§ 178-81 and § 193, ECHR 2006-V), *Norman v. Denmark* ((dec.), no. 44704/98, 14 June 2001) and *Rakowski v. Poland* ((dec.), no. 34934/14, § 11, 6 November 2018).

59. In the present case, the Warsaw Court of Appeal, ruling on the applicant's complaint under the 2004 Act, acknowledged that an unreasonable delay had occurred in the divorce proceedings before the Warsaw Regional Court, between 26 July 2011 and 28 February 2012. On that account, the Warsaw Court of Appeal awarded the applicant EUR 500 (see paragraphs 46 and 47 above).

60. The Court observes that the delay in question precluded the applicant from the possibility of obtaining additional contact in September, November and December 2011. While, as a result of her complaint under the 2004 Act, the applicant obtained an explicit acknowledgement of the violation, pecuniary redress awarded to her by the domestic court was, in the light of the Court's well-established case-law under Article 6, insufficient and therefore did not constitute appropriate redress for the violation suffered (contrast, *mutatis mutandis*, *Rakowski*, cited above, § 12).

61. Given these circumstances, the Court notes, *proprio motu*, that the applicant can still claim to be a "victim" of a breach of the "reasonable time" requirement and ensuing consequences for her family life in respect of this part of the impugned divorce proceedings.

62. The Court therefore concludes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds and must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

63. The applicant argued that the domestic court's judgment fixing the child's residence with and granting parental authority to the child's father had disproportionately interfered with her family life and had been against the child's best interests. The impugned ruling had been unfair, essentially, in that it had been based on the argument that the child had become attached to the environment in her father's home and town. In the applicant's opinion, that element, a natural result of the passage of time, had been produced only

because the proceedings had been unreasonably long. The applicant submitted that the ruling in question had, in fact, sanctioned the illegal removal of her daughter from her family home by her father.

64. The Government made the following observations. The custody proceedings (parental authority and the child's residence) had not affected the applicant's contact rights. Throughout the entire impugned proceedings the applicant had exercised her contact rights with the child without any hindrance. The contact schedule had been gradually extended by the domestic courts in line with her applications. The applicant's bond with her daughter had not been broken. The overall length of the proceedings in question had resulted from the family courts' diligence in obtaining updated information in respect of the family from a court guardian and experts in order to be able to adequately balance the interests of the child and those of each parent. Moreover, the Government stressed that the jurisdiction of the first court dealing with the applicant's custody case had necessarily to be taken over by another court in view of the divorce proceedings which had been instituted by T.H.

### *2. The Court's assessment*

#### (a) General principles

65. It is well-established that although the object of Article 8 is essentially that of protecting 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 primarily negative undertaking, there may be positive obligations inherent in an effective respect for private 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. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance which has to be struck between the general interest and the interests of the individual; and in both contexts the State enjoys a certain margin of appreciation (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 114, ECHR 2014 (extracts) with further references). Other general principles regarding positive obligations under Article 8 in the specific context of child custody dispute are set out in *Leonov v. Russia* (no. 77180/11, §§ 64-68, 10 April 2018, with further references).

#### (b) Application of the general principles to the present case

66. Before turning to the analysis of the reasons advanced by the domestic courts, it is important to note that the scope of the impugned order was limited to determining where the applicant's daughter would live and who would have direct custody over her. It did not restrict the applicant's parental

authority other than excluding her power to decide on day-to-day matters, which was dictated by the practicalities of the child's residing with one parent only, in the absence of agreement between the parents on the implementation of joint-custody and in view of the overall conflict between them (see paragraphs 44 and 45 above). It is also significant that, throughout the whole time, the applicant effectively exercised her contact rights.

67. The Court accepts that in reaching decisions on child-care measures, national authorities and courts are often faced with a task that is extremely difficult.

