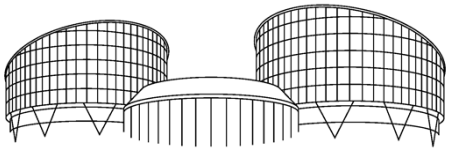

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF A.W. v. POLAND

(Application no. 1307/21)

JUDGMENT

Art 37 § 1 • Request to strike out application on the basis of a unilateral declaration dismissed • Application raised serious issues not yet determined by the Court • Continued examination justified
Art 8 • Positive obligations • Family life • Putative father unable to seek recognition of paternity of two children and to have contact with them • Refusal to allow the applicant to participate in proceedings challenging the presumption of paternity in respect of the mother's husband which were a preliminary mandatory step in establishing his own paternity • Absence, in domestic law and practice, of any time frame for a prosecutor to decide whether to initiate proceedings challenging the legal presumption of paternity • Domestic court proceedings marked by extreme protractedness • Apparent absence of any remedial action • Failure to exercise sufficient diligence regarding the importance of the passage of time for the applicant's interests • Legal avenue by which applicant could have established paternity effectively extinguished • Failure to regulate the applicant's contact with the children in an expeditious manner or enforce it, resulted in a *de facto* determination of the matter and prevented him from maintaining a relationship with them

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 October 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 A.W. v. Poland,

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

Ivana Jelić*, President*,
Erik Wennerström,
Raffaele Sabato,
Frédéric Krenc,
Davor Derenčinović,
Artūrs Kučs,
Anna Adamska-Gallant*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 1307/21) 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, Mr A.W. ("the applicant"), on 13 December 2020;

the decision to give notice to the Polish Government ("the Government") of the complaints under Articles 6 and 8 of the Convention, concerning the applicant's right of access to a court regarding his paternity of and contact with his children, as well as the length of the proceedings in those matters, and to declare the remainder of the application inadmissible;

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

the parties' observations;

Having deliberated in private on 16 September 2025,

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

INTRODUCTION

1. The case concerns the applicant's right of access to a court and the length of proceedings concerning the recognition of his paternity of and contact with two children who were born during an informal relationship with a married woman. It raises issues under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1975 and lives in J. He was represented by Ms A. Zubkowska-Rojszczak, a lawyer practising in Poznań.

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

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

I. BACKGROUND

5. The applicant is a military professional. Between 2004 and 2009 he was in an informal relationship with a married woman, W.N., a judge by profession.

6. W.N. has been married to B.N. since 2001.

7. While the applicant and W.N. were living together, the latter gave birth to two children, a son, L., born in 2005 and a daughter, B., born in 2007.

8. On the basis of the legal presumption of paternity (see paragraph 67 below), the mother's husband, B.N., was indicated as the children's father in the birth register.

9. In 2006 the applicant intended to establish his paternity of L. However, under domestic law, this necessitated challenging the legal presumption that the child's mother's husband was the father (see paragraph 71 below) – a procedure which the applicant had no standing to initiate (see paragraphs 69-70 below). He therefore petitioned the public prosecutor to institute proceedings to challenge B.N.'s paternity of L. At the request of W.N., who feared that such proceedings might harm her career, the applicant withdrew the petition.

10. During their relationship, the applicant and W.N. lived together in a rented apartment in L., where they ran a joint household as a couple. The children had a strong emotional bond with the applicant.

11. The applicant submitted that the children were aware of their situation and accepted the fact that they had two fathers, their "real dad, A." (the applicant), and "dad B., in C.".

12. After the relationship ended, the applicant's relations with W.N. deteriorated; they stopped talking to each other and the applicant's contact with the children was significantly reduced. Until January 2011 the applicant met with the children regularly, in the presence of their childminder. After W.N. moved to C. with the children to live with her husband, the applicant's contact with the children was further reduced and eventually ended completely.

13. W.N. remains married to B.N.

14. The applicant's children reached the age of majority in 2023 and 2025 respectively.

II. PROCEEDINGS TO CHALLENGE B.N.'S PATERNITY

15. On 27 September 2010, after the relationship between the applicant and W.N. had ended, the applicant again petitioned the public prosecutor to institute proceedings to challenge B.N.'s paternity of both children.

16. Initially, the prosecutor's office refused. The applicant submitted the results of DNA tests showing that he was the biological father of the children. On an appeal by the applicant, the decision refusing to institute proceedings

was overturned. However, it was not until 4 January 2013 that the C.-P. B. District Prosecutor instituted proceedings to challenge B.N.'s paternity in the C.-K. District Court.

17. The defendants in the case were B.N., W.N., and both the children, L. and B. The applicant was not a participant in the proceedings.

18. Since the children were minors, it was necessary to appoint a guardian *ad litem* (*kurator*) for them. A guardian was appointed for each of the minor defendants in two separate decisions given in early 2013. Both decisions were appealed against. The C. Regional Court quashed those decisions on 8 August 2013 (in respect of B.) and on 15 May 2014 (in respect of L.), and the case was remitted to the first-instance court.

19. On 24 November 2014, following a fresh examination, guardians were appointed by the C.-K. District Court for the children. That decision did not become final until 19 September 2019.

20. As a result, between 11 October 2013 and 30 September 2019 the main proceedings were stayed pending the appointment of guardians for the children. During that period the court found no grounds to resume the proceedings of its own motion and none of the parties made a request to that effect.

21. Meanwhile, on 29 April 2013, in an attempt to influence the course of the proceedings, the applicant made an application to intervene in the proceedings as a third party (*interwencja uboczna*) in support of the plaintiff (that is, the public prosecutor). A copy of that application was not served on the other parties until after the proceedings had been resumed, in September 2019. B.N. objected to the application.

