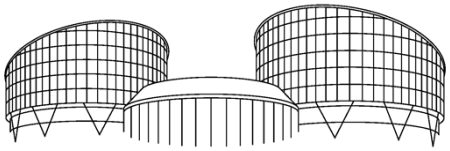

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF L.D. v. POLAND

(Application no. 12119/14)

JUDGMENT

Art 8 • Positive obligations • Family life • Domestic authorities' failure to ensure the effective enforcement of the applicant's custody of and contact with her son after his father refused to return him • Proceedings marked by a lack of diligence and long and repeated delays with significant consequences for the family situation • Shortcomings in decision-making process and the enforcement of court orders contributed to the complete breakdown of the applicant's relationship with her son • Failure to make adequate and effective efforts to protect her rights

Prepared by the Registry. Does not bind the Court.

STRASBOURG

13 February 2025

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 L.D. v. Poland,

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

Ivana Jelić*, President*,
Erik Wennerström,
Alena Poláčková,
Frédéric Krenc,
Alain Chablais,
Artūrs Kučs,
Anna Adamska-Gallant*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 12119/14) 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 L.D. ("the applicant"), on 3 February 2014;

the decision to give notice to the Polish Government ("the Government") of the application concerning Article 8 of the Convention;

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

the parties' observations;

Having deliberated in private on 21 January 2025,

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

INTRODUCTION

1. The case concerns the State's positive obligations under Article 8 of the Convention regarding the applicant's custody of and contact with her child.

THE FACTS

2. The applicant was born in 1971 and lives in Sieradz. The applicant was represented by Ms M. Gąsiorowska, a lawyer practising in Warsaw.

3. The Government were represented by their Agent, Ms A. Kozińska-Makowska, of the Ministry of Foreign Affairs.

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

I. BACKGROUND

5. B. is a child born in 2006 to the applicant (the mother) and to P. (the father), with whom the applicant was in a relationship until January 2011. Initially, B. was living with the applicant and his half-brother. Both parents retained full parental custody of the child and the father exercised contact rights in accordance with a judicial decision.

6. On 6 March 2011 P. did not return the child to the applicant. Several attempts immediately undertaken by the applicant to retrieve B. failed. The police refused assistance on the grounds that the child's place of residence with the mother had not been formally established by a court order.

7. On 8 March 2011 the applicant applied to the Sieradz District Court (*Sąd Rejonowy*, "the SDC") seeking to have the child returned to her.

II. COURT PROCEEDINGS LEADING UP TO THE CHILD'S RETURN ORDER OF 23 MAY 2012

A. First part of proceedings regarding child custody

1. Main proceedings

8. On 11 March 2011 the SDC opened, *proprio motu*, proceedings to limit the parental custody of both parents given the conflict between them.

9. On 15 March 2011 the applicant lodged an application seeking to restrict P.'s custody and to establish the child's place of residence as being with her.

10. On 25 March 2011 the SDC joined that application to the main proceedings.

11. On 20 June 2011 the SDC ordered that an expert report regarding B.'s psychological state and the parties' parental skills be drawn up by the Family Consultation Centre (*Rodzinny Ośrodek Diagnostyczno-Konsultacyjny*, "the RODK").

12. On 11 October 2011 the RODK drew up its report, based, among other things, on examinations conducted on 13 and 29 September 2011. The RODK included findings regarding B., his father, P., and the applicant. It stated that B. was emotionally unstable and heavily dependent on his paternal family. He had a close and positive bond with his father and also showed closeness and trust towards his mother. It found that P. was egocentric, authoritarian, overconfident, condescending and manipulative, not abiding by social or legal norms, but driven by his own moral code. He was not in tune with his child's needs and, towards his child, P. was impatient, chaotic and overly commanding. He was belittling and competitive towards the child's mother. He had agreed to the meetings between the child and the mother only if they took place on his terms and under his supervision. P. had expressly stated that, if his conditions were not met, he would not abide by any court orders, even if the police arrived at his house. It was suspected that P. was heavily addicted to alcohol. The RODK stated that the applicant was cooperative and caring. She was emotionally dependent on others and, at times, she could be overemotional, helpless and slightly possessive. In the past, she had threatened to kill herself and her children. The applicant had adapted and responded to B.'s needs, and despite P.'s disturbing actions, she had stimulated and accompanied the child. The RODK concluded that B. had

shown a need to be close with both parents, although he was dependent on emotional approval from his paternal family. The parental skills of both parents were diminished by their inability to separate their own conflict from their relationship with the child. The report stated that the child should be in the custody of the applicant, since she was, nevertheless, better suited to respond to the boy's needs and that P. should have regular contact with the child.

13. On 23 February 2012 the SDC delivered a ruling in which it authorised P. to exercise custody of B. It also ordered the parents to undergo therapy to improve their parental skills and appointed a guardian to monitor the parents' compliance with the ruling. The domestic court observed that, based on unspecified witness testimony and police reports, as well as on a medical certificate, it could not adhere to the RODK's conclusions. Removing B. from the paternal family environment would not be in his best interests. It could not be said that P. was an alcoholic, and B. felt safe in his father's house and any harmful behaviour would cease after P. and the applicant underwent therapy, as ordered by the court.

14. On 12 April 2012 the applicant appealed against that ruling, among other things, on the grounds that P. was hindering her contact with B. and manipulating the child.

15. On 8 May 2012 the President of the Sieradz Regional Court (*Sąd Okręgowy*, the "SRC") replied to the applicant's request to expedite the proceedings. It was considered that, despite the statutory time-limits having been exceeded, there had been no unreasonable delays in the applicant's case.

16. On 23 May 2012 the SRC granted the applicant's appeal and changed the ruling of the SDC of 23 February 2012. The court granted full custody of B. to the applicant. The SRC also ordered the court-appointed guardian to supervise the applicant. The court reasoned that the SDC had not had any basis to discredit the RODK's expert report, which was reliable, comprehensive and objective. Moreover, in finding that B.'s removal from his paternal residence would not be in the child's best interests, the lower court had contradicted the experts and itself, given that, in its decision of 11 March 2011 (see paragraph 18 below), it had found that B. had not been in danger while living with his mother. The SRC ordered P. to hand B. over to the applicant. The ruling became immediately final, and on 24 May 2012 the SRC issued a formal instrument of enforcement.

2. Court decisions regarding the child's place of residence

17. Meanwhile, on 4 March 2011 P. filed an application for an interim measure, seeking to have B.'s residence established at his own address.

18. On 11 March 2011 the SDC dismissed it. The court relied on the community interview conducted by a court-appointed officer and held that B.'s best interests had not been jeopardised while being in the applicant's custody.

19. P. lodged an interlocutory appeal against that ruling, which was dismissed by the SRC on 27 April 2011.

20. Meanwhile, on 15 or 16 March 2011, the applicant requested a court order regarding the child's place of residence (see paragraph 9 above).

