



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

FIFTH SECTION

CASE OF MIRZOYAN v. THE CZECH REPUBLIC

(Applications nos. 15117/21 and 15689/21)

JUDGMENT

Art 8 • Family life • Refusal of applicant's applications to extend his long-term residence permit for business purposes and long-term residence permit for family purposes on grounds he was considered to pose a threat to national security and public order based on classified documents made partly accessible to applicant's lawyer but not disclosed to applicant himself • Lack of expulsion order or withdrawal or revocation of valid residence permit meant Court's case-law for assessing compatibility of such measures with Art 8 could not automatically be transposed to situation of the applicant • Domestic court proceedings offered sufficient guarantees counterbalancing limitation of applicant's procedural rights in proceedings before the administrative authorities • Applicant not deprived of opportunity to effectively challenge executive's assertions that national security and public order were at stake • Domestic authorities gave sufficient consideration to applicant's family ties and, with reference to case-law of the Court, carried out balancing of relevant interests at stake • Margin of appreciation not overstepped

Prepared by the Registry. Does not bind the Court.

STRASBOURG

16 May 2024

FINAL

16/08/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Mirzoyan v. the Czech Republic,

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

Georges Ravarani, *President*,

Lado Chanturia,

Mārtiņš Mits,

Stéphanie Mourou-Vikström,

María Elósegui,

Mattias Guyomar,

Kateřina Šimáčková, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the applications (nos. 15117/21 and 15689/21) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Artur Mirzoyan (“the applicant”), on 15 March 2021;

the decision to give notice of the applications to the Czech Government (“the Government”);

the parties’ observations;

Having deliberated in private on 13 February and 2 April 2024,

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

INTRODUCTION

1. The case concerns the refusal of the Czech administrative authorities and courts of the applicant’s application to extend his long-term residence permit for business purposes and his application for a long-term residence permit for family purposes on the grounds that he was considered to pose a threat to national security and public order, a conclusion which was based on classified documents made partly accessible to the applicant’s lawyer but not disclosed to the applicant himself. The applicant, relying on Article 8 of the Convention and Article 1 of Protocol No. 7 to the Convention, argued that the dismissal of his applications had adversely affected his right to respect for his family life and the corresponding right of his wife and their children, whose best interests had not been sufficiently considered.

THE FACTS

2. The applicant was born in 1966 and lives in Karlovy Vary. He was represented by Mr P. Václavek, a lawyer practising in Prague.

3. The Government were represented by their Agent, Mr V. A. Schorm, of the Ministry of Justice.

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

5. The applicant has lived in the Czech Republic since 2006, initially on the basis of a visa for a stay of more than ninety days and then on the basis of a long-term residence permit issued in connection with his business activities in the country. On 26 August 2009 he was granted a long-term residence permit for business purposes, which was valid until 25 August 2011.

He lived there with his wife, an Armenian national, and four children, all Russian nationals, born in 1995, 2002, 2007 and 2010 respectively. The applicant's wife and the children born in 2002, 2007 and 2010 have had permanent residence in the Czech Republic since 2013. His eldest son, born in 1993, also lived in the Czech Republic on a long-term residence permit granted for business purposes. On 28 May 2020, the applicant's daughter born in 2002 acquired Czech citizenship (see paragraph 33 below).

6. It appears from the case file that throughout all the proceedings described below, the applicant was represented by a lawyer of his choice.

I. THE APPLICANT'S APPLICATION TO EXTEND HIS RESIDENCE PERMIT FOR BUSINESS PURPOSES

7. On 3 June 2011 the applicant applied to the Department for Asylum and Migration Policy of the Ministry of Interior ("the Ministry") to extend his long-term residence permit for business purposes (see paragraph 5 above).

8. After interviewing the applicant about his business activities and the place of residence of his family members, but not about any other issues relating to his family life, on 5 March 2012 the Ministry dismissed his application, concluding that his residence in the country was not in the interests of the Czech Republic.

9. Following a review by the Commission for Matters of Residence of Aliens ("the Commission"), the Ministry's decision was annulled and the matter was returned to it for reconsideration.

10. On 31 October 2012 the Ministry issued a second decision, dismissing the applicant's application on the same grounds. The conclusion that his residence in the country was not in the security interests of the Czech Republic was based on classified information dated 1 March 2012 (identified as V2-V/2012-UOOZ/OSAI) submitted to the Ministry by the police organised crime unit. According to the Ministry, the information had its source in the applicant's personal activities and actions and conduct over a relatively long period of time and could be considered credible. On 6 March 2013 that decision was upheld by the Commission.

11. Following an administrative action by the applicant, in which he argued that the dismissal of his application would adversely affect his right to respect for his family life and the corresponding right of his wife and their children, on 22 May 2013 the Commission's decision was annulled by the Plzeň Regional Court ("the Regional Court"). It considered that the classified information underlying the Ministry's decision did not meet the qualitative

requirements laid down in the relevant case-law. The court stated, *inter alia*, as follows:

“It is not clear how that information was obtained, it is not specified why the police considered it credible and as regards the reasons given, namely [the applicant’s] contact with the individuals specified in the classified information, these cannot be verified by the Regional Court in any way. The Regional Court was therefore unable to assess whether the information was sufficiently credible as to allow it to affect the life of [the applicant] (and his entire family) by preventing him from obtaining a permit to continue residing in the Czech Republic.”

On 30 January 2014 that judgment was upheld by the Supreme Administrative Court.

12. On 7 April 2014, after the Ministry’s decision dated 31 October 2012 had been annulled by the Commission, the Ministry issued a third decision, again dismissing the applicant’s application on the grounds that his residence in the country was not in the interests of the Czech Republic. It relied on a piece of classified information dated 14 November 2013 (identified as V83/2013-OAM, later V211-5/2016-OAM) submitted by the police. On 27 July 2014 that decision was upheld by the Commission.

13. Following an administrative action by the applicant, on 23 September 2015 the Regional Court annulled the decisions of the Commission and the Ministry. It held that the relevant classified information still did not meet the qualitative requirements laid down in the relevant case-law and stated, among other things, as follows:

“The classified information dated 14 November 2013 supplemented the original classified information dated 1 March 2012, and its content shows efforts by the police to provide more details ... However, the content and nature of the latter classified information still do not enable the Regional Court to state anything other than the fact that it had been submitted by the [police organised crime unit] and that it describes meetings or contact between [the applicant] and persons regarded negatively by the provider of the information. The information does not mention any specific subversive or criminal activity by [the applicant], nor does it refer to any evidence of [the applicant’s] collaboration with the identified individuals in their criminal activities. Although it is clear that the source of the classified information is the [police organised crime unit], it is not clear how this information was obtained; it is not specified why the police considered it credible and, in so far as reasons are given, namely the [applicant’s] contact with the individuals specified in the classified information, these cannot in any way be verified by the Regional Court.”

On 17 June 2016 that judgment was upheld by the Supreme Administrative Court.

14. On 4 July 2016 the Ministry issued its fourth decision, again dismissing the applicant’s application on the grounds that his residence in the country was not in the interests of the Czech Republic. It relied on another piece of classified information, dated 7 June 2016 (identified as V117/2016-OAM and V118/2016-OAM, later V211-6/2016-OAM and V211-7/2016-OAM), submitted by the police organised crime unit. That decision was upheld by the Commission on 17 October 2016.

15. Both the above-mentioned decisions were again successfully challenged by the applicant before the Regional Court, which annulled them on 24 October 2017. Having reviewed and assessed the content of the classified information, the court concluded that, despite having been supplemented, it still did not provide sufficient grounds for dismissing the applicant's application. On 26 April 2018 that decision was upheld by the Supreme Administrative Court.

16. In its fifth decision, issued on 1 March 2018, the Ministry again dismissed the applicant's application on the grounds that his residence in the country was not in the interests of the Czech Republic, namely the interest of preserving national security (*vnitřní bezpečnost*), referring in particular to sections 37(2)(a) and 56(1)(j) of the Aliens Act (see paragraphs 36 and 39 below). It relied on several pieces of classified information, those identified as V211-5/2016-OAM and V211-6/2016-OAM describing the applicant's activities generally, and those identified as V211-7/2016-OAM and V5/2018-OAM containing more specific details. According to the Ministry, that information had its source in the applicant's personal activities and conduct over a relatively long period of time and could therefore be considered credible and sufficient to establish the true state of facts, without it being necessary – as suggested by the applicant's representative – to hear the individuals named in the classified information, the applicant and the provider of the information.

It appears from that decision that on 19 January 2018 the applicant's representative was able to consult the classified information identified as V211-5/2016-OAM and V211-6/2016-OAM, but not the classified information identified as V211-7/2016-OAM and V5/2018-OAM, submitted by the police organised crime unit and the National Office for Combating Organised Crime (*Národní centrála proti organizovanému zločinu* – “NCOZ”), which contained a description of the operational activities of those units that could be compromised if disclosed.