22. On 21 February 2020 the court upheld the objection raised by B.N. and refused to allow the applicant to participate in the proceedings as a third party, having regard to the domestic case-law (see paragraph 79 below). An interlocutory appeal by the applicant, in which he referred to this Court's case-law, was dismissed on 19 May 2020. The appeal panel found that although the view that the putative father lacked legal standing was not unchallenged, it remained the prevailing position in domestic case-law and among legal commentators. No further appeal was available to the applicant.

23. The court granted a request by the prosecutor and ordered that the children be questioned by an expert at the hearing scheduled for 2 March 2020. The defendants W.N. and B.N. appeared at that hearing without the children, making it impossible to proceed. In addition, they requested the exclusion of the appointed experts from the case (that request was dismissed on 5 March 2020).

24. The defendants failed to appear at the next hearing, scheduled for 5 October 2020, and at the following two hearings, scheduled for 21 July 2021 and 25 May 2022.

25. Consequently, the court asked the prosecutor whether he maintained his request for evidence to be heard from the children. By a letter dated 24 June 2022, that request was withdrawn.

26. By a decision of 6 July 2022, the court ordered DNA tests, but B.N. failed to attend his appointment for those tests.

27. By a decision of 22 September 2022, another hearing date was set. Owing to a lack of proof of service of the summons on the defendants and witnesses, the court postponed the hearing until 22 December 2022. However, on account of the absence of the judge rapporteur, the hearing did not take place.

28. A hearing was held on 30 January 2023, during which the parties set out their respective positions on the case.

29. A further hearing was scheduled for 27 February 2023, but was adjourned after a request was made to exclude the judge rapporteur. That request was dismissed on 23 March 2023.

30. On 29 March 2023 the court denied a request to transfer the case to another court.

31. At a hearing on 30 March 2023, one witness gave evidence.

32. At a hearing on 8 May 2023, further witnesses were heard and the case was then adjourned until 3 July 2023. In view of the fact that the older child, L., reached the age of majority in May 2023, he was served notice of the proceedings and summoned to appear in person at the next hearing, due to take place on 3 July 2023. Only the prosecutor and a guardian *ad litem* appeared on that date.

33. By a decision dated 19 October 2023, the court excluded evidence submitted by the defendants and set a hearing date for 25 January 2024. That hearing did not take place on account of the illness of the judge hearing the case. A further hearing date was set for 27 January 2025 but one of the witnesses was incorrectly summoned for that hearing, resulting in further hearings being scheduled for 24 April 2025 and 8 May 2025.

34. The proceedings to rebut the presumption of paternity of B.N. are still pending at first instance.

III. CONTACT ARRANGEMENTS

35. The applicant submitted that he had attempted to reach an amicable agreement with W.N. regarding his contact with the children but had been unsuccessful.

36. On 26 January 2011 the applicant applied to the L. District Court for a contact order in respect of the children.

37. On 6 April 2011 the Cz. Regional Court disqualified the judges of the L. District Court from hearing the case and transferred jurisdiction to the Z. District Court.

38. On 8 September 2011 the Z. District Court dismissed the applicant's request for contact. The applicant appealed.

39. On 20 April 2012 the Cz. Regional Court quashed the contested decision and remitted the case for a fresh examination, having found that the first-instance court had failed to consider the merits of the case.

40. On 12 July 2012 the applicant applied for an interim order allowing him contact with the children on a one-time basis, which the court granted on 8 October 2012.

41. On 7 July 2013 the applicant applied for another interim contact order, this time for regular contact with children, which would take place once a month. By a decision of 9 October 2013, the court dismissed his application. The applicant's appeal against that decision was dismissed by the C. Regional Court on 30 December 2013.

42. On 6 October 2014 the applicant applied again for an interim contact order allowing him regular, monthly contact with the children. By a decision of 13 November 2014, his application was granted in part. On 30 December 2014 W.N. lodged an interlocutory appeal against the above-mentioned interim order, but the C. Regional Court dismissed it on 22 June 2015.

43. Ultimately, by a decision on the merits of 31 December 2014 ("the final contact order"), the court made arrangements for contact between the applicant and the children. Contact was to take place every second Friday of the month from 5 p.m. to 6 p.m. in the presence of a court-appointed guardian and without W.N. and B.N. being present. Appeals by both W.N. and B.N. were dismissed by the C. Regional Court on 3 March 2016.

44. It would appear that W.N. made attempts to resume the appeal proceedings, but the C. Regional Court dismissed her request to that effect on 20 July 2016.

45. W.N. and B.N. have been refusing to comply with the final contact order and the applicant has no contact with the children.

IV. ATTEMPTS TO ENFORCE THE CONTACT ORDER

A. Proceedings to set a penalty payment to be paid in the event of future breaches of the final contact order

46. On 31 May 2017 the applicant requested that W.N. and B.N. ("the participants") be put on notice that penalty payments would be imposed for failures to comply with the final contact order (see paragraph 86 below).

47. On 8 June 2017 the C.-K. District Court ordered that a copy of that request be served on the participants, who were required to respond within three weeks. B.N. received it on 17 July 2017, while W.N. did not pick up the letter.

48. On 2 August 2017 the participants requested an extension of the deadline for their response, an exemption from the court fees and the appointment of legal-aid lawyers.

49. On 22 August 2017 the court refused the participants' request for an extension of time and ordered them to submit declarations of their assets for the purposes of examining their remaining requests.

50. On 21 September 2017 the participants submitted the declarations without signing them, thus requiring the court to issue a notice giving them the opportunity to rectify that defect. On 28 November 2017, following rectification, the court refused the participants' requests, both for an exemption from the court fees and for the appointment of legal-aid lawyers. A hearing was scheduled for 26 February 2018.