21. On 25 March 2011 the SDC dismissed her application and, acting *proprio motu*, issued a different order, stating that a court-appointed guardian should supervise the father's custody of B. The court held that B.'s best interests had not been jeopardised while in the custody of his father. It also declared that since both parents enjoyed full parental custody, the child could live with either one of them. It observed that B.'s permanent place of residence would be decided in the course of the main proceedings.

22. On 30 May 2011 the applicant applied to have the above order changed so that B.'s temporary place of residence would be with her.

23. On 20 June 2011 the SDC dismissed that application.

24. On 27 June 2011 the applicant appealed against that decision.

25. On 1 August 2011 the SRC dismissed that appeal.

3. Court decision regarding contact rights

26. On 25 March and 15 April 2011 the applicant filed an application, seeking an order regarding her contact arrangements.

27. On 26 April 2011 the SDC dismissed the request of 15 April. The court held that the applicant had failed to show any legal interest in obtaining an interim order in that regard. The court reasoned that refraining from issuing the order regulating the applicant's contact rights would not render the enforcement of the future decision regarding custody impossible or seriously difficult within the meaning of Article 730^1 § 2 of the Code of Civil Procedure (see paragraph 101 below). The court suggested that the applicant should seek contact arrangements in a separate set of proceedings.

B. The applicant's contact with the child and related proceedings

1. Applicant's contact with B. in the period when her contact rights were not established by any court order

28. Between 2 April and 29 August 2011, the applicant filed several letters with the SDC, informing the court that P. was hindering her contact with her son. In particular, she made the following submissions: (i) between 4 March and 17 June 2011 she had seen B. four times at his kindergarten, and four or five times at P.'s house – in his and his family's presence – where P. and his family had shouted insults and swear words at her and pushed a person accompanying her out of the garden; (ii) between 17 June and 29 August 2011 (including on B.'s birthday) she had not seen B. or had any information about him; (iii) the applicant's telephone calls and letters to P., in which she was informing him of dates when she wished to meet with her child or to take him

on holiday, had gone unanswered; and (iv) the applicant had gone to P.'s house dozens of times and had stood there for hours, waiting for or calling her son.

2. Applicant's contact with B. in the period when her contact rights were established by a court order

29. Regarding the period when contact rights were set out in the court orders of 21 October 2011 and 7 November 2011 (paragraphs 42 and 43 below), the applicant made the following submissions, firstly, to the SDC and then, also, to the guardian appointed by the court in the custody decision of 23 February 2012.

30. According to the applicant's letter of 29 December 2011, in the first two months following the order, P. had effectively hindered the applicant's contact rights. In particular, the applicant could only meet with B. six out of nine times on Wednesdays, and two out of four times at weekends. She did not see the child over Christmas. The meetings had only taken place when the applicant had picked up the child from kindergarten; when the applicant had tried to pick up the child from P.'s house, she had been told either that B. had been ill, or that the child had refused to go with her. The applicant, giving various examples, submitted that P. had manipulated the child and made him feel guilty about meeting with her.

31. In her letter of 7 March 2012, the applicant conveyed her suspicion that P. had been pressuring B. to refuse the meetings and turning him against her. She submitted that seven meetings (between 25 January and 29 February 2012) had not taken place and described several situations when P. had either picked up the child from the kindergarten on the applicant's day, had told her that the child had been ill (without a medical certificate or with a certificate indicating a future date), or had taken B. out of town. She also recounted how P. had pressured B. into refusing to go with his mother and how he had provoked an argument and ended up not allowing her to have her meeting with the child.

32. In her letter of 23 April 2012 the applicant submitted that ten meetings (between 2 March and 9 April 2012) had not taken place, either because B. had refused to go with her when he had seen P. or his relatives waiting for him in front of the kindergarten, or because he had not been at the kindergarten in the first place. She also claimed that P. had told B. that if he went with his mother, she would not return him. The applicant submitted that she had been going to the kindergarten on alternative days in order to spend time with B. there.

3. Proceedings concerning contact rights

33. On 5 May 2011 the applicant lodged an application with the SDC seeking contact rights for her and B.'s grandmother. She also filed an application for an interim order in that matter.

34. On 6 May 2011 the SDC declared that, given the child's actual place of residence, it lacked jurisdiction *ratione loci* and transmitted the case to the Zduńska Wola District Court (the "ZWDC").

35. On 30 May 2011 the applicant asked the SDC to expedite the proceedings.

36. On 6 June 2011 the ZWDC dismissed the applicant's request for an interim order, essentially considering that the SDC was better placed to rule on the issue. On 7 June 2011 the ZWDC asked the SRC for the case be reassigned to the SDC.

37. On 14 June 2011 the applicant appealed against the dismissal of her application for an interim order.

38. On 15 June 2011 the SRC reassigned the case from ZWDC to the SDC.

39. It appears that on 18 July 2011 the SRC, following up on the applicant's appeal, quashed the decision of 6 June 2011 and remitted the case for re-examination.

40. On 19 September 2011 the applicant asked the SDC to expedite her request for an interim order. She argued that since the initial decision had been quashed, nothing had happened in her case. She also indicated that under the appliable law, a request for an interim order should be decided within seven days.

41. On 14 October 2011 the applicant modified her original request for contact rights.

42. On 21 October 2011 the SDC issued an interim order, setting out the applicant's (and her mother's) contact with B. away from P.'s house (two weekends per month, every Wednesday and selected days during the 2011 Christmas and New Year holiday period).

43. On 7 November 2011 the SDC issued a main decision, establishing the applicant and her mother's long-term contact arrangements with B. away from the child's place of residence (two weekends per month, every Wednesday afternoon and night until Thursday morning, one week during winter holidays, a month during the summer holidays, and on an alternating basis, selected days during the Christmas and Easter holidays).

44. On 22 February 2012 the SRC dismissed the father's appeal against that decision.

4. Applications for enforcement of contact rights

45. On 27 January 2012 the applicant asked the SDC to enforce the final ruling of 7 November 2011 (see paragraph 43 above) regarding her contact rights.

46. On 15 February 2012 the SDC declared that it lacked jurisdiction *ratione loci* and referred the case to the ZWDC.

47. On 24 February 2012 the applicant lodged an appeal, arguing that for reasons of procedural economy, the case should stay with the SDC, where all the other proceedings regarding the applicant's family situation were pending.

48. On 6 April 2012 the applicant wrote to the President of the SRC asking for assistance in the enforcement of her contact with B. by expediting the proceedings in her case. She submitted that the father had been hindering her contact rights and that, despite the court's ruling setting out those rights, she had not had any contact with her son since February 2012.

49. On 16 April 2012 the SRC dismissed the applicant's interlocutory appeal against the ruling of 15 February 2012. The court observed that the proceedings regarding contact rights would not be hampered given that the two courts in question were at a short distance from one another and that a copy of the case file from the other court could always be appended to the file of the case regarding contact rights.

50. On 8 May 2012, in reply to the applicant's complaints about the protraction of the various proceedings regarding her family situation, the President of the SRC informed the applicant that on 7 May 2012, the case file had been released by that court and that her application regarding the enforcement of contact rights would now be examined by the ZWDC.