The Ministry concluded that the applicant's conduct represented a sufficiently serious risk to the fundamental interests of a democratic society, which included preserving security and preventing the potential commission of the most serious criminal activity, while it was in the public interest that only aliens whose residence was not contrary to the State's interests in preserving national security should be allowed to remain on the territory. In response to the applicant's argument that he had never been prosecuted and had no criminal record, the Ministry held that it was immaterial in that context whether he himself had committed a crime.

17. On 31 May 2018 the decision was upheld by the Commission. It noted, referring to the case-law of the Supreme Administrative Court, that a “State interest” was an indefinite legal concept and that it was for the administrative authority to assess whether the specific factual circumstances of the case could be subsumed under that term.

18. On 23 July 2019, following an oral hearing, the Regional Court allowed the applicant's administrative action and annulled the Commission's decision, holding that the supplemented classified information still did not provide sufficient grounds for dismissing the applicant's application. In the court's view, the courts also had to be provided with specific evidence, namely the results of operational investigative activities (such as intercepted communications) in order to verify conclusions made by a provider of the classified information.

19. On 12 March 2020 the Supreme Administrative Court quashed the Regional Court's judgment and sent the matter back to it. It acknowledged that the limitations placed on a procedural party to whom information was not disclosed had to be proportionate to the aim pursued, and that the specific role of a full-jurisdiction review was to also review the substantive correctness of the findings of fact and conclusions of law. In this regard, it was crucial that classified information be as credible and verifiable by the courts as possible. In the present case, the Supreme Administrative Court found the information contained in the classified part of the administrative file to be sufficient in terms of conclusiveness, accuracy and reliability, despite the fact that it consisted of metainformation reproducing the content of specific evidence (interception of communications, video-recordings of specific individuals and events, statements of police officers and so forth) gathered in the criminal proceedings against other individuals, which also gave an account of the presence and activities of the applicant. In the instant case, this information provided a vivid, long-term and relatively consistent picture of the development of the applicant's activities and his contact with a criminal community in the Czech Republic since 2011, not relating to an isolated fact or event, but containing a mosaic of facts having occurred over an extended period of time.

20. On 2 June 2020 the Regional Court examined the applicant's case at an oral hearing and dismissed his action, referring to the above-mentioned conclusions of the Supreme Administrative Court. In relation to his family life, the court emphasised, *inter alia*, that the fact that his children had been living in the Czech Republic for a long time and had developed social ties in the country was not a specific feature which would distinguish his case from other cases routinely considered; it was therefore unnecessary to hear the applicant's family members, namely his wife, about their family situation. Indeed, the applicant did not state any exceptional circumstances likely to lead to the conclusion that the dismissal of his application was not proportionate (for example, his inability to return to the Russian Federation, health problems and so forth). The court also stated that the applicant's family could continue to reside in the Czech Republic and that they were financially independent of him.

21. On 17 August 2020 the Supreme Administrative Court dismissed a cassation appeal by the applicant and upheld the Regional Court's judgment.

As to the existence of an interference with his private and family life, it pointed to the fact that during his stay in the Czech Republic the applicant had established a number of economic, social, cultural ties, as well as family ties which could be disrupted or completely limited as a result of the refusal to extend his stay. The court further endorsed the conclusion that such an interference, resulting in the present case from the dismissal of the applicant's application on the grounds that his residence in the country was not in the interests of the Czech Republic, was proportionate and did not breach Article 8 of the Convention or Article 3 § 1 of the Convention on the Rights of the Child. It was also of the view that his children's situation had been sufficiently taken into account, reiterating that his family members could remain in the Czech Republic and that the minor children could be cared for by their mother, who was also a businesswoman and able to provide for the family. The public interest in preserving security and preventing criminal activity therefore prevailed in the applicant's case.

22. The applicant lodged a constitutional complaint, relying on Article 8 of the Convention and Articles 3 § 1 and 12 of the Convention on the Rights of the Child. By decision no. III. ÚS 2880/20 of 16 February 2021 the Constitutional Court dismissed that complaint.

It found that the administrative courts had sufficiently dealt with the applicant's complaint that the interference with his right to respect for his private and family life was disproportionate. The court also acknowledged the importance of considering the best interests of a child, even in cases where the impact was indirect, and admitted that dismissing the applicant's application would limit his contact with his children. It found, nevertheless, that the children's situation had been sufficiently considered, based on the information available to the authorities, and that their interests had been duly taken into account.

As regards the inability to challenge the content of the classified information, the Constitutional Court endorsed the conclusions of the Supreme Administrative Court. It emphasised that the procedural limitations placed on the applicant, who had been unable to examine the classified information and challenge it effectively, had been counterbalanced by the judicial review carried out.

II. THE APPLICANT'S APPLICATION FOR A NEW LONG-TERM RESIDENCE PERMIT FOR FAMILY PURPOSES

23. On 12 May 2014 the applicant applied to the Ministry for a new long-term residence permit for family purposes, submitting that his wife, an Armenian citizen, had held a permanent residence permit in the Czech Republic since 24 August 2013.

24. The applicant's application was dismissed on 26 August 2014, but that decision was later annulled by the Commission.

25. On 14 February 2018 the Ministry dismissed the applicant's application again, on the grounds that there was a reasonable risk that he could seriously disrupt public order during his residence in the Czech Republic, referring in particular to sections 9(1)(h) and 56(1)(g) of the Aliens Act (see paragraphs 34 and 40 below). It relied on the same classified information as in his application to extend his long-term residence permit for business purposes (identified as V211-5/2016-OAM, V211-6/2016-OAM, V211-7/2016-OAM and V5/2018-OAM), submitted by the police's organised crime unit and NCOZ, which had its source in the applicant's personal activities and conduct over a relatively long period of time and could therefore be considered credible. It was apparent from that information that the applicant had repeatedly and over a long period behaved immorally, which had seriously disrupted public order, even if that had not in itself amounted to a criminal offence or a breach of the provisions of domestic law.

Referring to Article 8 of the Convention, the Court's case-law and Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, the Ministry took the view that the interference with an alien's right to respect for family life stemming from the refusal to grant him or her a long-term residence permit for family purposes was comparable to that stemming from the expulsion of a EU citizen and that the best interests of minor children had to be taken into account. As to the applicant's situation, the Ministry stated that he had repeatedly travelled to Russia from the Czech Republic, so his ties with his home country could not have been disrupted. His wife and minor children (born in 2002, 2007 and 2010) had permanent residence in the Czech Republic but also had Russian citizenship, which allowed them to enter Russian territory without restrictions and to develop their family life there. Moreover, the applicant's wife was a businesswoman and had an income that enabled her to provide for the family. The Ministry concluded that in the present case the public interest clearly outweighed the applicant's interest and that the refusal to grant him a residence permit did not exclude him from his children's care, since it was entirely up to him to decide where he would exercise his parental rights and obligations.

26. In its decision of 31 May 2018 upholding the Ministry's decision the Commission stated that the Ministry had duly examined the impact of its decision on the residence permits of the applicant's family members and on the applicant's ties to his home country. It also stated that, according to the administrative courts' case-law (judgments of the Supreme Administrative Court nos. 9 As 142/2012 of 29 November 2012 and 9 Azs 12/2015 of 12 March 2015), an administrative authority could not be asked to collect evidence in favour of an alien exclusively on its own initiative. In proceedings brought by a party, it was up to that party to submit all the relevant facts and information it considered important and to adduce evidence in support. Section 174a(1) of the Aliens Act had recently been amended accordingly (see paragraph 46 *in fine* below).

27. On 23 July 2019 the Regional Court annulled the Commission's decision, finding that the classified information did not provide sufficient grounds for dismissing his application (see, similarly, paragraph 18 above).

28. On 12 March 2020 the Supreme Administrative Court quashed the Regional Court's judgment and returned the case to it. It found the relevant classified information sufficient and credible in that it provided more than a convincing picture of the general and long-term characteristics of the applicant's way of life. In the court's view, there was no doubt that there was a reasonable risk that he could seriously disrupt public order in the Czech Republic. That risk was of such a nature and gravity that the applicant or his representative could not be given access to even part of the classified information assessed by the court.

29. On 2 June 2020 the Regional Court examined the applicant's case at an oral hearing and dismissed his action on the same grounds as in its other decision of 2 June 2020 (see paragraph 20 above). The court added to the considerations concerning the interference with the applicant's family life that, while the departure of the applicant was likely to have an impact on the family, that fact was not imputable to the Czech Republic but only to the applicant himself.