51. The participants lodged interlocutory appeals against the decision refusing their requests, but failed to fulfil all the formal requirements. They were given the opportunity to rectify the defects, but as they failed to do so, their appeals were ultimately rejected on formal grounds on 26 February 2018.

52. At a hearing on the same date, the applicant was heard by the court. The participants did not appear. The next hearing was scheduled for 14 May 2018.

53. On 26 February 2018 the court received formally compliant interlocutory appeals lodged by the participants against the decision of 28 November 2017 (see paragraph 50 above). As a result, on 26 April 2018 the decision of 26 February 2018 rejecting the appeals on formal grounds was quashed. The participants' interlocutory appeals against the decision of 28 November 2017 were ultimately dismissed by the C. Regional Court on 18 July 2018.

54. On 26 April 2018 a new judge rapporteur was assigned to the case.

55. The participants did not appear at a hearing held on 15 May 2018. Further hearings were scheduled for 21 June 2018 and 23 July 2018, but the participants again failed to appear, thus leading the court to decide not to hear them.

56. On 23 July 2018, with a view to the enforcement of the final contact order, the court delivered a decision on the merits, setting a penalty payment of 1,000 Polish zlotys (approximately 250 euros) on each participant to be paid in the event of each future violation of their obligations under that order.

57. On 10 October 2018 the participants lodged appeals against the decision on the merits. However, as the appeals contained multiple formal defects, the court requested that they be rectified.

58. The participants continued to lodge new, formally defective requests and, subsequently, appeals against unfavourable ancillary decisions concerning those requests. As a result, it was not until 14 April 2021, when the C. Regional Court dismissed an appeal against the decision of 23 July

2018 to set penalty payments on the participants, that that decision became final.

B. Proceedings to implement the penalty payments arising from a breach of the final contact order

59. In view of the decision of 23 July 2018 becoming final (see paragraph 58 above), the applicant applied for an order for the implementation of the penalty payments determined in respect of the participants (see paragraph 87 below). The court ordered that a copy of that application be served on the participants on 30 July 2021.

60. In this set of proceedings, the participants again submitted requests that failed to comply with the applicable formal requirements (including requests for exemption from court fees, the appointment of legal-aid lawyers and the exclusion of judges), thus requiring the court to request rectifications and further prolonging the process.

61. The participants failed to appear at the first hearing, scheduled for 14 November 2022, and a further hearing was scheduled for 6 March 2023. Owing to a series of requests for the exclusion of judges, neither that hearing, nor the following one, scheduled for 12 June 2023, was held. Further hearings were scheduled for 25 September and 14 December 2023, but it is not clear whether they took place. Owing to the illness of the judge hearing the case, the next hearing did not take place until 16 January 2025.

62. By means of first-instance decisions delivered on 23 May 2023 and 31 January 2025, the proceedings were discontinued in respect of both children as they had reached the age of majority. It appears that the applicant appealed, and the appeal proceedings are still pending.

C. Complaint under the 2004 Act about the length of the proceedings to set a penalty payment

63. On 7 April 2020 the applicant lodged a complaint about the length of the proceedings to set a penalty payment, under the Law of 17 June 2004 on complaints of a breach of the right to have a case examined in an investigation conducted or supervised by a prosecutor and in judicial proceedings without undue delay (*ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i postępowaniu sądowym bez nieuzasadnionej zwłoki* – "the 2004 Act complaint"; see paragraph 88 below).

64. The president of the court that had heard the case was given the opportunity to respond. He noted that conducting the proceedings in question had been particularly difficult, as both B.N. himself and W.N.'s lawyer had sought to prolong the proceedings as much as possible by taking actions which he considered to be "unethical but not contrary to the law". He

concluded that the court could not be held accountable for such actions by the participants in the proceedings.

65. In a decision of 10 June 2020, the C. Regional Court referred to domestic case-law according to which obstruction of proceedings by the parties could not be held against the court hearing the case if the latter had taken "effective disciplinary and corrective actions". The court was satisfied that such actions had been taken and referred to one refusal of a request for an extension of time, issued in 2017 (see paragraph 49 above). Consequently, not having found any "undue (gross) delay in judicial actions" in the case under review, the court dismissed the applicant's complaint.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. PROVISIONS OF THE CONSTITUTION

66. The relevant provisions of the Constitution read, in so far as relevant, as follows:

Article 31 § 3

"Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic State for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights."

Article 45 § 1

"Everyone shall have the right to a fair and public hearing of his [or her] case, without undue delay, before a competent, impartial and independent court."

Article 47

"Everyone shall have the right to legal protection of his [or her] private and family life, of his [or her] honour and good reputation, and to make decisions about his [or her] personal life."

Article 48

"§ 1. Parents shall have the right to bring up their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of the child, as well as his [or her] freedom of conscience and belief and ... his [or her] convictions.

§ 2. The limitation or deprivation of parental rights may be effected only in the instances specified by statute and only on the basis of a final court judgment."

Article 72 § 1

"The Republic of Poland shall ensure the protection of the rights of the child. ..."

Article 77 § 2

"No statute shall bar access to a court for persons seeking redress for any breach of their freedoms or rights."

II. PATERNITY

A. Relevant provisions of the Family and Custody Code (*Kodeks Rodzinny i Opiekuńczy*) of 25 February 1964 ("the FCC")

1. Legal presumption of paternity of a child born during marriage

67. Article 62 of the FCC reads:

"§ 1 If a child is born during a marriage or before the lapse of 300 days after its termination or annulment, it is presumed that the child is of the mother's husband. ...

§ 3. The above presumptions may only be rebutted by an action to challenge paternity."

2. Rebuttal of the presumption of paternity

68. Article 67 of the FCC provides that a challenge to the presumption of paternity is to be made by demonstrating that the mother's husband is not the father of the child.