51. The subsequent proceedings in respect of the applicant's contact rights are described in paragraphs 63-82 below.

C. Enforcement of the ruling of 23 May 2012 on the child's return to the applicant

52. On 30 May 2012 the applicant applied to the ZWDC to formally order the surrender of B., based on the SRC's ruling of 23 May 2012 (see paragraph 16 above).

53. On 11 July 2012 the ZWDC issued an interim order obliging P. to hand the child over to the applicant by 20 July 2012. P. refused to comply.

54. On 23 July 2012 the ZWDC ordered a court-appointed guardian to forcibly remove B. from his father's home.

55. On 26 July, 1 August and 17 August 2012 the guardian, assisted, among others, by the police and a psychologist, made attempts to enforce the order. The guardian did not retrieve B. owing to the child's emotional reaction against his return to the applicant – on two occasions – and on account of the child's absence on 1 August.

56. On 2 August 2012 the applicant again asked the President of the SRC to intervene in her case. On 20 August 2012 the president declared the applicant's complaint unfounded, given that the guardians had made attempts to enforce the ruling.

57. On 10 September 2012 the Commissioner for the Rights of the Child (*Rzecznik Praw Dziecka*, the "RPD") intervened in the proceedings and asked the ZWDC to stay the enforcement of the ruling of 23 May 2012, reasoning that B. could have suffered trauma on account of the actions undertaken by the guardians, psychologists and police officers during the attempts to enforce the ruling in question. He also suggested that the forcible handover of a child to a parent after long-term alienation needed to be handled more delicately.

58. On 18 September 2012 the ZWDC granted the RPD's request and stayed the enforcement of the ruling of 23 May 2012 until both the applicant and P. had completed family therapy and training on parental and conflict-solving skills. No time-limit was set within which the parties had to comply.

59. On 1 October 2012 the applicant appealed against that ruling. She argued that P. had shown blatant disregard for judicial authority and the whole situation could have been avoided had he willingly complied with the final and enforceable court order, or had the authorities conducted the forcible return differently, taking into account that the child had been alienated from her. She stressed that the child had not been crying or been otherwise hysterical during the authorities' attempt to remove him from P. In her submissions, B. had merely refused to go with his mother, verbally expressing a categorical "no". She also stressed that it was P. and his family who had inflamed the situation by screaming at and insulting her while she had been calmy waiting on the sidelines. The applicant argued that the ruling against which she was appealing was practically non-enforceable, in that the enforcement was made conditional on the family therapy and parental skills training, which P. had no intention of pursuing, especially since his refusal could impede enforcement. For her part, the applicant explained she had made various enquires with the local authorities and learned that no such training or therapy sessions were available to her. She also submitted that she was a fully trained child educator who was attending psychological therapy. She also listed a series of classes and workshops which she had completed in her professional capacity, essentially indicating that she had the necessary skills to ensure B.'s well-being.

60. On 20 December 2012 the SRC quashed the ruling of 18 September 2012 and remitted the case for re-examination. It instructed the first-instance court, firstly, to establish whether the parents had sought to undergo the therapy and training sessions that had been ordered and, secondly, to indicate the time-limit within which the parties had to comply with the order.

61. On 11 April 2013 the applicant completed a forty-hour training session on parental skills.

62. The subsequent proceedings are described in paragraphs 85-98 below.

D. Proceedings conducted after 23 May 2012

1. Proceedings and developments regarding contact rights

63. On 27 November 2012 the ZWDC, acting *proprio motu*, issued an interim order concerning the applicant's contact with B. It authorised the applicant to meet with B. on eight occasions over two months, namely on two Saturdays and two Sundays of the month between 12 p.m. and 2 p.m., without P. being present. The first four meetings were to take place at P.'s house, the remainder away from the father's home. It also ordered a guardian to supervise each meeting.

64. On 13 December 2012 P. appealed against the interim decision, asking that the meetings take place in his house under his and the guardian's supervision.

65. On 15 January 2013 the applicant replied to P's appeal.

66. On 11 March 2013 the SRC partly granted P.'s appeal, ordering that all the applicant's meetings with B. would take place in P.'s house, without him being present, but under the supervision of a court-appointed guardian.

67. In a letter of 13 August 2013 sent to the President of the ZWDC, the applicant submitted that, for a long time, she had not been able to enforce her contact rights set out in the decision of 27 November 2012, because, despite her repeated interventions, the guardian, who was supposed to supervise the visits, had only been assigned to her on 12 June 2013. On 3 September 2013 the President of the ZWDC replied that she had not found any shortcomings on the part of the court or the guardians. Various court documents submitted to the case file demonstrate that a court-appointed guardian was remunerated for her work between August and September 2013. It had not been specified how many meetings had taken place in that period.

68. On 12 September 2013 the applicant made a new interim application for another set of meetings with her son. She also submitted that the previous meetings had taken place, but that P. and his family had been watching and effectively disturbing them.

69. On 26 September 2013 the ZWDC set out new contact arrangements. The applicant was allowed to meet with her son on two alternating Saturdays and two alternating Sundays of the month between 12 p.m. and 2 p.m. All the meetings were to be supervised by a guardian. The Saturday meetings were to take place away from P.'s house. The Sunday meetings were to take place at P.'s house, without P. or his family being present. Starting on 1 December 2013, the applicant was to spend time with B. alone, without the guardian.

70. Both the applicant and P. appealed against that ruling.

71. On 25 November 2013 the SRC quashed the decision of 26 September 2013. It held that allowing the applicant's meetings away from P.'s house was a premature step in that it could be traumatic for the child, who, despite the

applicant's love and efforts, was still distrustful towards her. The court suggested that an expert report should be obtained in that regard.

72. On 9 January 2014 the applicant asked the guardian to indicate the dates of her meetings with B., in accordance with the decision on her contact rights of 11 March 2013 (see paragraph 66 above).

73. On 23 January 2014 the guardian responded that no such dates could be determined, because the case file was with the SRC.

74. Court documents in the case file show that a guardian supervised the applicant's meetings with B. on 22 February, 16 and 22 March, and 6 and 12 April 2014.

75. On 2 December 2014, in a decision adopted in the main custody proceedings (see paragraph 91 below), the ZWDC set out the following contact arrangements: the applicant was to see B. on two alternating Saturdays and two alternating Sundays every month. For the first three months, the meetings were to take place between 12 p.m. and 2 p.m., at P.'s house and without P. or his family being present. As from the fourth month, the meetings were to take place between 2 p.m. and 4 p.m., away from P.'s house, without P. or his family being present. In the first two months, the meetings away from P.'s house were to take place in the presence of a guardian. In the first three months, P. was to take B. to those meetings.

76. In that decision, the domestic court observed that, based on the guardian's reports, interviews and several expert reports, including the one dated 3 July 2014 (see paragraph 90 below) and further testimony, during the initial visits conducted in P.'s house, the child, on the one hand, had started opening up to the mother through play, but, on the other hand, had been unwilling or reluctant to engage with her. B. had talked back to the applicant, reluctantly accepted her gifts or left the room. As of 14 February 2014, B. had first become aggressive towards the applicant, and then had started ignoring her altogether. The applicant's bond with B. was weak.