30. On 19 August 2020 the Supreme Administrative Court dismissed a cassation appeal by the applicant and upheld the Regional Court's decision, endorsing the finding that the interference with his right to respect for his private and family life was proportionate. In that connection, it held that it was not necessary to assess all the criteria set out in section 174a of the Aliens Act (see paragraph 46 below) and in the Court's case-law, but only those which were specific to each case and came to light during the proceedings, the burden of proof being primarily on an applicant, who was the only one in possession of the relevant information. As such information could be of a private or even intimate nature (such as that concerning health), it was entirely at an applicant's discretion whether or not to share it with the authorities. It was only in cases of doubt or where there was a need to supplement such information that the administrative authority could be required to take procedural steps in this regard. Although the administrative authority was bound by the duty to establish facts beyond reasonable doubt, it could not be expected to actively seek details about an applicant's private life or to invite an applicant to supplement his submissions. In the present case, the applicant had not submitted, either in his action or in his cassation appeal, any information likely to overturn the administrative authorities' decisions, nor had he specified any important facts from his private or family life which would outweigh the public interest in his no longer residing in the Czech Republic. The same applied to his argument concerning the best interests of his children, as he had never indicated what kind of care he provided to his minor children and how they would be affected by being separated from him. In this regard, the Supreme Administrative Court held

that the present case fell within the fourth category of cases defined by the Constitutional Court in its decision no. IV. US 950/19 (see paragraph 53 below). The administrative authorities could therefore not be blamed for the applicant's passivity or the procedural strategy he had chosen.

31. By decision no. I. ÚS 2879/20 of 19 January 2021 the Constitutional Court dismissed a constitutional complaint by the applicant for the same reasons as in its decision of 16 February 2021 (see paragraph 22 above).

III. OTHER PROCEEDINGS CONCERNING THE APPLICANT'S RESIDENCE IN THE CZECH REPUBLIC

32. On 21 October 2011 the applicant applied to the Ministry for a permanent residence permit on the grounds that he had been residing in the Czech Republic for at least five years. On 1 March 2018, in the fourth round of the proceedings, the Ministry dismissed his application, stating that there was a reasonable risk that he could seriously disrupt public order. It further stated that its decision to dismiss the application meant that the applicant would have to leave the territory of the Czech Republic. On 17 May 2018 that decision was upheld by the Commission. On 23 June 2020 an administrative action brought by the applicant was dismissed by the Regional Court, and the Supreme Administrative Court later dismissed a cassation appeal lodged by him. By decision no. I. ÚS 2027/22 of 6 December 2022 the Constitutional Court dismissed a subsequent constitutional complaint.

33. On 5 June 2020 the applicant applied to the Ministry for a temporary residence permit for a family member of an EU citizen, his adult daughter born in 2002, who had acquired Czech citizenship. On 3 March 2021 the Ministry dismissed the applicant's application, stating that there was a reasonable risk that he could endanger State security (*bezpečnost státu*) and setting a deadline for him to leave the territory of the Czech Republic (thirty-five days from the date on which the decision came into force), pursuant to section 87e(4) of the Aliens Act (see paragraph 41 below). This dismissal was subsequently upheld by the Commission. After the Regional Court's first decision dismissing the applicant's action was quashed by the Supreme Administrative Court on the grounds that it was not clear whether the Regional Court had had all the classified information at its disposal and/or whether all the members of the relevant chamber had examined the content of all the classified information, on 29 June 2022 the Regional Court annulled the Commission's decision. It found that the classified information did not provide sufficient grounds for dismissing the applicant's application. According to the latest information available to the Court, the proceedings were still pending before the Commission.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. ALIENS ACT (LAW NO. 326/1999 ON ALIENS' RESIDENCE IN THE CZECH REPUBLIC)

34. Under section 9(1)(h) of the Aliens Act, the Ministry will not issue an alien with a long-term residence permit if there is a reasonable risk that during his or her residence in the country he or she could endanger State security, seriously disrupt public order or endanger the international relations of the Czech Republic.

35. Section 33(1)(d) provides that the Ministry will grant a visa for a stay of more than ninety days in order to tolerate the stay of an alien who has brought an administrative action (with a request for its suspensive effect), *inter alia*, against the decision of the Ministry not to extend his or her long-term residence permit.

36. Section 37(2)(a) provides that the Ministry will annul a visa for a stay of more than ninety days for any of the reasons specified in section 56(1) (a), (c), (d), (g), (h) and (j) to (l) or section 56(2), provided that the consequences of the decision are proportionate to the reason for annulment of the visa. When assessing proportionality, the Ministry gives particular consideration to the impact that the decision would have on the alien's private and family life.

Section 37(3) provides that if the Ministry decides to annul a visa, it will set a deadline for the alien concerned to leave the territory and issue an order to leave.

37. Under section 46a(4) (and other sections relating to the annulment of other types of residence permits), if the Ministry decides to annul a long-term residence permit granted for family purposes, it will set a deadline for the alien concerned to leave the territory, which the alien must comply with.

38. Section 47(2), as in force until 17 December 2015, provided that if the period of validity of a visa for a stay of more than ninety days expired before a decision was taken on a timely request for the extension of a long-term residence permit, the visa was deemed valid until the decision on that request became final.

39. Under section 56(1)(j), the Ministry will not issue a long-term residence permit if an alien's residence in the country is not in the interests of the Czech Republic.

40. Under section 56(1)(g), the Ministry will not issue a long-term residence permit for the reasons specified in section 9(1)(a),(b), (g), (h), (i) or (j).

41. Section 87e(4) provides that if the Ministry dismisses an application for a temporary residence permit, it will set a deadline for the alien concerned to leave the territory and issue an order to leave, which the alien must comply with.

42. Section 87y provides that a family member of an EU citizen who is not him or herself an EU citizen and who is staying on the territory with the EU citizen is authorised to stay on the territory until the decision on his application for the relevant residence permit becomes final; during that period, his stay on the territory is considered temporary.

43. Under section 169m(1), documents or records containing classified information must be kept separately from the case file put together in the proceedings under the Act and cannot form part of it.

44. Under section 169m(2), if documents forming the basis of the decision contain classified information, the decision must only contain a reference to that information and its classification level. The considerations followed by the administrative authority in its assessment and the reasons for issuing the decision are only stated to the extent that they are not classified information.

45. Under section 169m(3), if it becomes clear in the proceedings, on the basis of classified information provided by the police or the intelligence service of the Czech Republic, that an alien concerned poses a threat to the security of the State, its sovereignty, territorial integrity, democratic foundations, the lives or health of persons, or if this information leads to a reasonable suspicion that the alien could endanger those values during his or her stay on the territory, the information on the reasons for not granting a long-term visa or in justification of a decision under the Act will only state that the visa or permit was not granted on account of a threat to national security. If the administrative authority is, in proceedings under the Act, obliged to assess the proportionality of the impact of its decision, the reasoning of its decision must also state the considerations used for that assessment.

46. Under section 174a(1), when assessing the proportionality of the impact of a decision under the Act, the administrative authority must take into account, in particular, the seriousness or the nature of the alien's unlawful conduct, the length of his or her stay or residence in the country, his or her age, state of health, the nature and stability of family ties, financial situation, any social and cultural ties established in the country and the strength of the alien's ties to the State of which he or she is a citizen, or, in the case of a stateless person, to the State of his or her last permanent residence.

On 15 August 2017 that section was amended to also provide that the party to the proceedings must provide the Ministry with all relevant information necessary to assess the proportionality of the decision.

II. CODE OF ADMINISTRATIVE PROCEDURE (LAW NO. 500/2004)

47. Article 17 § 3 provides that, in order to protect classified information or other information subject to a statutory duty of confidentiality, part of the documents or records must be kept separately from the case file in the cases specified by law.

48. Under Article 36 § 3, unless otherwise provided by law, the parties must have the opportunity to comment on the material underlying the decision prior to its adoption; this does not apply to an applicant if his or her application is granted in full or to a party who has waived this right. Where the decision is based on documents and records which, pursuant to Article 17 § 3, are kept separately from the case file, the party whose claim is being decided in the proceedings may consult these documents, but only in a way that does not jeopardise the purpose of their classification. If this is not possible, that party will be informed, at least in general terms, of the facts stemming from those documents. Before allowing the party to consult the documents, the administrative authority will request the opinion of the authority that provided them.

49. The first sentence of Article 38 § 6 provides that the parts of the file containing classified information or facts subject to a duty of confidentiality are excluded from consultation. This does not apply to the parts of the file which have been or will be used as evidence, and which only a party or his or her representative can consult.