69. As a general rule, only (i) the husband (Articles 63-65), (ii) the mother (Article 69) and, upon reaching the age of majority, (iii) the child (Article 70) may bring an action challenging the presumption of paternity.

70. However, if the welfare of the child or the protection of the public interest so requires, an action to challenge paternity may also be brought by a prosecutor, in accordance with Article 86 of the FCC.

3. Establishment of paternity

71. Article 72 § 1 of the FCC reads:

"If there is no legal presumption in operation that the mother's husband is the father of her child, or if such a presumption has been rebutted, the paternity of the child may be established by the acknowledgment of paternity by the father, or by a court decision."

72. In accordance with Article 73, a declaration recognising (acknowledging) paternity of a child is made, as a general rule, to the registrar of a local office for the register of births, marriages and deaths.

73. Article 76 § 1 provides that the recognition (acknowledgment) of paternity cannot take place after the child has reached the age of majority.

74. Article 77 § 1 reads:

"The declaration necessary for the acknowledgment of paternity can be made by a person who has reached the age of sixteen where there are no grounds for their total incapacitation."

75. As regards the judicial establishment of paternity, Articles 84 and 85 read, in the relevant part:

Article 84

"1. The child, the child's mother, or the presumed father of the child may request the judicial establishment of paternity.

2. Neither the mother nor the presumed father may bring an action to establish paternity after the child has reached the age of majority. If the child dies before reaching the age of majority, the mother and the presumed father may bring an action to establish paternity until the day the child would have reached the age of majority.

3. The child or the mother shall bring an action to establish paternity against the presumed father, and if he is deceased, against a guardian appointed by the family court.

4. The presumed father shall bring an action to establish paternity against the child and the mother. If the mother is deceased, the action shall be brought against the child, and if the child is deceased, against a guardian appointed by the family court.

..."

Article 85

"1. It is presumed that a child's father is the man who had sexual intercourse with the child's mother not earlier than 300 days, and not later than 181 days before the child's birth. ...."

76. If the welfare of the child or the protection of the public interest so requires, an action to establish paternity may also be brought by a prosecutor, in accordance with Article 86 of the FCC.

77. Article 99 of the FCC provides that a guardian *ad litem* must be appointed by the family court to represent the child if neither of the parents can represent him or her in judicial proceedings.

B. Third-party intervention

1. Statutory provisions

78. Article 76 of the Code of Civil Procedure (*Kodeks Postępowania Cywilnego*) of 17 November 1964 ("the CCP"), regulating third-party intervention (*interwencja uboczna*), reads:

"Anyone who has a legal interest in having the case decided in favour of one of the parties may join that party at any stage of the proceedings until the conclusion of the hearing on appeal (third-party intervention)."

2. Domestic case-law as regards proceedings to challenge the presumption of paternity

79. There are no specific provisions regarding the possibility for the putative father to intervene in proceedings to challenge the presumption of paternity in respect of the mother's husband. That being so, the issue has been

addressed through case-law. In 1956 the Supreme Court found (in case no. IV CR 1039/55, ruling of 4 June 1956) as follows:

> "The [applicable] provisions ... explicitly set out the persons who have active or passive legal standing in cases concerning the denial of paternity. These persons are individuals directly interested in the proper determination of the family composition. Other persons (with the exception of the prosecutor) cannot participate in such cases, which is a consequence of the ideological assumption that in matters of such great importance as determining the status of a child, only those who have a direct interest may participate, excluding the possibility of a third party disturbing the family's peace. The intervention of such persons is inherently inadmissible in any form, including as third-party interveners. In particular, a man who claims to be the father of the child and wishes to acknowledge the child cannot join the case as a third-party intervener on the plaintiff's side. Until the action for the denial of paternity has been upheld with final effect, such a man cannot acknowledge the child, nor can his paternity be established, and therefore, in the eyes of the law, he is a complete stranger to the child. Similarly, a man who claims he is not the father of the child and wishes to avoid the possibility of an action to establish his paternity cannot be a third-party intervener on the defendant's side."

80. In general, the view that third-party intervention is, in principle, not permissible in proceedings to challenge the presumption of paternity seems to have been accepted in some other rulings of the Supreme Court (for example, in the rulings of 30 October 1956, case no. 3 CR 741/56, and of 30 April 1963, case no. 4 CR 307/62), while the issue was at the very least left open in others (for example, in the ruling of 26 November 1956, case no. 1 CR 423/56).

81. In a ruling of 11 October 1967 (case no. II CZ 107/67), the Supreme Court appears to have accepted that third-party intervention was permissible by a man with whom the child's mother had had intimate relations during her marriage.

82. All the above-mentioned rulings concerning proceedings for challenging the presumption of paternity were given in the period when Article 84 of the FCC precluded a putative father from instituting proceedings to establish his paternity altogether, including in situations where the presumption of paternity of the husband of the child's mother had already been rebutted. Legal standing for a putative father to claim judicial establishment of his paternity was only introduced following the amendment of Article 84 of the FCC in 2004 (see paragraph 75 above). This legislative amendment resulted from the Constitutional Court's judgment in case no. K 18/02 of 28 April 2003 (see *Różański v. Poland*, no. 55339/00, §§ 47-52, 18 May 2006). In that judgment, while finding that the presumed (putative) father's inability to institute proceedings to have his paternity established was unconstitutional, the Constitutional Court made more general remarks as regards the right of access to a court in matters concerning civil status. Notably, it found that the correct determination of civil status was of fundamental importance for safeguarding both the proprietary and non-proprietary interests of the child and the father's right to the protection

of family life as guaranteed under Article 47 of the Constitution. The Constitutional Court further found that Article 45 of the Constitution encompassed the right to institute proceedings concerning the determination of civil status rights, and that civil status rights associated with establishing a child's origin had a direct impact on the legal interests of not only the child but also the parents. The judgment resulted in the amendment of Article 84 of the FCC, extending the right to initiate proceedings for establishing paternity to include the presumed (putative) father (for the current wording, see paragraph 75 above).