77. In the court's view, the situation could be remedied by gradually moving the meetings out of P.'s house and by balancing out the roles of the parents. It was important for P. to undergo parental training and to show his approval of B.'s meetings with his mother, in particular, by taking him to those meetings. The domestic court stressed that its decision was driven by the child's best interests; it aimed to carefully reestablish the bond between the child and his mother and alleviate the negative impacts of the parental conflict on the child. The court observed that the aims could have already been achieved if the ZWDC's decision of 27 November 2012, which had set out similar contact arrangements (see paragraph 63 above), had not been changed as a result of P.'s appeal (see paragraphs 64 and 66 above).

78. As a result of the appeal lodged by the applicant, on 6 May 2015 the SRC made, among others, the following changes to the applicant's contact arrangements with B. (see paragraphs 92 and 93 below). The applicant's meetings with B. were to take place away from P.'s house after two, instead

of three, months. After three – instead of four – months, the meetings were to take place from 2 p.m. to 4 p.m. As from the fifth month, the meetings were to be extended and would take place from 2 p.m. to 6 p.m.

79. According to a medical certificate issued on 3 July 2015 by a psychiatrist from a public hospital, the applicant had been treated for depression and an adjustment disorder associated with a series of traumatic experiences regarding her inability to be with her son, threats that she had received and battery on the street of which she had been a victim. The psychiatrist determined that the applicant had shown symptoms that were typical for victims of psychological violence. She concluded that the applicant would be unable to have contact with B. in P.'s house for fear of being exposed to further threats and owing to the risk to her mental and physical health.

80. The applicant refused to exercise her contact rights at P.'s residence and insisted on meeting with B. at another location. She ceased all contact with B. and the child's father. She paid the child support that had been imposed on her by the SDC's decision of 22 November 2016.

81. On 28 June 2018 the applicant applied for contact rights to be exercised two hours per week away from P.'s house. As established by the domestic court (decision of 28 March 2019, see paragraph 98 below), the applicant had declined P.'s offer to settle the case with the arrangement that contact with the child would take place at P.'s house.

82. As submitted by the Government, presumably in 2018, the applicant had several meetings with the child at the Consultative Panel of Court Experts. Ultimately, the mother-child bond was effectively severed (see paragraph 97 below).

2. Interim order regarding the child's place of residence

83. On 13 June 2013 the ZWDC, acting *proprio motu*, issued an interim order and determined that B.'s temporary residence would be with his father. The court held that such a solution would be the least harmful for B.

84. On 19 August 2013 the SRC dismissed the applicant's appeal against that ruling.

3. Proceedings regarding child custody and contact rights

85. It appears that on 18 January 2013 the ZWDC declared that it did not have jurisdiction, given that, on 23 May 2012 the applicant had been given custody of the child (see paragraph 16 above). The case was therefore transferred to the SDC.

86. The case file was not immediately transferred to the SDC, because the appeal regarding contact rights was being examined by the SRC, which gave a ruling on 11 March 2013 (see paragraph 66 above). On an unspecified date the case file was then transferred to the SDC.

87. On 5 May 2013 the SDC formally asked the SRC to transfer the case back to the ZWDC, owing to the fact that the child had ultimately remained with P. On 31 May 2013 the SRC granted that request.

88. On 10 June 2013 the President of the SRC replied to the applicant's complaint about the delays, lodged on 23 May 2013 with the Minister of Justice. The president found the applicant's allegations unjustified given the need to have the case file transferred between the courts at different levels of jurisdiction and the case, as such, transferred between the courts of the child's changing place of residence.

89. Following up on the SRC's decision of 25 November 2013 (see paragraph 71 above), on 3 April 2014 the ZWDC ordered an expert report to be drawn up regarding B.'s condition and his relationship with his parents.

90. On 3 July 2014 the RODK submitted its report based, among other things, on the examination of all persons concerned conducted on 4 June 2014. The experts found that B. had a bond with both parents. That bond was nevertheless distorted by the parental conflict, in particular, by P.'s strongly deprecating attitude towards the child's mother. Given his loyalty to P. and to his paternal family, B. had a negative view of his mother and rejected her from his life. B. perceived his father as the primary caregiver and had a very strong bond with him and with the paternal family. The experts concluded that removing the child from P.'s family environment could provoke B.'s opposition to the applicant. They also concluded that it was in the child's best interests, in the long term, to have undisturbed access to a freely developed relationship with both parents. To avoid B.'s total alienation from his mother, P. would have to completely abandon his authoritarian and rigid exclusion of the applicant from the child's life. To mitigate the negative consequences of the child's past exposure to P.'s attitude, and to normalise his relationship with the applicant, it would be necessary to set out broad contact rights for the applicant at her place of residence, without third parties and with the possibility of the child spending nights there. It was suggested that P. should take the child to such meetings and encourage him to have a relationship with his mother.

91. On 2 December 2014 the ZWDC partly changed the ruling of the SRC of 23 May 2012, granting parental custody to P. and assigning his address for B.'s temporary residence (see paragraph 16 above). Relying on Article 97 of the Family and Custody Code as the legal basis, the court gave its decision in the same ruling as the one regarding the applicant's contact rights (see paragraph 75 above). In that context, the court observed that ensuring mutual contact between a child and a non-custodial parent and changing or setting out contact arrangements, surely fell under "important matters relating to the child" within the meaning of that provision (see paragraph 100 below).

92. On 21 January 2015 the applicant appealed against that ruling.

93. On 6 May 2015 the SRC changed the ruling in so far as it concerned the applicant's contact arrangements (see paragraph 78 above) and dismissed the remainder of her appeal. In the latter context, the court held that after spending four years under P.'s *de facto* custody, it would be against B.'s best interests to restore custody to the applicant.

94. According to a certificate issued on 23 October 2015 by a psychologist in a private practice, P. had been undergoing therapy sessions to improve his parental skills in response to his son's needs. The sessions were also attended by B. It was assessed that the father-son relationship was very good, and no issues were flagged as to B.'s condition. That certificate was challenged by the applicant before the ZWDC. She stressed that the psychologist in question lacked the professional qualifications to conduct psychotherapy and that she had not elaborated on her findings which greatly diverged from what had been established by the RODK experts.

95. On 29 December 2016 the ZWDC reinstated the father's full parental custody rights and lifted the guardian's supervision (see paragraph 21 above). The applicant, who had been notified about those proceedings, did not participate.

96. On 27 September 2018 court-appointed experts drew up the third report regarding B. and his relationship with his mother, as ordered by the SRC on 28 February 2018. The experts concluded that, while the bond between the child and the mother had effectively been severed and B. did not wish to spend any time with his mother, it would be better for B. if the mother were allowed to be present in his life.