III. CODE OF ADMINISTRATIVE JUSTICE (LAW NO. 150/2002)

50. Article 45 § 3 provides that, when submitting a case file to the court, the administrative authority must always identify the parts of the file containing classified information protected by a “special law” (the Protection of Classified Information Act (Law no. 148/1998)). The presiding judge excludes these parts of the case file from consultation. This also applies to documents or records which have been kept separately from the case file in the proceedings before the administrative authority. It also applies, where appropriate, to court files.

51. Under Article 45 § 4, the parts of the case file referred to in Article 45 § 3 which have been or will be used as evidence by the court cannot be excluded from consultation. Similarly, the parts of the case file which a party was allowed to consult in the proceedings before the administrative authority cannot be excluded from consultation. Documents or records which have been kept separately from the case file in the proceedings before the administrative authority, and which are not subject to the provisions on consultation of the case file, may be made available for consultation only if the presiding judge decides that this cannot jeopardise or seriously disrupt the work of the intelligence services or the police. Before issuing such a decision, the presiding judge must request the opinion of the authority that provided the information contained in those documents or records.

IV. RELEVANT DOMESTIC CASE-LAW

A. The Constitutional Court's case-law

52. In its decision no. III. ÚS 2116/21 of 19 October 2021, the Constitutional Court stated as follows with regard to the existence of grounds for the classification of information:

“22. There must, however, be clear legal grounds for the classification of such information. Law no. 412/2005 on the protection of State classified information and access thereto ... divides classified information into individual categories depending on the severity of the potential damage or threat to the interests of the Czech Republic. The criterion is the significance of the interference with the interests of the Czech Republic; the terms used in this provision to define the individual categories of classified information, i.e. the degree to which they are contrary to the interests of the Czech Republic, namely ‘harm’, ‘serious harm’ and ‘very serious harm’ to these interests, are defined in section 3 of that Law.

...

25. At the same time, however, under the conditions of the rule of law, the principle must apply that classified information can only be information whose disclosure could lead to one of the consequences defined by law. It does not make any reasonable sense for information that is publicly available to be listed as classified. However, this is exactly what happened in the case under consideration, and it was in this regard that the Constitutional Court found a violation of the complainant's right ...

...

27. However, the situation that arose in this matter is similar to target shooting while blindfolded. The Ministry rejected the complainant's request, but did not inform her of the reasons why she was not successful in the proceedings; however, it did so in a situation where it based its decision solely on circumstances for which there is no legal or reasonable reason for concealment, as they are well known and publicly available to the complainant ...”

53. In its decision no. IV. ÚS 950/19 of 14 April 2020, the Constitutional Court stated as follows with regard to the best interests of a child in the context of the Czech constitutional order:

“52. It is therefore necessary to distinguish between the various categories of legal proceedings according to the type of impact on the child:

- the first category consists of proceedings whose purpose is to directly regulate the rights or obligations of the child as a child (typically proceedings concerning care of the child and contact);

- the second category consists of proceedings whose purpose is to regulate the rights and obligations of the child, but which do not directly affect his or her status as a child (e.g. proceedings concerning obligations in private law, criminal proceedings against a juvenile offender, etc.);

- the third category consists of proceedings whose purpose is not to directly affect the legal status of the child (to decide directly on his or her rights and obligations), but which have an indirect legal impact on the child, as their outcome is necessarily and unavoidably linked to a subsequent change in the child's legal status (e.g. proceedings

for the expulsion of the child's caregiver, followed either by proceedings for a change in the child's care or the child's departure to the caregiver and a change of his or her permanent residence);

– the fourth and final category consists of proceedings whose purpose is not to directly affect the legal status of the child, nor do they have an indirect legal impact on the child, but only affect the child in factual respects (e.g. the above-mentioned proceedings for termination of the employment of the parent caring for the child, where the legal status of the child does not change as a result, even though the financial situation of his or her family may change, for example).

53. In the first category of proceedings, the best interests of the child are almost always the decisive criterion to be considered by the decision-making body. In the second and third categories, the best interests of the child are an absolutely fundamental criterion, but these may be outweighed by a competing interest, typically the legitimate interest of another individual also enjoying the protection of fundamental human rights and freedoms (e.g. in a civil dispute between a child and a third party), or a sufficiently important public interest (e.g. the imposition of a punitive measure on a juvenile offender who has committed an extremely serious offence). In the third category, a wider scope for overriding another competing interest opens up than in the second category, as here the conflict concerns not only the child's interest on the one hand and a different interest on the other, but the child's interest is only one, albeit undoubtedly significant, of a number of different interests of various other subjects that need to be balanced and which may be equally or even more significant. In the fourth category, the decision-making body is, in principle, not obliged to take into account the best interests of the child unless the relevant legal provisions explicitly provide for the protection of the child's interests."

B. The Supreme Administrative Court's case-law

54. In its decision no. 5 Azs 46/2016 of 31 May 2018, the Supreme Administrative Court stated as follows regarding the obligation of public authorities and courts to consider proportionality of the interference with the appellant's private and family life and the violation of Article 8 of the Convention with regard to the best interests of the appellant's children in the circumstances of the case:

"38. The Supreme Administrative Court notes that if the appellant objected in the administrative proceedings that the interference with his private and family life was not proportionate, in breach of Article 8 of the Convention with regard to his specific family and personal situation, the administrative authority should have dealt with the question of whether the challenged decision amounted to a disproportionate interference with the appellant's private and family life, regardless of the fact that the Aliens Act in the given procedure did not require an assessment of proportionality in the sense of section 174a of that Act. The administrative authority did not deal with the question of proportionality of the decision in terms of the best interests of the appellant's child, nor did it deal with the question of whether it was in the child's best interests to remain with the family on the territory of the Czech Republic, and if that were the case, whether any competing public interest could prevail over this interest. The administrative authority thus burdened the proceedings with a defect that could have resulted in a decision on the merits not in accordance with the law ..."

55. In its decision no. 5 Azs 383/2019 of 14 February 2020, the Supreme Administrative Court stated as follows:

“43. In this context, it was also necessary to assess the proportionality of the decisions with regard to the best interests of the appellant’s children. First and foremost, the aspect of the best interests of the children was not, in the opinion of the Supreme Administrative Court, sufficiently considered in the circumstances of the case and weighed against the conflicting interest of the State in not granting the appellant a residence permit.

44. However, the first-instance administrative authority did not pay sufficient attention to the best interests of the appellant’s children, only stating that the appellant had had minimal contact with his family during his imprisonment and had been unable to provide for them financially [and that] therefore the family members had had to adapt to the appellant’s absence and ‘function without [his help]’. As regards how the family lives today, the first-instance administrative authority only noted that the family was allegedly not dependent on the appellant for existence or residence, as this is provided by his wife, the [appellant] at most helps her or takes care of the children ... However, in the opinion of the Supreme Administrative Court, it was not sufficiently proven in the proceedings that the appellant’s family would really be able to function without his help, at least from a financial point of view and in the long term, the appellant stating, among other things, that his wife was only able to continue working in business and ensuring the financial existence of the family because of his constant care for their now one-year-old son.”

56. In its decision no. 5 Azs 137/2022 of 21 October 2022, the Supreme Administrative Court stated as follows with regard to a qualified assessment of the best interests of the appellant’s children:

“36. For a qualified assessment of the best interests of the child, a sufficient amount of information is essential, on the basis of which the administrative authorities will have an overview of the real family situation of the alien and his children. It can therefore be agreed with the appellant that the administrative authorities are also obliged to obtain appropriate documents for their decision on this issue, especially in a situation where already in the administrative proceedings the appellant proposed that he and his wife be heard to clarify his family situation.”

57. In its decision no. 10 Azs 270/2021 of 4 October 2021, the Supreme Administrative Court stated as follows with regard to procedural safeguards in proceedings where undisclosed classified information is used:

“The administrative authority which decides on the residence matters of an alien residing on the territory of the Czech Republic on the basis of the content of classified information [here, the rejection of the alien’s application for a permanent residence permit pursuant to section 75(2)(e) of the Aliens Act], is in any case obliged to inform the alien of at least the essence of the grounds arising from the classified information.”

58. In its decision no. 10 Azs 438/2021 of 7 February 2022, the Supreme Administrative Court stated as follows:

“25. The Supreme Administrative Court emphasises that a general communication was sufficient, there was no need to show the appellant all the facts and evidence stemming from the classified part of the file. However, the appellant had the right to be informed of at least the “essence of the grounds”, otherwise he had no chance to effectively defend himself against the Ministry’s decision. It is unacceptable for the

appellant or his lawyer to accidentally learn of those grounds in related court proceedings concerning other aliens. This resulted in a situation similar to the one described by the Constitutional Court - the Ministry forced the appellant to 'shoot at a target blindfolded'."

