



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

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FIRST SECTION

Application no. 19561/22
Johann, Dephaer BOISTEAU
against Poland
lodged on 6 April 2022
communicated on 24 January 2023

SUBJECT MATTER OF THE CASE

The application concerns the applicant's contact with his child (born in 2015), the enforcement of interim measures and the length of proceedings in this matter.

The proceedings concerning the applicant's contact rights, instituted by the applicant, lasted from 22 May 2017 to 28 October 2021 (case no. III Nsm 263/17/S before the Kraków-Śródmieście District Court, case no. III Nsm 437/17 before the Dębica District Court, case no. V Ca 346/18 before the Rzeszów Regional Court, case no. III Nsm 626/18 before the Dębica District Court, case no. V Ca 271/21 before the Rzeszów Regional Court).

The applicant's application for an interim measure to secure his contact rights pending the main proceedings, lodged on 22 May 2017 along with the main claim, was not examined by the court. The applicant renewed his application on 5 October 2018 and the first decision *ad interim* (the "contact order") was delivered on 25 October 2018. The applicant also asked (on 25 July 2019 and on 8 January 2020) that the mother be fined for failure to comply with the contact order. The Dębica District Court dismissed those applications on 21 December 2020. The court held that only a final decision on contact rights could serve as basis for imposing a fine.

On 6 December 2021 the Rzeszów Court of Appeal dismissed the applicant's complaint lodged under the Law of 17 June 2004 about the 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 court held that, despite the overall length and the shortcomings in scheduling and organising hearings and handling the case file at first instance, the proceedings were not protracted given that the case had been factually complex and that the parties (particularly the child's mother) had contributed to the length of the proceedings by lodging numerous belated submissions.

QUESTION TO THE PARTIES

Has there been a failure by the State to comply with its positive obligations to protect the applicant's right to respect for his family life under Article 8 of the Convention (see *Süß v. Germany*, no. 40324/98, § 100, 10 November 2005, *P.K. v. Poland*, no. 43123/10, §§ 80-86, 10 June 2014, *Ribić v. Croatia*, no. 27148/12, §§ 92-94, 2 April 2015)? Reference is made to (i) the time that had elapsed from the applicant's first application for an interim contact order to the decision of 25 October 2018, (ii) the applicant's allegation that his applications to have his contact rights secured by imposing a fine on the mother had been examined with a delay and, ultimately, dismissed (iii) the overall length of proceedings regarding the applicant's contact rights.