97. On 25 March 2019 court-appointed experts drew up the fourth report regarding B. and his relationship with his mother, as ordered by the ZWDC on 7 November 2018. The experts concluded that, owing to B.'s negative attitude towards his mother and his unwillingness to meet with her, it would not be in his best interests to impose on him an obligation to meet with the applicant, even if the meetings were to take place in P.'s house.

98. On 28 March 2019 the ZWDC divested the applicant of custody of B. That ruling was final.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

Parental custody and contact rights

99. Parental custody and contact rights are regulated by the Family and Custody Code (*Kodeks rodzinny i opiekuńczy*, the "FCC") and by the Code of Civil Procedure (*Kodeks Postępowania Cywilnego,* the "CCP"), as applicable at the material time.

1. Procedure

100. In the context of parental custody, in the absence of agreement between the parents, a court decides on "important matters relating to the child" (Article 97 § 2 of the FCC). Regardless of who exercises parental authority, the parents and their child have the right and obligation to maintain contact with each other (Article 113 § 1 of the FCC). In the absence of an agreement between the parents, the court will decide on how contact is to be maintained with the child by the non-custodial parent (Article 113^1 of the FCC).

101. An application for an interim order can be filed by a party to any civil case (Article 730 of the CCP) that has demonstrated legal interest (Article 730^1 § 1 of the CCP). Legal interest in seeking an interim order exists when the lack of such an order makes it impossible or seriously impedes the execution of a judgment rendered in the main case or otherwise makes it impossible or seriously difficult to achieve the purpose of the proceedings in the main case (Article 730^1 § 2 of the CCP). An application for an interim order must be examined immediately and no later than one week from the date of its receipt by the court (Article 737 of the CCP). If the law provides for the application to be examined at a hearing, such a hearing is held within one month from the date of receipt of the application (ibid.).

102. A final court decision regarding custody or contact can be modified at any time if the interests of the child so require. This can be done pursuant to an application by either parent or by the court acting of its own motion (Article 577 of the CCP and Articles 106 and 113^5 of the FCC).

103. Since 13 August 2011 a domestic court, at the request of the party, must order the custodial parent to cease hindering the contact rights of the non-custodial parent within a set time-limit, on pain of a fine or punitive damages (Article 582^1 § 3 and Articles 598^{15} to 598^{21} of the CCP). A court decision on contact arrangements serves as an enforceable order for the purposes of such a request.

2. Supervision of parental custody and contact rights by guardians

104. A court can subject the enforcement of parental custody to the supervision of a guardian (Article 109 § 2.3 of the FCC). The court can also subject the enforcement of contact rights between a non-custodial parent and a child to the supervision of a guardian or another designated person (Article 113^2 § 2.3 of the FCC). Establishing supervision for meetings between a parent and a child is intended to first bring about that meeting, and then to arrange the relationship between the parents in such a way that those meetings can take place without external interference and without the presence of third parties. The task of guardians in this type of supervision can be compared to the function of mediators. Their task is to bring the parties to an agreement regarding contact and to regulate them in such a way that they

can take place in a form similar to the natural state (see T. Jedynak and K. Stasiak (eds), *An outline of the guardian's work methodology*, Warsaw, 2013, section 3.1.1).

105. When required by circumstances, the guardian has an obligation to lodge applications seeking a change to or revocation of a measure ordered by a court (section 11.1 of the Court-Appointed Guardians Act of 27 July 2001 (*Ustawa o kuratorach sądowych*), as in force at the material time).

3. *Mitigation of conflict between parents and mediation in childcare disputes*

106. A court can oblige the parents and the minor to undertake a specific course of action, in particular, to work with a family assistant in order to implement a work plan with the family, or refer the parents to a facility or specialist dealing with family therapy, counselling or providing other appropriate assistance to the family, while at the same time indicating the method of monitoring the implementation of the orders issued (Article 109 § 2.1 of the FCC). A similar regulation operates in the context of contact rights (Article 113^4 of the FCC).

107. The FCC, as such, makes no provision for family mediation in childcare cases (see *Kacper Nowakowski v. Poland*, no. 32407/13, § 87, 10 January 2017). However, pursuant to Article 570^2 of the CCP, in all matters in which a settlement is allowed under the law, a court may refer the participants to mediation (Article 10 of the CCP). Such mediation may extend to the subject of child custody or contact for a non-custodial parent with a minor child (resolution of the Supreme Court of 21 October 2005, III CZP 75/05, OSNC 2006). Mediation is further regulated in Article 183^{1-15} of the CCP.

108. Pursuant to the submissions made by the Polish Government in the framework of the execution of the Court's judgment in *Kacper Nowakowski* (cited above), extensive measures have been undertaken by the authorities to ensure that mediation is widely used in family-law cases (Communications from Poland DH-DD(2022)23, 5 January 2022, and DH-DD(2022)587, 31 May 2022). The number of cases regarding family matters settled through in and out-of-court mediation has risen from 406, in 2012, to several thousand per year as from 2017 (Communications from Poland DH-DD(2018)23, 12 January 2018 and DH-DD(2022)587, 31 May 2022).

II. INTERNATIONAL LAW

109. Recommendation No. R (98) 1 of the Council of Europe's Committee of Ministers to member States on family mediation, adopted on 21 January 1998, recognised the growing number of family disputes, particularly those resulting from separation or divorce. Noting the detrimental consequences of conflict for families, the text recommended that the member

States introduce or promote family mediation or, where necessary, strengthen existing family mediation. In accordance with paragraph 7 of the Recommendation, the use of family mediation could "improve communication between members of the family, reduce conflict between parties in dispute, produce an amicable settlement, provide continuity of personal contacts between parents and children, and lower the social and economic costs of separation and divorce for the parties themselves and States" (see also the European Commission for the Efficiency of Justice's Guidelines for a better implementation of the existing recommendation concerning family mediation and mediation in civil matters (CEPEJ (2007)14)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

110. The applicant complained that the domestic authorities had not taken all the necessary steps to ensure protection of her right to respect for her family life as guaranteed in Article 8 of the Convention, which reads as follows:

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

111. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

112. The applicant complained that the authorities had been unable to effectively enforce lawful decisions in her favour and that there had been a series of long procedural delays in the proceedings regarding her family situation. She also complained that the courts had ruled in favour of her child's father despite an expert's recommendation that she should be the custodial parent and despite being aware that the father had been hindering her contact with the child.

113. The Government argued that the authorities had complied with their positive obligations to secure to the applicant the effective exercise of her right to respect for her family life. The Government stressed that the authorities had been reacting to a complex family situation marked by a strong conflict between the two parents and the child's negative attitude towards the applicant. They had ultimately acted in the child's best interests.

2. General principles

114. The general principles concerning respect for family life, positive obligations of the State and the importance of the interests of a child in matters concerning childcare disputes were summarised in the cases of *E.K. v. Latvia* (no. 25942/20, §§ 73-77, 13 April 2023), *P.K. v. Poland* (no. 43123/10, §§ 81-86, 10 June 2014), and *Malec v. Poland* (no. 28623/12, §§ 66-67, 28 June 2016).