III. CONTACT ARRANGEMENTS

83. The CCP contains provisions dealing specifically with the enforcement of court rulings regulating contact with children (Articles 598^{15} to 598^{21}).

84. Those provisions provide that a court order on contact arrangements is enforceable and serves as the basis for an application to a court seeking the imposition of a penalty payment of a specified sum of money (*oznaczona suma pieniężna*) on the party refusing to comply with those arrangements in respect of each and every failure to comply, to be paid to the person to whom visiting rights have been granted.

85. Proceedings in relation to this matter are divided into two separate stages.

86. First, in accordance with Article 598^{15} § 1 of the CCP, the interested party whose contact rights have been regulated by a court order applies to the court for the person disobeying the decision to be put on notice that a penalty payment will be imposed (*wniosek o zagrożenie nakazaniem zapłaty na rzecz osoby uprawnionej do kontaktu z dzieckiem oznaczonej sumy pieniężnej*), taking into consideration his or her financial situation. Such a decision is subject to an interlocutory appeal (Article 598^{15} § 3 of the CCP).

87. Next, in accordance with Article 598^{16} § 1 of the CCP, if the person who has been put on notice by the court fails to fulfil or improperly fulfils his or her obligations, the court orders the payment of the penalty due, determining its amount according to the number of violations. That decision is also subject to an interlocutory appeal (Article 598^{16} § 3 of the CCP).

IV. THE 2004 ACT COMPLAINT

88. In accordance with section 3(3) of the Law of 17 June 2004 on complaints of a breach of the right to have a case examined in an investigation conducted or supervised by a prosecutor and in judicial proceedings without undue delay (the 2004 Act"), the following persons are entitled to lodge a complaint in civil proceedings: a party (*strona*), a third-party intervener (*interwenient uboczny*) and a participant in the proceedings (*uczestnik*).

V. ABUSE OF PROCEDURAL LAW

89. On 7 November 2019 the Law of 4 July 2019 amending the Code of Civil Procedure and some other laws (*ustawa z dnia 4 lipca 2019 r. o zmianie ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw*) entered into force, introducing the concept of abuse of procedural law into the Code of Civil Procedure, through the following provisions:

Article 4^1

"Parties to and participants in proceedings are prohibited from using procedural rights in a manner that is inconsistent with the purpose for which they were established (abuse of procedural law)."

Article 226^2

"§ 1. Whenever a party's conduct, in the light of the circumstances of the case, indicates an abuse of procedural law, the court shall put that party on notice of the possible application of the measures referred to in § 2.

§ 2. If the court finds that a party has abused procedural law, it may, in the final ruling concluding the proceedings:

1) impose a fine on the party responsible for the abuse;

2) regardless of the outcome of the case, require the party responsible for the abuse to reimburse costs in an amount greater than that which would normally be indicated by the outcome of the case, or even in full, corresponding to the delay caused by the abuse of procedural law;

3) upon the request of the opposing party:

a) order the party responsible for the abuse to pay increased costs, corresponding to the increased effort required by the opposing party to conduct the case on account of the abuse, but not more than double the amount,

b) increase the interest rate awarded against the party responsible for abuse causing a delay in the case, for the period corresponding to the delay, provided that the rate may be increased by no more than double; the provisions on the maximum permissible statutory interest rate for delay shall not apply."

THE LAW

I. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT OF THE LIST OF CASES UNDER ARTICLE 37 § 1 OF THE CONVENTION

90. On 28 February 2024 the Court received a unilateral declaration from the Government requesting it to strike the application out of its list of cases pursuant to Article 37 § 1 of the Convention.

91. The applicant disagreed with the terms of the unilateral declaration.

92. The Court considers that it may be appropriate in certain circumstances to strike out an application, or a part thereof, under Article 37 § 1 of the Convention on the basis of a unilateral declaration by the respondent Government even where the applicant wishes the examination of the case to be continued. Whether this is appropriate in a particular case depends on whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*; see, among other authorities, *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, § 75, ECHR 2003-VI). Relevant factors in this respect include the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases, and the impact of these measures on the case at issue (ibid., § 76).

93. The present application raises serious issues which have not already been determined by the Court in previous cases, notably as regards a putative father's access to proceedings to challenge the presumption of paternity in respect of the mother's husband. The Court therefore considers that the unilateral declaration submitted by the Government does not offer a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*).

94. The Court therefore rejects the Government's request for the application to be struck out of its list of cases and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

95. Relying on Articles 6 and 8 of the Convention, the applicant complained that the domestic authorities had infringed his right to respect for private and family life by failing to provide him with effective access to a court which could rule, in an expeditious manner, on matters concerning his paternity of the children and contact with them.

96. Being the master of the characterisation to be given in law to the facts of the case, the Court finds it appropriate to examine these complaints under Article 8 of the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

97. The admissibility of the complaint was not in dispute between the parties.

98. As regards both proceedings to challenge the presumption of paternity and proceedings to establish paternity, the Court has held on numerous occasions that such proceedings do fall within the scope of Article 8, which encompasses important aspects of personal identity (see *Kautzor v. Germany*, no. 23338/09, § 63, 22 March 2012 and the references cited therein). As regards child contact proceedings, the Court has held that Article 8 may protect family life notwithstanding the absence of a legally established parent-child relationship (see *Shavdarov v. Bulgaria*, no. 3465/03, § 40, 21 December 2010).