C. United Nations Committee on the Rights of the Child: General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, published on 29 May 2013

59. Under the headings "Balancing the elements in the best-interests assessment" and "Procedural safeguards to guarantee the implementation of the child's best interests", the United Nations Committee on the Rights of the Child stated as follows:

"84. In the best-interests assessment, one has to consider that the capacities of the child will evolve. Decision-makers should therefore consider measures that can be revised or adjusted accordingly, instead of making definitive and irreversible decisions. To do this, they should not only assess the physical, emotional, educational and other needs at the specific moment of the decision but should also consider the possible scenarios of the child's development and analyse them in the short and long term. In this context, decisions should assess continuity and stability of the child's present and future situation.

...

85. To ensure the correct implementation of the child's right to have his or her best interests taken as a primary consideration, some child-friendly procedural safeguards must be put in place and followed. As such, the concept of the child's best interests is a rule of procedure ...

87. States must put in place formal processes, with strict procedural safeguards, designed to assess and determine the child's best interests for decisions affecting the child, including mechanisms for evaluating the results. States must develop transparent and objective processes for all decisions made by legislators, judges or administrative authorities, especially in areas which directly affect the child or children."

V. INTERNATIONAL LEGAL INSTRUMENTS

A. Convention on the Rights of the Child

60. Article 3 of the United Nations Convention on the Rights of the Child provides as follows:

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

B. Charter of Fundamental Rights of the European Union

61. Article 24 of the Charter of Fundamental Rights of the European Union (“the Charter”) provides as follows:

“1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.”

C. Council Directive 2003/109/EC

62. Under Article 12 § 3 of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, before taking a decision to expel a long-term resident, which is possible, under paragraph 1, solely where he or she constitutes an actual and sufficiently serious threat to public policy or public security, member States shall have regard to the following factors: (a) the duration of residence in their territory; (b) the age of the person concerned; (c) the consequences for the person concerned and family members; and (d) links with the country of residence or the absence of links with the country of origin.

VI. CASE-LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

63. According to the CJEU’s settled case-law, for the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights to be effective, the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him or her is based, either by reading the decision itself or by requesting and obtaining notification of those reasons, without prejudice to the power of the court with jurisdiction to require the authority concerned to provide that information (judgment of 17 March 2011, *Peñarroja Fa*, C-372/09 and C-373/09, EU:C:2011:156, § 63, and judgment of 17 November 2011, *Gaydarov*, C-430/10, EU:C:2011:749, § 41), so as to make it possible for him to defend his rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any

point in his applying to the court with jurisdiction, and in order to put the latter fully in a position in which it may carry out the review of the lawfulness of the national decision in question (see judgment of 15 October 1987, *Heylens and Others*, 222/86, EU:C:1987:442, § 15, and judgment of the grand chamber of 3 September 2008, *Kadi and Al Barakaat International Foundation v Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, § 337).

64. However, if, in exceptional cases, a national authority opposes precise and full disclosure to the person concerned of the grounds which constitute the basis of a decision by invoking reasons of State security, the court with jurisdiction in the member State concerned must have at its disposal and apply, in the course of the judicial review it carries out, techniques which accommodate, on the one hand, legitimate security concerns about the nature and sources of information taken into account in the adoption of the act concerned and, on the other, the need to accord the individual a sufficient measure of procedural justice (see *Kadi and Al Barakaat International Foundation*, cited above, § 344).

THE LAW

I. JOINDER OF THE APPLICATIONS

65. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

66. The Court will thus jointly examine the two sets of proceedings complained of by the applicant, that is to say the proceedings concerning his application to extend his long-term residence permit for business purposes and the proceedings concerning his application for a new long-term residence permit for family purposes.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

67. Relying on Article 8 of the Convention, the applicant complained that before dismissing his applications for a residence permit, the authorities had failed to establish all the relevant circumstances concerning his family situation and the best interests of the children. They had also failed to carry out any meaningful balancing exercise between the national security interests and his right to respect for his family life. Article 8 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

68. The Court notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

69. The applicant argued that the dismissal of his applications for a residence permit had adversely affected his right to respect for his family life. He submitted that the judicial review of the administrative decisions by the domestic courts had not been accompanied by adequate procedural safeguards and that the courts had not conducted a meaningful balancing exercise between the national security interests and his right to respect for his family life. He pointed out that he had not been notified of any accusations or reservations against him, even though he had had partial access to the documents in the case file.

70. The applicant further stressed that the best interests of his children had not been properly considered in his case. Indeed, the administrative authorities and courts had not ascertained all the facts and information about their place of residence and, in particular, had not at any time heard them or his wife.

71. The Government admitted that the authorities' refusal to extend the applicant's resident permit for business purposes and to grant him another long-term residence permit had interfered with his right to respect for his family life. They contended, however, that that interference had been in accordance with the conditions laid down by domestic law, namely the Aliens Act, which had allowed the authorities to dismiss the applicant's applications on the grounds that his residence in the country was not compatible with the interests of the Czech Republic and on account of a reasonable risk that he could seriously disrupt public order. The Government further argued that, in the given circumstances, the interference had been necessary in the interests of security and order. They emphasised that the lawfulness of the administrative decisions and the necessity of denying the applicant a residence permit had been duly examined by the domestic courts, which had found that the public interest in protecting State security had been duly balanced against his private interests. In this regard, the applicant had been duly informed that his right to respect for his family life and the best interests of the children were not absolute.

72. In the Government's view, the domestic authorities had considered all the relevant facts, including those put forward by the applicant, concerning the maintenance of his family life. They stressed that it had been incumbent on him to remain active in the proceedings which he had himself initiated,

especially since he had been the best-informed source regarding his family situation. Although he could have put forward any relevant and specific information, he had failed to do that, which was an important fact to be taken into account.

73. The Government also argued that the limitation on the applicant's right to be informed of the reasons for those decisions had been appropriately counterbalanced by sufficient safeguards preserving the essence of his rights. In particular, the Government pointed out, referring to the relevant legislation on the protection of classified information, that the classified information relied on by the authorities could not be disclosed because it related, *inter alia*, to a criminal activity and operational means used by the police to detect it. Although that material could not be made available to the applicant or his representative, as confirmed by the Supreme Administrative Court (see paragraphs 28 and 51 above), all the domestic authorities, including the courts, had had unrestricted access to it. The applicant had been informed of the essence of the grounds underlying the decisions, that is, of the substance of the facts held against him, and his lawyer had been given access to some of the classified documents. The matter had been reviewed by independent courts, which had genuinely focused on the credibility and quality of the content of the classified information and whether it had truly provided grounds for refusing the applicant a residence permit.

2. *The Court's assessment*

(a) **The Court's approach**

74. The Court observes that the applicant's complaint concerns in particular the quality and thoroughness of the judicial review of the administrative decisions on his applications for a residence permit, as he claimed that the courts had failed to carry out a meaningful balancing exercise between the national security interests and his right to respect for his family life and to properly establish all the relevant circumstances concerning his family situation. He did not dispute the existence of a legal basis for the alleged interference or its legitimate aim, but considered that, as a result of the above-mentioned deficiencies, the interference with his Article 8 rights had been unjustified and arbitrary.

75. In these circumstances, the Court considers that its role in the present case is not to examine whether the domestic authorities were under a duty pursuant to Article 8 to grant the applicant an extended or new residence permit, but rather to examine whether there was an interference with his right to respect for his family life under that provision and, if so, whether the approach of the authorities, because of the alleged lack of procedural guarantees or as a result of the alleged failure to properly assess and take into account the applicant's existing family ties, was so deficient as to render the alleged interference unjustified (see, *mutatis mutandis*, *Saeed*

v. Denmark (dec.), no. 53/12, § 30, 24 June 2014, and *I.R. and G.T. v. the United Kingdom* (dec.), no. 14876/12 and 63339/12, § 54, 28 January 2014).

(b) Whether there was an interference with the right to respect for family life

76. As a matter of well-established international law and subject to their treaty obligations, States have the right to control the entry, residence and expulsion of aliens. The Convention does not guarantee the right of an alien to enter or to reside in a particular country (see, for example, *De Souza Ribeiro v. France* [GC], no. 22689/07, § 77, ECHR 2012, and *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, § 114, 15 October 2020), nor, as its corollary, entails a general obligation for a State to authorise the residence of a foreign national on its territory (see *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 100, 3 October 2014) or issue a particular type of residence permit (see *Dremlyuga v. Latvia* (dec.), no. 66729/01, 29 April 2003). However, the Court has already acknowledged that in cases concerning “settled migrants”, that is to say persons who have already been granted formally a right of residence in a host country, a subsequent withdrawal of that right, for instance because the person concerned has been convicted of a criminal offence, constitutes an interference with his or her right to respect for private and/or family life within the meaning of Article 8. In examining whether the interference in such cases is justified, the Court has regard – as far as they are relevant – to the various criteria which it has identified in its case-law in order to determine whether a fair balance has been struck between the grounds underlying the authorities’ decision to withdraw the right of residence and the Article 8 rights of the individual concerned (see, for instance, *Boultif v. Switzerland*, no. 54273/00, ECHR 2001; *Üner v. the Netherlands* [GC], no. 46410/99, ECHR 2006; *Maslov v. Austria* [GC], no. 1638/03, ECHR 2008). The procedural guarantees inherent in Article 8 of the Convention will also vary depending on the context of the case in question (see *Saeed*, cited above, § 35).