115. The Court reiterates that, in relation to the State's obligation to take positive measures, Article 8 encompasses a parent's right to the taking of measures with a view to his or her being reunited with the child and an obligation on the national authorities to facilitate such reunion, in so far as the interest of the child dictates that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family; the State's obligation is not one of result, but one of means (see *Krasicki v. Poland*, no. 17254/11, §§ 83 and 85, 15 April 2014, with further references).

116. Moreover, in proceedings concerning children it is important to take into consideration that time takes on a particular significance, as there is always a risk that any procedural delay will result in the *de facto* determination of the issue before the court and that the decision-making procedure should provide the requisite protection of parental interests (ibid., § 86, and *T.C. v. Italy*, no. 54032/18, § 58, 19 May 2022). The Court also reiterates, however, that the obligation of expeditious examination of a childcare 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 (see *M.H. v. Poland*, no. 73247/14, § 8, 1 December 2022).

117. Lastly, the child's best interests must be the primary consideration and may, depending on their nature and seriousness, override those of the parents (see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, §§ 204 and 206, 10 September 2019, and *Malec*, cited above, § 67). In this context, the Court considers that, in principle, it is in the child's best interests to maintain contact with both parents, in so far as practicable, on an equal footing, save for lawful limitations justified by considerations relating to those interests (see *Kacper Nowakowski v. Poland*, no. 32407/13, § 81, 10 January 2017).

3. Application of those principles in the present case

(a) General observations

118. It is not disputed that the present case concerns "family life" within the meaning of Article 8 § 1 of the Convention and that this provision is applicable.

119. The decisive question is whether the Polish authorities took all the necessary steps that could reasonably be required to ensure the enforcement of the child's return and of the applicant's contact rights. The Court must assess whether the domestic courts ruled on those issues in a timely and adequate manner, and whether the authorities took all the necessary steps to facilitate the enforcement of those rulings. Overall, the Court's task is to consider whether the measures taken by the Polish authorities were as adequate and effective as could reasonably have been expected in the circumstances to ensure the protection of the applicant's right to respect for her family life.

120. The Court, having thoroughly analysed the sequence of the relevant sets of proceedings and the measures taken by the authorities, would make the following observations in respect of the relevant aspects of the case.

(b) Observations regarding the return order and its enforcement

121. Regarding the steps taken to facilitate the return of the child, the Court will first assess the length of the decision-making process regarding custody in the first-instance court. In this context, the Court notes that the applicant initiated her action for custody and for the child's return in March 2011 (see paragraph 7 above). The first-instance court quickly took up the case (see paragraphs 8 and 10 above). It was, however, well over three months into the proceedings, on 20 June 2011, that it ordered an expert report in respect of the family (see paragraph 11 above). It took the experts four months to draw up the report (see paragraph 12 above) and another four months elapsed before the first-instance court issued, on 23 February 2012, its ruling on custody. It is true that, between March and June 2011, the court was not only conducting the main proceedings, but also dealing with various interim applications regarding the child's place of residence and the applicant's contact rights (see paragraphs 18, 21, 23, 27 and 34 above). In the subsequent part of the main proceedings, however, the domestic court was not called on to issue any interim orders (see paragraphs 17-27 above). Overall, the fact remains that the first-instance custody ruling was issued as many as eleven months after the father had refused to take the child back to his mother (see paragraphs 6 and 13 above). The Government did not provide any reasons for that delay.

122. Concerning the adequacy of the first-instance ruling on custody, the Court reiterates that it is not seeking to substitute itself for the domestic authorities in the exercise of their responsibilities as regards parental

authority, but rather to review under the Convention the decisions taken by those authorities in the exercise of their margin of appreciation (see *Kaleta v. Poland*, no. 11375/02, § 58, 16 December 2008). The Court cannot but take note, however, of the fact that, as later observed by the appellate court, the first-instance court had not given any specific reasons for not adhering to the unequivocal expert recommendation and for granting custody to P. instead of to the applicant (see paragraphs 13 and 16 above). Moreover, it does not appear from the reasoning of that decision that the first-instance court gave any consideration to a crucial element of any child custody case, namely the assessment of which parent was more likely to foster the child's relationship with the non-custodial parent.

123. The Court does not take issue with the appellate proceedings that were completed within a little over one month, on 23 May 2012, with the SRC reversing the ruling of the first-instance court, relying on the expert report (see paragraphs 14 and 16 above).

124. Overall, the Court considers that the protraction, caused by the first-instance court, of the decision-making process leading up to the return order was a contributing factor to the ultimate inability of the authorities to facilitate the child's return to the applicant.

125. As to the enforcement of the return order, the Court notes that in spite of both the substantiated allegations and the actual record of non-compliance with court orders on the part of the child's father (see paragraphs 6, 14, 29-32, 45 and 48 above), it was only on 23 July 2012, that is to say, almost two months after the return decision, that the court ordered that the child be forcibly removed by a court-appointed guardian (see paragraph 54 above). The Government did not provide any reasons for that delay.

126. On 26 July, 1 August and 17 August 2012 at least three attempts were made to retrieve the child from the father's house, with the assistance of the police, several guardians and a psychologist (see paragraph 55 above). Two of those attempts failed because the child was anxious and refused to leave (ibid.). On 18 September 2012 the family court stayed the enforcement of the return order, following the intervention of the Child Rights Commissioner (see paragraphs 57 and 58 above).

127. The Court does not question the authorities' conclusion that the stay of the enforcement was in the child's best interests. The Court has repeatedly held that coercive measures against children are not desirable in this sensitive area, or might even be ruled out by the best interests of the child (see *Malec*, cited above, § 77, with further references). The Court also held, however, that the use of sanctions must not be ruled out in the event of unlawful behaviour by the parent with whom the child lives (see *A.S. and M.S. v. Italy*, no. 48618/22, § 153, 19 October 2023, and, *mutatis mutandis*, *H.N. v. Poland*, no. 77710/01, § 74, 13 September 2005).

128. In this context, the Court takes issue with the lack of foresight on the part of the domestic court and the authorities, which had not taken sufficient

preparatory steps, by means of mitigating the family conflict, with a view to ensuring the smooth return of the child to the custodial parent, and incidentally, the enforcement of the contact rights of the non-custodial parent. In particular, the Court notes that the complexity of the family dispute, owing to the alienation of the child from the non-custodial parent and the strong conflict between the parties had been known to the authorities, given that the proceedings regarding custody, temporary residence and contact rights had been ongoing for over a year (see paragraphs 8-50 above) and that the applicant had been informing the court and the guardian of the difficulties in enforcing her contact rights (see paragraphs 28-32 above). Court-appointed experts had also brought to the court's attention their conclusion that the child's father was uncooperative and defiant of court orders and that both parties' parental skills had been diminished by the conflict between them (see paragraph 12 above). Despite these elements, it was only on 23 February 2012 that the family court ordered the parents to undergo therapy and training to improve their parental skills. This order was not only belated, but also deprived of any force, owing to the court's failure to indicate any time-limit within which such an obligation was to be complied with (see paragraph 13 above). In this context, the Court notes that the domestic law offers a possibility for domestic courts adjudicating childcare cases, to issue, *proprio motu* and at any stage of the proceedings, specific orders for measures to mitigate family conflict and protect the best interests of the child (see paragraph 106 above). The Court has already observed in a similar case concerning the enforcement of contact rights that civil mediation "would have been desirable as a means of promoting cooperation between all parties to the case" (see *Cengiz Kılıç v. Turkey*, no. 16192/06, § 132 *in fine*, 6 December 2011). Such opportunity was not effectively seized by the domestic courts in the present case.