99. Consequently, the Court considers that this complaint 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

100. The applicant asserted that his right to respect for his family life had been violated on account of the very design of the domestic procedure, which (i) precluded him from instituting proceedings to challenge the presumption of paternity in respect of the mother's husband and made the institution of such proceedings conditional on actions by a prosecutor; (ii) precluded him from taking part in the proceedings challenging paternity; (iii) provided that even if he succeeded in challenging the presumption of paternity in respect of the mother's husband, the establishment of his paternity would not automatically follow and he would still need to institute a new set of proceedings to that end. He added that, owing to the fact that proceedings to establish paternity could not be brought in respect of an adult child, the length of the relevant domestic proceedings had effectively deprived him of the possibility of having his paternity of the children recognised.

101. Furthermore, the applicant complained that his rights under Article 8 had also been violated in so far as his contact with the children was concerned. In that regard, he referred to the length of the contact proceedings and the impossibility of having the final court order granting him contact enforced.

102. Concerning the legal framework governing the domestic procedure for the establishment of the applicant's paternity of the children, and in particular the applicant's inability to access the proceedings challenging the presumption of paternity in respect of the mother's husband, B.N., the

Government relied on domestic case-law and legal commentary to contend that the proceedings at issue had been conducted in accordance with the law.

103. As regards the length of the proceedings in question, the Government argued that the domestic courts had taken all reasonable steps to ensure the smooth examination of the relevant cases but had been manifestly obstructed by W.N. and B.N., who had prolonged the proceedings at every stage. The Government contended that it was difficult to find otherwise, given that W.N. was a judge by profession and many of her pleadings had obvious errors, such as failing to provide a signature.

2. The Court's assessment

104. The Court notes at the outset that the application concerns two distinct types of proceedings: (a) those aimed at challenging the paternity of B.N. (see paragraphs 15-34 above – the outcome of these proceedings being a pre-requisite for the applicant to subsequently be able to institute proceedings to establish his paternity of the children), and (b) those concerning the applicant's contact arrangements with the children, including both the establishment (see paragraphs 35-45 above) and enforcement of such arrangements (see paragraphs 46-65 above). Against that background, the Court finds it appropriate to examine the present complaint from the angle of the State's positive obligations under Article 8 of the Convention as regards (i) the impossibility for the applicant to participate in the proceedings challenging the presumption of paternity in respect of the mother's husband; (ii) the overall length of those proceedings and the impossibility for the applicant to complain in that regard; (iii) the impact that the length of those proceedings had on his right to subsequently have his paternity established (see *Koychev v. Bulgaria*, no. 32495/15, § 55, 13 October 2020, and *Vagdalt v. Hungary*, no. 9525/19, § 50, 7 March 2024); and (iv) the difficulties he faced in obtaining a contact order in respect of the children, having that order enforced, and the length of the proceedings in that regard (see *P.K. v. Poland*, no. 43123/10, §§ 81-86, 10 June 2014, and *Ribić v. Croatia*, no. 27148/12, §§ 92-94, 2 April 2015).

105. The Court will consider whether the relevant positive obligations have been fulfilled, first in connection with the applicant's ability to challenge the presumption of paternity in respect of B.N. and to establish his own paternity of the children, and second, as regards his contact with the children. In both cases, the Court will be guided by the principle that in cases concerning a person's relationship with his or her child, there is a duty to exercise exceptional diligence in view of the risk that the passage of time may result in a *de facto* determination of the matter (see *Süß v. Germany*, no. 40324/98, § 100, 10 November 2005).

(a) Paternity

106. The Court considers that it is not its role to decide *in abstracto* on the compatibility of the choices of the Polish legislature with Article 8 of the Convention and to rule on whether and under what conditions a person claiming to be the biological father of a child may be authorised to challenge the legal presumption of the husband's paternity. It must determine whether a fair balance has been struck in the present case between the competing interests at stake and whether the decision-making process taken as a whole was fair and provided the applicant with the requisite protection of his interests safeguarded by Article 8 (see *Vagdalt*, cited above, § 51).

107. The Court observes, at the outset, that Polish law did not allow a man claiming to be the biological father of a child whose paternity had already been established, either by legal presumption or by recognition, to bring proceedings to challenge paternity. Such proceedings could be instituted by a public prosecutor if the welfare of the child or the protection of the public interest so required (see paragraph 70 above). Thus, the domestic authorities enjoyed discretionary powers, designed to safeguard the best interests of the child and to balance the interests of both the child and the putative biological father. The Court notes that it has already held that such discretionary powers in the field of the establishment of paternity as provided for by the Polish Family and Custody Code are not in themselves irreconcilable with the guarantees contained in Article 8 (see *Różański v. Poland*, no. 55339/00, § 75, 18 May 2006). The Court has also held that, if the domestic authorities carry out a thorough scrutiny of the interests of those involved – attaching particular weight to the interests of the child while not ignoring those of the putative father – in a procedure securing sufficient procedural safeguards for the latter, it would discern no issues under Article 8 (see *Krisztián Barnabás Tóth v. Hungary*, no. 48494/06, § 37, 12 February 2013, and, for illustrative purposes, *Słoń v. Poland* (dec.) [Committee], no. 22963/16, §§ 33-38, 15 September 2020). In the present case, the applicant petitioned the public prosecutor to institute proceedings aimed at challenging the presumption of paternity of B.N. Although the prosecutor initially refused to institute such proceedings, that decision was overturned as a result of review by a superior prosecutor following an appeal by the applicant (see paragraph 16 above).