68. Having examined the domestic courts' decisions at issue (see paragraphs 40-42 and 44 and 45 above), the Court finds nothing to doubt that they were based on the best interests of the child. The appellate court, in the decision which terminated the proceedings, upheld the conclusion of the first-instance court that changing the child's place of residence would firstly, be against her wishes and, secondly, against her interests because her father's home and the city had become the centre of her life and because she had got used to that situation (see paragraphs 41 and 44 above).

69. There is nothing to indicate that the findings reached by the domestic courts, which had the benefit of direct contact with all the individuals concerned and which were based on ample material produced by experts in psychology and psychiatry, and by court guardians (see paragraph 41 above), were unreasonable and thus fell outside their wide margin of appreciation. Given that the national authorities are in principle better placed than an international judge to evaluate the evidence before them, it is not the Court's task to take their place in establishing and assessing the facts and deciding what is in the best interests of the child in the present case. The Court notes that the custody order was based on an assessment of the particular circumstances of the case.

70. The Court further notes that the decisions at issue were reached following adversarial proceedings in which the applicant was placed in a position enabling her to put forward all arguments in support of her application for a custody order in her favour. She also had access to all relevant information that was relied on by the courts.

71. It follows that the decision-making process was fair in so far as it allowed the applicant to present her case fully and that the reasons advanced by the domestic courts were relevant and sufficient. In this respect the Court observes that, by making a custody order in favour of the father, the domestic courts did not overstep their wide margin of appreciation.

72. That being said, the Court notes that the family courts in the divorce proceedings ruled after two years and two months and three years and two months after jurisdiction had been taken over by the Warsaw Regional Court and, respectively, three years and nine months (in the case of the first-instance court). With regard to the child-custody proceedings before the institution of the joint divorce and custody proceedings, covering a period of one year and

eight months (14 August 2009 to 19 April 2011), the Konin District Court issued three interim measures and validated four friendly settlements between the parties, and carried out other activities demanded by the parties.

73. In the circumstances of the case, it cannot be said that the procedural activity of the applicant who, on one occasion, applied for legal-aid and, on another, asked for a hearing adjournment in order to find a lawyer of her own choice (see paragraphs 34 and 47 above), significantly influenced the overall duration of proceedings (contrast *Leonov*, cited above, § 75 and, *mutatis mutandis*, *Gobec v. Slovenia*, no. 7233/04, § 144, 3 October 2013). Moreover, except for the first interim decision of the Konin District Court on the child's residence (of 19 February 2010), and the main decision of the Warsaw Regional Court on custody and divorce, the courts were not called on to examine any appeals (see paragraphs 28 and 43 above).

74. A thorough analysis of the course of both sets of the impugned proceedings prompts the Court to make the followings observations.

75. By 24 August 2010 the Konin District Court, which had been the court with jurisdiction to rule on the custody issue, obtained a large portion of the expert material necessary to adjudicate the case (the court guardian's community interview report of 2 September 2009; the RODK's report of 30 November 2009; and the reports of the psychiatric expert of 24 August 2010). However, in view of the ever-changing family circumstances, the proceedings could not be concluded, and the domestic court saw it fit to obtain new community interview reports (see paragraph 25 above). No inactivity can be assigned to that court, as it issued at least seven *ad interim* decisions on contact and one such decision on the child's residence.

76. As to the proceedings before the Warsaw Regional Court, an unreasonable delay between 26 July 2011 and 28 February 2012 was acknowledged by the Warsaw Court of Appeal, ruling on the applicant's complaint under the 2004 Act (see paragraphs 46 and 47 above).

77. Apart from that part of the divorce proceedings, the domestic court's work was not marked by individual periods of lengthy inactivity. The court obtained two new RODK reports (see paragraphs 31, 32 and 37 above), held four hearings at the intervals of two to four months and issued five interim decisions: three in respect of the applicant's contact with the child, one in respect of custody and one in respect of child support (see paragraphs 28, 29, 35, 36, 38 above).