(c) Observations regarding contact arrangements and their implementation

129. Moving on to the assessment of the steps to facilitate the applicant's contact with her son, the Court notes that the applicant first applied for an interim decision on contact rights in March or April 2011 (see paragraph 26 above). That application was dismissed on 26 April 2011 on the grounds that the applicant had not demonstrated the legal interest in having her contact rights regulated as part of the main custody proceedings (see paragraph 27 above). The domestic court thus declined to rule on the matter, having concluded that the absence of the interim order sought would not render the enforcement of the future decision on custody impossible or seriously difficult to enforce (ibid.). The Court finds this conclusion undermined by the following two elements of the case. Firstly, another domestic court that was later adjudicating the applicant's custody case found both merit and a legal basis in ruling on contact rights as part of the main proceedings regarding custody (see paragraphs 91 and 100 above). Secondly, the interruption of the

mutual contact between B. and the applicant was indeed an important factor that rendered the enforcement of the child's return order of 23 May 2012 seriously difficult and, ultimately, impossible (see paragraphs 55, 58, 91 and 101 above). The Court finds that even without such hindsight, the domestic court ought to have considered such a risk to exist by the mere nature of childcare disputes between strongly antagonistic parties.

130. On 5 May 2011 the applicant followed up with an application to have her contact rights established in a separate set of proceedings (see paragraph 33 above). The Court notes, however, that the accompanying interim application was never examined on the merits. This resulted from the fact that, despite the applicant's request to have the proceedings expedited (see paragraphs 35 and 40 above) and despite a clear statutory deadline (see paragraph 101 above), the courts spent five months deciding, back and forth, on jurisdiction (see paragraphs 33-40 above), only to ultimately see the court with which the applicant had originally lodged an application rule on contact rights in response to her – by then modified – interim application (see paragraphs 41 and 42 above).

131. The first (interim) ruling regarding the applicant's contact rights was therefore issued on 21 October 2011 (see paragraph 42 above). This means that the applicant's contact with her son was left unregulated for nearly six months. The Court finds that, while procedural reasons may validly justify some protraction, the seriously belated judicial intervention in the present case cannot be justified given that the authorities knew or ought to have known that B. was a very young child who had been abruptly removed by the father from his habitual residence with the mother (see paragraphs 5 and 6 above) and that the proceedings in this matter were ongoing (see paragraph 8 above); that the child was becoming alienated from the mother, owing to the disruption of the latter's contact with the child (see paragraph 28 above); and that a strong conflict between the parents (paragraph 8 above) was likely to undermine any prospects of amicable contact arrangements.

132. The Court also observes that, having set out the applicant's contact rights, firstly by means of an interim order and then by the main decision of 7 November 2011 (see paragraph 43 above), the domestic courts did not take sufficient measures to facilitate the effective enforcement of those rights. In particular, no action was taken in response to the applicant's informing the court and the court-appointed guardian that P. had been hindering her contact rights (see paragraphs 29-32 above). Moreover, despite the applicant's formal application for the enforcement of her contact rights of 27 January 2012 (see paragraph 45 above) and her request for the expedition of those proceedings (see paragraph 48 above), no judicial intervention took place for over four months (see paragraph 49 above). That delay was again linked to the issue of jurisdiction between the first-instance courts operating, respectively, in the father or the mother's district of residence (see paragraphs 46-50 above). The applicant made the point, which has not

been contested by the Government, that in the relevant period, more specifically between 25 January and 9 April 2012, seventeen of her meetings with her son did not take place because of the father's actions (see paragraphs 31 and 32 above).

133. The Court would stress that the authorities' effective inaction *vis-a-vis* the father's attitude was not in the child's best interests (see paragraph 117 above) and also had severe repercussions for the applicant's enjoyment of her right to respect for her family life. The hindering of mutual contact between B. and the applicant by the child's father was an important factor that rendered the enforcement of the child's return impossible (see paragraph 129 above) and that subsequently caused a complete break-down of the mother-child relationship (see paragraph 82 above).

(d) Observations regarding the promptness of the decision-making process in respect of the return order and contact arrangements, and the adequacy of the measures after the stay of the enforcement of the return order

134. Lastly, the Court will assess the promptness of the decision-making process and the adequacy of the measures taken by the authorities after the stay of the enforcement of the order to have the child returned to the applicant.

135. Regarding the follow-up to the return order, the Court notes that on 18 September 2012 the ZWDC stayed the enforcement of that order until both the applicant and P. had completed family therapy (see paragraph 58 above). The Court observes that that ruling was practically non-enforceable, firstly, because the domestic court had omitted to indicate a time-limit for the therapy and secondly, because P. had a record of blatant non-compliance with court orders (see paragraph 59 above).

136. More importantly still, while on 20 December 2012 the SRC quashed that ruling, flagging the above-mentioned error in issuing an open-ended order regarding parental therapy, it did not rectify it (see paragraph 60 above). Moreover, while the applicant subsequently completed her training sessions (see paragraph 61 above), the fact that P. did not was not met with any reaction from the domestic courts (see paragraph 77 above). As a result, some doubt arises as to whether the authorities were, at that point, aiming to enforce the child's return order, which was no longer formally stayed, and whether they were seeking the rectification of the father's action that they had themselves deemed wrongful and against the child's best interests. The Court accepts that the authorities must react to the inherently dynamic family situation with the overarching goal of protecting the child's best interests, including short-term interests. It is not acceptable, however, for the domestic authorities to lose sight of the main purpose, which, in the present case and at that time, was to reestablish the mutual relationship between the child and his mother. Instead, the courts merely reacted in a haphazard and protracted manner to various issues arising, one after another, in the case.

137. The Court therefore notes that the domestic courts ruled on the issue of the applicant's contact rights. The first set of contact arrangements was established in the interim decisions issued on 27 November 2012 by the first-instance court, and on 11 March 2013 by the appellate court (see paragraphs 63 and 66 above). Based on those decisions, the applicant's meetings with B. were to be supervised by a court-appointed guardian (ibid.). As submitted by the applicant, and not contested by the Government, the meetings did not take place for seven months because, despite the applicant's intervention, the guardian was only assigned on 12 June 2013 (see paragraph 67 above). The second set of contact arrangements was briefly established in the interim decision issued by the first-instance court on 26 September 2013 and quashed by the appellate court on 25 November 2013 (see paragraphs 69 and 71 above). The material in the case file shows that the applicant's contact with her child was again effectively interrupted until 22 February 2014 for reasons relating to the shortcomings of the guardian supervision arrangement (see paragraphs 72-74 above). The above-mentioned lack of effective enforcement of the courts' rulings regarding contact rights renders it unnecessary for the Court to additionally examine the adequacy of those rulings.