108. That being so, the Court considers that the main issue in this part of the complaint lies not in the fact that the applicant had to petition the public prosecutor to institute proceedings to challenge the presumption of paternity on his behalf but (i) in the refusal to allow the applicant access to those proceedings in any way, and (ii) in the manner in which the proceedings instituted following the applicant's petition were conducted (notably as regards their duration).

109. As such, the instant case differs from the Court's previous case-law in respect of Poland concerning a putative father's attempts to challenge another man's paternity of a child and to establish his own paternity of the

child, in so far as the competent domestic authority agreed, in principle, with the applicant that biological reality should prevail over a legal presumption by ultimately instituting proceedings to challenge B.N.'s paternity (see paragraph 16 above; compare and contrast with *Różański* and, for illustrative purposes, *Słoń*, both cited above). Moreover, the Court emphasises that the instant case, anchored in both its specific factual circumstances as well as the domestic legal framework should further be distinguished from the Court's earlier rulings concerning different factual scenarios, notably in *Schneider v. Germany* (no. 17080/07, 15 September 2011) and *Scalzo v. Italy* (no. 8790/21, 6 December 2022), which are not called into question herein.

(i) Refusal to involve the applicant in the proceedings to challenge paternity

110. First, the Court reiterates that whilst Article 8 contains no explicit procedural requirements, it is important for the effective enjoyment of the rights guaranteed by this Article that the relevant decision-making process is fair and such as to afford due respect for the interests safeguarded by it. What has to be determined is whether, having regard to the particular circumstances of the case and notably the nature of the decisions to be taken, an individual has been involved in the decision-making process, seen as a whole, to a degree sufficient to provide her or him with the requisite protection of his or her interests (see *R.R. v. Poland*, no. 27617/04, § 191, ECHR 2011 (extracts)).

111. In that connection, the Court notes that, from the perspective of safeguarding the applicant's rights under Article 8, the proceedings to challenge the presumption of paternity in respect of B.N. were the first, mandatory step to subsequently, in new proceedings, establish the applicant's own paternity of L. and B. (compare with *Scalzo*, cited above, § 65, where the Court found that a similar two-step system could be, in principle, compatible with the obligations stemming from Article 8, bearing in mind the State's margin of appreciation). Thus, the applicant, whose biological paternity had been indicated by DNA tests submitted to the prosecutor (see paragraph 16 above; compare and contrast with *Schneider*, cited above, § 86, where the applicant's biological paternity was never established), had a clear interest in participating in those proceedings.

112. Consequently, while the applicant was not deprived of access to a court in connection with his paternity altogether (in so far as court proceedings were instituted by the prosecutor), the subsequent refusal to allow the applicant to participate in those proceedings as an intervening third party cannot be said to have provided him with the requisite protection of his interests under Article 8 (see also paragraph 115 below). Furthermore, as there appear to be no clear statutory obstacles in Polish law preventing third-party intervention in cases challenging a presumption of paternity (see Article 76 of the CCP, cited in paragraph 78 above), the Court is not persuaded by the reasoning of the domestic court, which refused the

applicant's third-party intervention by referring to case-law dating back decades (see paragraphs 22 and 79 above) and thus not taking into account developments in society which have taken place since the adoption of that case-law.

113. In this respect, the domestic court in the applicant's case did not refer to the amendments to Article 84 of the FCC resulting from the Constitutional Court's judgment of 2003 which declared unconstitutional the putative father's inability to institute proceedings to have his paternity established. In its reasoning of that case, the Constitutional Court made general remarks on the importance of access to a court in matters concerning the determination of civil status rights, notably as regards establishing a child's origin (see paragraph 82 above).

114. The Court notes that the Constitutional Court's judgment did not directly concern the possibility of accessing proceedings to challenge the presumption of paternity, but rather, the right to institute proceedings to establish paternity, that is, the second step which the applicant would have had to undertake. Nevertheless, it finds that the reasoning concerning the importance of affording a putative father access to a court could have served as guidance for the District Court in deciding the matter in the proceedings under review in the present case.

115. While the Court cannot speculate as to whether, had the applicant been allowed to participate in the proceedings, their course would have been different, it is clear that the refusal deprived him of access to a measure aimed specifically at addressing the excessive length of proceedings, namely a complaint under the 2004 Act (see paragraph 88 above), evidencing how a failure to involve an interested person in relevant proceedings may exacerbate in general, and in the instant case indeed has exacerbated, the adverse effects on that person's interests.

(ii) Handling of the proceedings to challenge paternity by the domestic authorities

116. As regards the handling of the applicant's case, the Court notes that the whole decision-making process concerning the applicant's paternity has been marked by a grave lack of expedition.

117. Firstly, as regards the part of the proceedings conducted by the public prosecutor alone, it should be pointed out that the period between the applicant's petition to the public prosecutor and the latter's application to the court to challenge the presumption of paternity lasted over two years and three months (see paragraphs 15-16 above). In this connection, the Court reiterates that the passage of time, in matters concerning a relationship with children, is of the utmost importance. While it should be reiterated that when a decision to be given falls within the ambit of the discretionary powers of the competent authorities, the involvement of a person whose interests are at stake cannot, for obvious reasons, be attended by the same procedural guarantees as those applicable in judicial proceedings (see *Różański*, cited

above, § 76), the Court has difficulty accepting the above-mentioned period as reasonable. Moreover, the Court notes with concern that the domestic provisions and practice contain no guidance as to the way in which the discretion with which the authorities have been vested by law should be exercised (ibid.), in particular as regards any minimum standards concerning deadlines.