77. In the present case, the Court observes that the applicant has lived and worked in the Czech Republic since 2006 and that in 2009 he was granted a long-term residence permit for business purposes. He can thus be considered a long-term or “settled migrant” who has been allowed to take part in the host country’s society, to form relationships and to enjoy a family life there. Indeed, he has lived in the Czech Republic with his wife, an Armenian national, and four children, who were minors for at least part of the proceedings (see paragraph 5 above); his eldest (his son born in 1993) also lived in the Czech Republic.

78. However, after the validity of the applicant’s residence permit for business purposes expired on 25 August 2011, his stay in the country was merely tolerated, on the basis of a legal fiction of residence (see paragraphs 35 and 38 above) which applied as long as the proceedings

relating to his application to extend that permit were pending. The final decision not to extend his residence permit issued in 2020 had the effect of terminating the legal basis for his lawful residence in the Czech Republic, since without a valid residence permit or visa he was not authorised to remain there (see also paragraph 32 above), which he tried to solve by lodging a new application in June 2020 (see paragraphs 33 and 42 above). Although no formal order compelling him to leave the country was issued in the impugned proceedings (compare the domestic-law provisions cited in paragraphs 36 *in fine* and 37 above pertaining to the annulment of residence permits, which entails an immediate order to leave), it was only a matter of time before he was compelled to leave. Indeed, it was only because and while proceedings relating to his applications for other types of permit were pending (see paragraphs 23, 32 and 33 above) that the authorities were prevented from ordering him to leave the country, as demonstrated by the order to leave later issued by the Ministry (see paragraph 33 above).

79. It follows from the above that, while no formal decision on expulsion – which could be issued only in the event of non-compliance with an order to leave and which the applicant would be able to challenge – was issued in the instant case, the refusal of the domestic authorities to extend his long-term residence permit for business purposes and not to grant him another one for family purposes deprived him of the legal right to stay in the Czech Republic and made his continued enjoyment of his family life in there uncertain and prone to be interrupted.

80. In line with its established case-law (see paragraph 76 above), the Court therefore considers that the decisions issued in the two sets of proceedings, which it is called upon to review in the present case, interfered with the applicant's right to respect for family life. Nevertheless, since the domestic proceedings leading up to the present application exclusively concerned the issue of whether the applicant was entitled to an extension of a residence permit which has expired, or to be granted another one on different grounds, and since there had been neither an expulsion order nor a withdrawal or revocation of a valid residence permit following a criminal conviction, the criteria developed in the Court's case-law for assessing the compatibility of such measures with Article 8 (see, in particular, *Üner*, cited above, §§ 57-60; and *Maslov*, cited above, §§ 68-76) cannot be transposed automatically to the situation of the applicant.

(c) General principles concerning procedural safeguards in cases concerning measures taken on grounds of national security in respect of aliens

81. The Court reiterates that where there is an arguable claim that the measure at issue threatens to interfere with an alien's right to respect for his private or family life, States must make available to the individual concerned an effective possibility of challenging the measure and having the relevant issues examined with sufficient procedural safeguards and thoroughness by

an appropriate domestic forum offering adequate guarantees of independence and impartiality (see, *mutatis mutandis*, *De Souza Ribeiro v. France* [GC], no. 22689/07, § 83, ECHR 2012). The procedural guarantees inherent in Article 8 of the Convention will vary depending on the context of the case in question and in some circumstances may not be as demanding as those which apply under Articles 5 and 6 (see *Saeed*, cited above, § 35).

82. The Court has also acknowledged that procedural safeguards are an integral feature of the lawfulness of deportation and exclusion decisions under Article 8 of the Convention. In this connection, the Court reiterates that the Convention must be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions (see, among many other authorities, *Marguš v. Croatia* [GC], no. 4455/10, § 128, ECHR 2014 (extracts), and *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, § 133, 15 November 2016). In keeping with this principle of harmonious interpretation of the Convention, the Court considers that, in cases concerning measures affecting an alien's residence permit in a manner that may potentially lead to his or her expulsion, procedural safeguards under Article 8 of the Convention must be interpreted in the light of those provided by Article 1 of Protocol No. 7, insofar as relevant.

83. As regards, in particular, cases in which national security has been invoked as grounds for the impugned measure, the aliens concerned must be informed of the relevant factual elements which have led the competent domestic authorities to consider that they represent a threat to national security and must be given access to the content of the documents and the information relied on by the authorities, without prejudice to the possibility of imposing duly justified limitations on such information if necessary (see, *mutatis mutandis*, *Ljatifi v. the former Yugoslav Republic of Macedonia*, no. 19017/16, § 35, 17 May 2018, and *Muhammad and Muhammad*, cited above, §§ 128-29). In the event of limitations, such as those stemming from the use of confidential material which may be unavoidable where national security is at stake, the alien must be offered an effective opportunity to submit reasons against the measure in question and be protected against any arbitrariness; therefore, only limitations which have been subject to independent scrutiny in the circumstances of each case are duly justified and are sufficiently counterbalanced, in particular by appropriate procedural safeguards (see, *mutatis mutandis*, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 218, ECHR 2009; *Natsvlishvili and Togonidze v. Georgia*, no. 9043/05, § 91, ECHR 2014; and *Muhammad and Muhammad*, cited above, §§ 133, 137 and 141).

84. In this regard, the Court will take particular account of the relevance of the information actually disclosed to the alien, both as regards the factual elements underlying the decision in question and as regards access to the content of the documents and information relied on by the authority making that decision and, where those documents were classified and inaccessible to

the alien, of the extent to which access to them was provided to the alien's representative. The Court will also examine whether one or more independent authorities were involved in the proceedings, judicial scrutiny in principle having a greater counterbalancing effect than an administrative form of scrutiny; whether the applicant was able to challenge, in an effective manner and before an independent authority, the allegations against him that he or she represented a danger to national security; whether the independent authority had the power to effectively examine the grounds underlying the impugned decision; and whether it had access to the totality of the file constituted by the relevant national security body to make its case against the alien, including to the classified documents, and to verify the authenticity of the documents in the file, together with the credibility and veracity of the classified information adduced in support (see, *mutatis mutandis*, *Muhammad and Muhammad*, cited above, §§ 151-56, with further references).

85. The Court has further considered that where children are involved, their best interests must be taken into account as a primary consideration and must be afforded significant weight. Accordingly, national decision-making bodies should, in principle, advert to and assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non-national parent in order to give effective protection and sufficient weight to the best interests of the children directly affected by it (*ibid.*, § 109; *Sarközi and Mahran v. Austria*, no. 27945/10, § 64, 2 April 2015; and *Gaspar v. Russia*, no. 23038/15, § 39, 12 June 2018). The Court's task is then to ascertain whether the domestic courts secured the guarantees set forth in Article 8 of the Convention, particularly taking into account the child's best interests, which must be sufficiently reflected in the reasoning of their decisions. Domestic courts must put forward specific reasons in light of the circumstances of the case, not least to enable the Court to carry out the European supervision entrusted to it. Where the reasoning of domestic decisions is insufficient, with any real balancing of the interests in issue being absent, this would be contrary to the requirements of Article 8 of the Convention (see, for example, *El Ghatet v. Switzerland*, no. 56971/10, § 47, 8 November 2016).

(d) Application to the present case

86. In line with its approach adopted in the present case (see paragraph 75 above), the Court will first examine whether there were limitations of the applicant's procedural rights that needed to be counterbalanced by appropriate safeguards and, secondly, whether the applicant's family ties in the Czech Republic were given sufficient consideration.

(i) Limitations of the applicant's procedural rights

87. As to the first issue, the Court observes that the administrative authorities, when dismissing the applicant's applications for a residence permit, referred primarily to the legal provisions considered relevant to his case (see paragraphs 16 and 25 above). However, such an enumeration cannot suffice to provide adequate information about the reasons underlying the decisions taken against him (see, *mutatis mutandis*, *Muhammad and Muhammad*, cited above, § 168).