138. The applicant's long-term contact arrangements were ultimately set out in the ZWDC's decision of 2 December 2014, as amended by the SRC on 6 May 2015 (see paragraphs 75 and 78 above). The Court observes that those decisions were issued in the framework of the main custody proceedings and had taken into account the RODK's expert report ordered on 3 April 2014 and drawn up three months later (see paragraphs 89, 90, 91 and 93 above). The Court finds that those contact arrangements adequately protected the child's best interests and the applicant's right to respect for family life. In particular, the meetings between the mother and the child, who had by that time become very alienated, were to start in the child's house and to gradually move to another location. The meetings were to be supervised by a guardian. It was recommended that the child's father should undergo parental training sessions, although no formal order with a time-limit was issued in that respect. Lastly, P. was ordered to show his support for the child's contact with his mother by taking B. to the meetings in the later phase (see paragraphs 75-78 and 90 above). The Court finds it regrettable that such well-tailored and forward-looking contact arrangements were made so late in the decision-making process. In this context, the Court firstly notes the ZWDC's criticism of the appellate court's earlier decision confining the child-and-mother meetings to the father's house (see paragraphs 77 *in fine*, and 66 above). Secondly, the Court notes that the applicant had by that time developed depression and was unable to benefit from those arrangements (see 79 and 80 above).

139. Overall, the Court finds that the measures taken by the domestic courts and the guardians were not adequate, timely or sufficient in the

circumstances of the case (contrast, *mutatis mutandis*, *Krasicki*, cited above, §§ 92-100).

(e) Observations regarding the final ruling on custody

140. The Court also observes that the ruling granting custody of B. to the applicant was ultimately reversed by the ZWDC on 2 December 2014, that is to say, two years after the appellate court had remitted the case for re-examination (see paragraphs 60 and 91 above). The Court finds such a delay unacceptable, even considering that the court had to issue, in that time, three interim decisions (see paragraphs 63, 69 and 83 above) or that it had to wait for the case file to be returned from another jurisdiction (see paragraph 85 above). In this context, the Court would stress that the delays that marked the custody and related proceedings were largely caused by the practice of transferring a material case file between different courts that were called on to adjudicate on specific issues comprising the family dispute. The Court therefore considers that two general problems contributed to the shortcomings in the present case. It is firstly, the lack of recourse, throughout the entire set of proceedings, to hard copies or indeed, digital solutions that were otherwise possible (see paragraph 49 above). Secondly, it is the fragmentation of the childcare case into separate sets of proceedings regarding issues such as contact rights or the child's place of residence, and the assignment of these side-proceedings to a jurisdiction distinct from that conducting the main custody proceedings. In the Court's view, adjudicating a childcare case holistically in all its aspects – as was eventually the case in the present circumstances (see paragraphs 63-98 above) – may prevent the unnecessary protraction of a decision-making process which is often fatal to the right to respect for family life of a non-custodial parent. It is not for the Court, however, to assess in the instant case whether the existing instruments would have been sufficient or whether they should have been supplemented by means of legislative reform.

141. Lastly, the Court observes that, in the light of how the impugned proceedings developed, nothing in the case material allows it to question the domestic courts' decisions of 2 December 2014 and 6 May 2015 to ultimately grant the child's custody to the father, or the decision of 28 March 2019 to divest the applicant of her parental rights (see paragraphs 91-98 above).

(f) Conclusions

142. In sum, the Court acknowledges that difficulties in protecting the applicant's right to respect for her family life were in large measure on account of the animosity between the applicant and the child's father, the latter's actions with respect to the child and his non-compliance or partial compliance with court orders. The Court is mindful of the fact that child custody disputes by their very nature are extremely sensitive for all the parties

concerned, and it is not necessarily an easy task for the domestic authorities to ensure execution of a court judgment in such a dispute where one or both parents' behaviour is far from constructive (see, *mutatis mutandis*, *P.K. v. Poland*, cited above, § 88).

143. That said, a lack of cooperation between parents who have separated is not a circumstance which can of itself exempt the authorities from their positive obligations under Article 8; it rather imposes on the authorities an obligation to take measures that would reconcile the conflicting interests of the parties, keeping in mind the paramount interests of the child (see *Z. v. Poland*, no. 34694/06, § 75, 20 April 2010).

144. In the present case the conflict between the applicant and the child's father made it particularly difficult for the domestic authorities to ensure the full enforcement of the applicant's custody and contact rights. This does not change the fact, however, that the domestic authorities had an obligation to ensure the effective enforcement of the child's return and subsequently, the contact arrangements, since it is they who exercise public authority and have the means at their disposal to overcome problems obstructing execution (see, *mutatis mutandis*, *P.K. v. Poland*, cited above, § 89; and *Kacper Nowakowski*, cited above, § 82).

145. Owing to the fact that the child's unrestricted day-to-day contact with his mother was abruptly curtailed by the father's actions and restricted to taking place at the latter's house for only several hours per week, it was incumbent on the domestic authorities to deal with the case speedily (see, *mutatis mutandis*, *J.N. v. Poland*, no. 10390/15, § 136, 10 November 2022).

146. Although it cannot be said that the authorities were idle in the performance of their duties, the proceedings were marked by a lack of diligence as well as long and repeated delays that had significant consequences for the family situation. The shortcomings in the decision-making process and in the enforcement of the courts' orders have, ultimately, contributed to the complete breakdown of the applicant's relationship with her son.

147. Having regard to the facts of the case, in particular the passage of time, and the criteria laid down in its own case-law, the Court concludes that, notwithstanding the State's margin of appreciation, the Polish authorities failed to make adequate and effective efforts to protect the applicant's right to respect for her family life.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

149. 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

150. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

151. The Government argued that the claim in respect of non-pecuniary damage should be dismissed as irrelevant, unsubstantiated and unreasonably high.

152. The Court accepts that the applicant must have suffered distress and emotional hardship as a result of the Polish authorities' failure to ensure the enforcement of the child's return and to conduct expeditious proceedings regarding custody and contact rights, a failure which is not sufficiently compensated for by the finding of a violation of the Convention. Having regard to the sums awarded in comparable cases, and making an assessment on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

153. The applicant also claimed EUR 2,469 in respect of costs and expenses, including EUR 1,570 incurred in the proceedings before the Court, and EUR 899 incurred in the domestic proceedings. Receipts and invoices were submitted in respect of both of these amounts.

154. The Government did not comment on the costs claimed in respect of the domestic proceedings. They argued that the amount of the costs claimed in respect of the proceedings before the Court was excessive.

155. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 2,469 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 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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,469 (two thousand four hundred and sixty-nine 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 13 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Ivana Jelić
Registrar	President