78. The Court observes that in child-care cases, to protect the best interests of the child, the domestic courts must first and foremost speedily and adequately respond to the dynamic family situation and not be driven by the goal of formally concluding the proceedings. Depending on the circumstances, family courts may therefore be required to attenuate the conflict if such exists between estranged parents, for example by having recourse to civil mediation or other instruments (see *Kacper Nowakowski v. Poland*, no. 32407/13, § 87, 10 January 2017, and *Cengiz Kılıç v. Turkey*, no.

16192/06, § 132 *in fine*, 6 December 2011). They may also have to facilitate contacts between the non-custodial parent and the child by means of interim decisions. All in all, the obligation of expeditious examination of a child-care case and the obligation to assess the merits of the case on the basis of quality and sufficient evidence are equally important components of the notion of diligence which the domestic courts should manifest in order to comply with Article 8 of the Convention.

79. In the present case, the courts' task of adjudicating the custody dispute was rendered particularly difficult by the conflict between the parents. In light of this, the Court finds that the domestic courts had to respond to the family situation as it was evolving. In these circumstances, the Court finds that, with the exception of the period between 26 July 2011 and 28 February 2012, the proceedings before the first instance and before the appellate court were not marked by lengthy periods of inactivity. The domestic courts were also constantly monitoring and intervening by means of interim measures or other *ad hoc* decisions in the case. Conversely, between 26 July 2011 and 28 February 2012, the domestic courts failed to take special precautions in order to prevent any unnecessary delays, such as adhering to a very tight time-schedule, and, consequently dealt with the proceedings without the requisite diligence (compare *Leonov*, cited above, § 75, and *Nanning v. Germany*, no. 39741/02, § 44, 12 July 2007). Incidentally, the Court observes that the obligation of expeditious examination of a child-care case does not give precedence, as essentially argued by the Government (see paragraph 64 above), to the obligation to assess the merits of the case on the basis of evidence that is sufficient and of adequate quality. Both obligations are, in fact, equally important components of the notion of diligence which the domestic courts should manifest in order to comply with Article 8 of the Convention. In the present case, the delay between 26 July 2011 and 28 February 2012 deprived the applicant of the possibility of obtaining additional contact with her child in September, November and December 2011, which must have created frustration and some anxiety on the part of the applicant. The Court agrees with the finding of the domestic court which examined the applicant's length complaint that, given the proximity of the dates referred to in the request of July 2011, the Regional Court should have made a decision promptly, on the basis of the evidence at its disposal (see paragraph 47 above). By failing to do so, mother and daughter could not benefit from additional contact with each other which could have been of importance having regard to the child's low age – five years at the time. The delay did not however, in and of itself, impact the impugned outcome. The latter was certainly influenced by the passage of time. As already observed above, however, that did not stem from significant procedural delays of the domestic courts, but rather from the dynamic character of the case to which these courts had to respond.

80. All in all, the finding that the impugned proceedings were marked by unjustified inactivity between 26 July 2011 and 28 February 2012 is sufficient to enable the Court to conclude that there has been a violation of Article 8 of the Convention on that sole ground.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicant claimed 16,900 euros (EUR) in respect of non-pecuniary damage.

83. The Government invited the Court to calculate the just satisfaction claim in the light of its current practice in similar cases.

84. Having regard to the particular circumstances of the present case (see in particular paragraph 79 above) and the award already granted at the domestic level (see paragraph 46 above), the Court, ruling on an equitable basis, awards the applicant EUR 2,500 in respect of non-pecuniary damage, plus any tax that may be chargeable, and rejects the remainder of the claim.

### B. Costs and expenses

85. The applicant also claimed EUR 1,100 for the costs and expenses incurred before the domestic courts and EUR 960 for those incurred before the Court. To this end, she submitted two invoices from the lawyer representing her before the Court.

86. The Government did not comment.

87. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 2,060 covering costs under all heads.

## 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 on the ground that the proceedings were marked by unjustified inactivity between 26 July 2011 and 28 February 2012;

3. *Holds*

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

(i) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and

(ii) EUR 2,060 (two thousand and sixty 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 1 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Liv Tigerstedt | Marko Bošnjak |
| Deputy Registrar | President |