88. In their further explanation given to the applicant as regards his specific conduct, the Ministry relied on classified documents and information submitted by the police organised crime unit and the National Office for Combating Organised Crime, which had its source in the applicant's personal activities and conduct over a relatively long period of time. In the first set of impugned proceedings, the authorities considered that his conduct represented a risk to national security and crime prevention, it being immaterial whether he himself had committed a crime (see paragraph 16 above). In the second set of impugned proceedings, the Ministry was of the view that the applicant had repeatedly and over a long period behaved immorally, which had seriously disrupted public order (see paragraph 25 above). Admittedly, the decisions did not specify why the authorities referred to those two different grounds and why the applicant was considered a danger to national security and public order, nor did they mention the specific factual elements on the basis of which those findings had been made. They merely provided a general description of his problematic conduct. Moreover, none of the classified documents relied on were made available to the applicant, and the two pieces of classified information containing more specific details (V211-7/2016-OAM and V5/2018-OAM) were not disclosed to his lawyer (see paragraph 16 above).

89. The Court considers that the foregoing resulted in a significant limitation of the applicant's procedural rights in the proceedings before the administrative authorities, which had to be mitigated by appropriate counterbalancing safeguards (see paragraphs 83-84 above).

90. In this connection, the Court observes that following the actions by the applicant, the impugned decisions of the administrative authorities were reviewed in judicial proceedings held before the administrative courts, including the Supreme Administrative Court, which is in fact the highest judicial authority in administrative cases. There is no dispute between the parties that those courts enjoyed the requisite independence within the meaning of the Court's case-law and that they had access to the classified information on which the administrative authorities' decisions were based. In the Court's view, those are significant safeguards which must be taken into account in assessing the factors capable of mitigating the effects of the limitations imposed on the applicant's enjoyment of his procedural rights

(compare *Muhammad and Muhammad*, cited above, § 193, and *Poklikayew v. Poland*, no. 1103/16, § 78, 22 June 2023).

91. The Court also notes that on several occasions (see, in particular, paragraphs 11, 13 and 15 above), the courts considered that the impugned classified information did not meet the qualitative requirements laid down in the relevant domestic case-law, and requested further details in order to verify that the applicant really did represent a danger to national security and public order. The Supreme Administrative Court held in this regard that the specific role of a full-jurisdiction review was to also review the substantive correctness of the findings of fact and conclusions of law. In this regard, it considered it crucial that classified information be as credible and verifiable by the courts as possible (see paragraph 19 above). Ultimately, that court found that the information contained in the classified part of the administrative file was sufficient in terms of conclusiveness, accuracy and reliability. In this regard, the Court considers it important to stress that the classified information reproduced the content of specific evidence gathered in the criminal proceedings against other individuals (see paragraph 19 above).

92. The Court also observes that the Supreme Administrative Court found that the documents and information available provided more than a convincing picture of the general and long-term characteristics of the applicant's way of life and contact with a criminal community in the Czech Republic, which did not relate to an isolated fact or event, but contained a mosaic of facts having occurred over an extended period of time (see paragraphs 19 and 28 above). In view of those considerations, the Court is ready to accept that the applicant was at least provided with an outline of the allegations against him.

93. In view of those considerations, the Court is satisfied that the applicant was able to have his case reviewed by independent courts which had the power to effectively examine the grounds underlying the administrative authorities' decisions, had access to the classified documents and were diligent in verifying the authenticity of those documents and the credibility and veracity of the classified information adduced in support.

94. The Court does not lose sight of the fact that the applicant was not allowed to examine the classified information and that his representative was only able to consult the pieces describing his activities generally (see paragraphs 16 and 88 *in fine*) (compare *Muhammad and Muhammad*, cited above, § 189). It notes in this connection that, under domestic law, the authorities may allow a party to consult the parts of the file containing classified information (see paragraphs 50-51 above). However, in the present case, the Supreme Administrative Court excluded that possibility, explaining, albeit summarily, the importance of preserving the confidentiality of such material (see paragraph 28 above). The Government added that, under the relevant legislation, the disclosure of classified information to an

unauthorised person was not allowed if it was liable to thwart, complicate or endanger an investigation into criminal offences (see paragraph 73 above, and *Regner v. the Czech Republic* [GC], no. 35289/11, § 37, 19 September 2017).

95. The Court acknowledges that in certain cases, disclosure of such evidence is liable to compromise State security, in that it may, in particular, put at risk the life, health or freedom of persons potentially affected by that disclosure, or reveal methods of investigation used by national security authorities, which may seriously impede, or even prevent those authorities from carrying out their tasks in future. In the present case, it finds it understandable that the applicant and his representative should not have been privy to the relevant pieces of classified information, given the potential implications for national security and the risk of revealing operational activities of the police.

96. Lastly, the Court observes that the applicant was represented by a lawyer throughout the whole proceedings (see paragraph 6 above), and that he was able to have his matter examined in adversarial proceedings before the courts, including at oral hearings before the Regional Court (see paragraphs 18, 20 and 29 above).

97. The Court is thus satisfied that the court proceedings offered the applicant sufficient guarantees counterbalancing the limitations of his procedural rights and did not deprive him of the possibility of effectively challenging the executive's assertions that national security and public order were at stake.

(ii) Assessment of the applicant's family ties

98. It remains for the Court to examine whether, in the domestic proceedings at issue, the authorities failed, as alleged by the applicant, to properly assess and take into account his existing family ties, to the extent that this deficiency rendered the interference with his Article 8 rights unjustified (see paragraphs 75 and 86 above). The Court reiterates in this regard that, given that he has not been (yet) subject to an expulsion order, the criteria established in this respect by the Court's case-law cannot be transposed automatically to the present case (see paragraph 80 above). In line with his arguments and the approach to be followed in this case (see paragraphs 74 and 75 above), the Court is called upon to examine, in particular, whether, in the proceedings on the residence permit for family purposes, the domestic authorities gave due consideration to his family ties in the country and sufficient weight to the best interests of his children. In so doing, the Court cannot ignore the fact that those interests cannot be decisive in themselves and that they represent only one of a number of factors to be assessed, among which considerations of national security and public order are of significant weight.

99. The Court starts by observing that the quantity and quality of the information available to the national authorities in proceedings concerning an

alien's application for a residence permit inevitably influences the balancing of the interests at stake, in particular because the burden of proof lies with the applicant in respect of, *inter alia*, his or her personal and family circumstances. It is therefore primarily in the interest of the latter to submit relevant facts, arguments and evidence to the courts in support of his or her allegations concerning the protection of his or her family life and the best interests and well-being of his or her children (see paragraphs 26, 30 and 46 *in fine* above). In this connection, the Court does not overlook that one of the basic principles of Czech law governing proceedings before the administrative bodies is the principle of material truth, implying that administrative authorities are not bound by the facts submitted by the parties, but must establish the material truth by collecting evidence on their own initiative. The highest domestic courts also consider that the proportionality of the relevant administrative decisions must be assessed with regard to the best interests of the appellant's children (see paragraphs 53 *in fine* and 54-56 above). It observes, however, that the Czech Supreme Administrative Court held in the present case that, although the administrative authorities were bound by the duty to establish facts beyond reasonable doubt, they could not be expected to actively seek details about an applicant's private life or to invite an applicant to supplement his submissions, unless there appeared to be any doubts or a need to supplement information already submitted (see paragraph 30 above).

100. It is true that, while the applicant in the present case was not asked for any details about his family life in his initial interview (see paragraph 8 above), or at any point later in the proceedings, nothing prevented him from submitting statements relating to the circumstances of his family life and from substantiating them with relevant evidence, as was also pointed out by the Regional Court (see paragraph 20 above). The Supreme Administrative Court, for its part, found that the applicant had not, either in his action or in his cassation appeal, submitted any information likely to overturn the administrative authorities' decisions, nor had he specified any important facts from his private or family life which would outweigh the public interest in his no longer residing in the Czech Republic (see paragraph 30 above).

101. Apart from the applicant's procedural inactivity, the Court observes that in the present case every domestic authority had regard to the State's obligations under Article 8 of the Convention and considered the relevant elements, including the applicant's children's interests. Indeed, the authorities took account of the fact that none of the children's residence permits depended on the existence of the applicant's, that his family members had permanent residence in the Czech Republic and could continue to reside there, and that they were financially independent of him because his wife was also a businesswoman and able to provide for the family. The fact that the applicant's children had been living in the Czech Republic for a long time and had developed social ties in the country was not considered a specific

feature calling for a more thorough assessment (see paragraphs 20 and 29 above). The authorities also stated that the applicant had repeatedly travelled to Russia, so his ties with his home country could not have been disrupted, and that the refusal to grant him a residence permit did not exclude him from his children's care, since it was entirely up to him to decide where he would exercise his parental rights and obligations (see paragraph 25 *in fine*). On that basis, the administrative authorities and courts reached the same conclusion, namely that the interest served by denying the applicant a residence permit outweighed his rights under Article 8.