118. Moving on to the course of the court proceedings to challenge the presumption of paternity in respect of B.N., the Court is struck by what cannot be considered anything other than extreme protractedness, as evidenced by the following three circumstances. Firstly, it took the domestic court over six years to give a final decision appointing a guardian *ad litem* for the children (see paragraphs 18-19 above), which was merely an initial procedural step before considering the merits of the case. Secondly, the domestic court took over ten years to hear the first witness (see paragraph 31 above). Thirdly, and most importantly, no decision on the merits was taken at first instance until both the children concerned had reached the age of majority (see paragraph 32 above). As a result, the domestic court effectively deprived the applicant of the right to have his paternity of the children established, having not only allowed the passage of time to determine the matter *de facto*, but having also allowed his further attempts to that effect to become time-barred (see paragraphs 73 and 75 above).

119. The Court acknowledges that the domestic court's task was rendered difficult by the actions of W.N. and B.N., to whom the overall duration of the proceedings was, at least in part, attributable. However, the Court reiterates that the lack of cooperation of the parties cannot exempt the authorities from their positive obligations under Article 8. It rather imposes an obligation on them to take measures that would reconcile conflicting interests, keeping in mind the paramount interests of the child (see, *mutatis mutandis*, *Z. v. Poland*, no. 34694/06, § 75, 20 April 2010). Moreover, the Court is not convinced by the Government's argument (see paragraph 103 above) that the domestic courts had taken all reasonable steps to ensure the smooth examination of the case. The Court finds it striking that the domestic authorities appear to have tolerated for years what the Government now deem to be "manifest obstruction". It is all the more troubling that both the court conducting the proceedings, which in 2019 gained an additional "disciplinary" tool (see paragraph 99 above), and the public prosecutor, who, as a party to the proceedings, was entitled to lodge a 2004 Act complaint (see paragraph 88 above), seem to have accepted such obstruction as a natural part of proceedings. In these circumstances, the Court finds that it has not been demonstrated that the domestic authorities exercised sufficient, let alone exceptional, diligence as regards the importance of the passage of time for the applicant's interests.

(b) Contact

120. The Court reiterates that the duty of exceptional diligence concerning the passage of time (see paragraph 105 above) is decisive in assessing whether a case concerning access to children has been heard within a reasonable time as required by Article 6 § 1 of the Convention (see, *inter alia*, *Nuutinen v. Finland*, no. 32842/96, § 110, ECHR 2000-VIII), and that it also forms part of the procedural requirements implicit in Article 8 (see, *inter alia*, *Hoppe v. Germany*, no. 28422/95, § 54, 5 December 2002).

121. That being so, the decisive question is whether or not the Polish authorities took all appropriate steps that could reasonably be demanded (i) to deliver a decision on the merits regulating the applicant's contact with the children within a reasonable time, and (ii) to facilitate the enforcement of the contact order.

122. In view of the above, the Court notes with the utmost concern that the domestic authorities: (i) took almost four years to regulate the applicant's contact with the children by way of a final contact order at first instance (see paragraphs 36 and 43 above); (ii) took almost four more years merely to put the participants on notice that penalty payments were liable to be imposed for each violation of that contact order (see paragraphs 46 and 58 above); and (iii) were unable to impose a single penalty payment for more than three years (see paragraphs 59 and 62 above). In addition, and most importantly from the perspective of the applicant, the authorities were unable to enforce any contact between him and the children before the children reached the age of majority.

123. The considerations relating to the influence that W.N. and B.N. had on the length of the proceedings (see paragraph 119 above) are applicable here in their entirety, that is, both in terms of recognising the difficulties arising for the domestic courts on that account and in terms of the special duty incumbent on national authorities in addressing the matter. Referring to the decision dismissing the applicant's 2004 Act complaint (see paragraph 65 above), the Court cannot accept the reasoning of the domestic court which found that the remedial actions of the court conducting the proceedings had been sufficient.

124. Overall, the Court finds that the protracted actions of the domestic courts resulted in a *de facto* determination of the matter and prevented the applicant from maintaining a relationship with the children.

(c) Conclusion

125. In its consideration of the case, the Court has had regard to the circumstances of the case seen as a whole. It has taken into consideration, firstly, the lack of any involvement of the applicant in the court proceedings to challenge the presumption of paternity in respect of the mother's husband (see paragraph 112 above). Secondly, the Court has noted the absence, in

domestic law and practice, of any time frame in which a prosecutor is to decide whether to initiate proceedings to challenge the legal presumption of paternity (see paragraph 117 above). In this context, the Court has attached importance to the fact that more than two years passed from the moment when the applicant petitioned the prosecutor to challenge B.N.'s paternity until it ultimately decided to institute proceedings to this effect (see paragraphs 15 and 16 above). Thirdly, the Court has considered the extreme protractedness of the proceedings challenging the presumption of paternity and the apparent absence of any remedial action by the domestic authorities. The Court has noted that, as a result thereof, the legal avenue by which the applicant could have established his paternity of the children – had the presumption in favour of the mother's husband been rebutted – was effectively extinguished (see paragraph 119 above). Fourthly, with reference to the contact proceedings, the Court has had regard to the fact that the domestic authorities have not been able to regulate that contact in an expeditious manner or enforce it in any way (see paragraph 122 above). Having examined the manner in which all these elements taken together affected the applicant's situation, the Court concludes that, even having regard to the margin of appreciation left to the State, the applicant was not afforded the respect for his family life to which he is entitled under the Convention (see, *mutatis mutandis*, *Różański*, cited above, § 79).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. 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."

128. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage. He made no other claims.

129. The Government submitted that the claim made by the applicant was excessive and asserted that he had not provided any documentation regarding non-pecuniary damage, in particular to show that he had suffered distress or emotional or psychological harm. They urged the Court to make an award of just satisfaction on the basis of its case-law in similar recent cases against Poland.

130. The Court, making an assessment on an equitable basis, awards the applicant EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the Government's request for the application to be struck out of the Court's list of cases;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *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, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Ivana Jelić
Deputy Registrar	President