102. While the Court acknowledges that the applicant's family would certainly be affected by his leaving the Czech Republic, it is ready to accept the highest courts' conclusion that the impact on his children was rather indirect (see paragraphs 22 and 30 above), according to the categorisation developed by the Constitutional Court (see paragraph 53 below). This is all the more so as the applicant made no submissions about the impact his relocation would have on his children, nor did he suggest that he played a central role in the family and that his presence in the Czech Republic was important for his children's well-being. He did not put forward any reasons why his family would not be able to visit him in Russia or why they would not be able to stay in contact through modern means of communication. The Court also observes that the applicant is currently trying to obtain a temporary residence permit for a family member of an EU citizen (see paragraph 33 above). If he is unsuccessful and an order to leave is issued against him, he will be able to challenge it (see paragraph 79 above). In the absence of an expulsion order, he will also have the possibility of applying for a visa in order to visit his family in the Czech Republic.

103. The Court further notes that while four of the applicant's children (those born in 1995, 2002, 2007 and 2010) were minors in 2011 when he applied for extension of his residence permit for business purposes, three were still minors when he applied for a new residence permit for family purposes in 2014; two of them (currently aged seventeen and fourteen) are still minors. In such circumstances, given the significant amount of time which has elapsed since the beginning of the impugned domestic proceedings and the subsequent decisions denying the applicant a residence permit, and given that no formal order to leave has yet been issued against him (see paragraph 78 above), the Court cannot but observe that the applicant has been able to enjoy family life with his children for most of their childhood. Moreover, the applicant appears to be still in the Czech Republic since the proceedings relating to his application for a temporary residence permit for a family member of an EU citizen remain pending, which *de facto* prevents the authorities from expelling him.

104. Bearing in mind that it is not the Court's role to examine whether the authorities' conduct complied with the relevant standards of domestic law (see paragraph 99 above), the Court considers, in the circumstances of the

present case, that the domestic authorities gave sufficient consideration to the applicant's family ties and, with reference to the case-law of the Court, carried out balancing of the relevant interests at stake, without overstepping the margin of appreciation afforded to them.

105. There has accordingly been no violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 7

106. The applicant further asserted that, contrary to Article 1 § 1 (a) of Protocol No. 7, he had not been informed of the relevant factual elements or, at the very least, of the substance of the reasons underlying the impugned decisions. He had therefore been unable to effectively exercise his procedural rights and challenge the assertion that national security was at stake.

107. In the present case, the Court observes that the applicant was not subject either to "expulsion" following the proceedings complained of in the present application or to any other measure compelling him to leave the territory of the Czech Republic, where he had been residing lawfully, albeit, after 25 August 2011, on the basis of a legal fiction (see paragraph 78 above) (see *Bolat v. Russia*, no. 14139/03, § 79, ECHR 2006-XI (extracts), and *Nolan and K. v. Russia*, no. 2512/04, § 112, 12 February 2009).

108. Consequently, this provision is not applicable in the instant case and the complaint must be rejected as incompatible *ratione materiae* with the provisions of the Convention, in accordance with Article 35 §§ 3 and 4.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaint under Article 8 of the Convention admissible and the complaint under Article 1 of Protocol No. 7 inadmissible;
3. *Holds* that there has been no violation of Article 8 of the Convention.

MIRZOYAN v. THE CZECH REPUBLIC JUDGMENT

Done in English, and notified in writing on 16 May 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Georges Ravarani
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Šimáčková is annexed to this judgment.

G.R.
V.S.

CONCURRING OPINION OF JUDGE ŠIMÁČKOVÁ

1. In considering this case, the Chamber relied on the Court's previous case-law and found that the national decision-making bodies had met the standards established therein in the applicant's case. I accept that it is not for the Court to examine the national law in any more depth and to consider that the decisions of the Supreme Administrative Court in the applicant's case did not correspond to that court's case-law (cited in paragraphs 54-58 of the judgment). The domestic court is significantly better placed to protect the best interests of the child, even in the event of a lack of procedural activity by the child's parent.

2. It should be noted that one of the basic principles of the domestic law governing proceedings before administrative bodies is that of material truth. Under that principle, administrative authorities are not bound by the facts submitted by the parties but rather must establish the material truth by collecting evidence on their own initiative. Thus, in the applicant's case, the domestic authorities had a duty – also stemming from the rules of domestic law – to supplement the information available in order to give more detailed consideration to his family situation as a whole. According to the case-law of the Supreme Administrative Court (see, in particular, decision no. 5 Azs 137/2022 of 21 October 2022), the relevant information may be obtained by means of an interview with the alien concerned or his or her spouse – an avenue which was not, however, considered necessary in the present case. It thus follows that the authorities should have made a more detailed assessment of the respective interests of the applicant's minor children, all of whom lived in the same household as he did and two of whom had presumably been born in the Czech Republic. The capacity of the children's mother both to care for the children by herself and to provide for the family financially should also have been examined more closely. In addition, other relevant criteria identified in the Court's case-law (namely *Jeunesse v. the Netherlands* [GC], no. 12738/10, §§ 107-09, 3 October 2014) should have been taken into account, namely (i) the strength of the applicant's ties with his wife and children and the extent to which their family life would have effectively been interrupted were he to leave the Czech Republic, (ii) the seriousness of the difficulties which his family members were likely to encounter in Russia and (iii) the solidity of the social, cultural and family ties with the host country and the country of destination.

3. The Chamber concluded that the applicant, as a father, had not sufficiently raised the issue of the best interests of his three minor children before the national administrative authorities and courts, and that it had not been the duty of the national courts to seek more details than the applicant himself had provided. The Chamber was thus unable to address the issue of the best interests of the applicant's children to any greater extent than the

applicant had raised it; nor, in view of the principle of subsidiarity, was it in a position to require the national authorities to do so.

4. In my view, however, that approach prevents the Court, as a human rights tribunal, from ever giving consideration to children who, although not direct parties to the proceedings before the Court, will see their destiny profoundly affected by its decisions, or rather by the national decisions it reviews.

5. The Czech Supreme Administrative Court held in the decision cited above:

“For a qualified assessment of the best interests of the child, a sufficient amount of information is essential, on the basis of which the administrative authorities will have an overview of the real family situation of the alien and his children.”

In the case of the applicant, however, the Supreme Administrative Court proceeded differently and left it to the applicant to raise any arguments in that regard. Although the administrative authority did not have sufficient supporting documents to determine whether and how its decision would affect the applicant’s children, it did not attempt to obtain them and left all responsibilities in this regard to the applicant.

6. The United Nations Convention on the Rights of the Child – the core international document on children’s rights – states as follows in the relevant part of Article 3:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

In addition, the United Nations Committee on the Rights of the Child’s General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (29 May 2013, UN Doc. CRC/C/GC/14, § 84) reads:

“In the best-interests assessment, one has to consider that the capacities of the child will evolve. Decision-makers should therefore consider measures that can be revised or adjusted accordingly, instead of making definitive and irreversible decisions. To do this, they should not only assess the physical, emotional, educational and other needs at the specific moment of the decision, but should also consider the possible scenarios of the child’s development, and analyse them in the short and long term. In this context, decisions should assess continuity and stability of the child’s present and future situation.”

7. Even in the Court’s decisions, it has been repeatedly stated that there is a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 204, 10 September 2019; *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, ECHR 2010; *X v. Latvia* [GC], no. 27853/09, § 96, ECHR 2013; and *Vavříčka and Others v. the Czech Republic* [GC],

nos. 47621/13 and 5 others, § 287, 8 April 2021). The Court has further held (see *Vavříčka and Others*, cited above, § 288):

“[T]here is an obligation on States to place the best interests of the child, and also those of children as a group, at the centre of all decisions affecting their health and development.”

8. In its Report on the Protection of Children’s Rights: International Standards and Domestic Constitutions, the European Commission for Democracy through Law (Venice Commission) points out that adults are cast in the role of gatekeepers to access to justice (Opinion no. 713/2013, 3 April 2014, § 128). If neither parents nor the courts open the gateway, who will guarantee justice for children?

9. The Court encourages the involvement of children in court proceedings, and has occasionally attempted to secure their participation in proceedings before it (see *C v. Croatia*, no. 80117/17, 8 October 2020). In this case, however, it treated the children only as circumstances in the applicant’s life, not as people whose rights were deeply affected by the domestic decision or the Court’s decision. It is likely that they will either lose their homeland (which for them is the Czech Republic, where they spent their childhood) or their father, who may have to leave that country in the future as a result of the decisions taken in this case.

10. The Court’s decision was based entirely on the procedural standard for protecting the applicant’s rights. But perhaps it should have paid much more attention to the procedural standard needed to protect the best interests of the children affected.

11. I am aware that the Court, as an international tribunal, must be strictly prohibited from dealing with arguments that have not been raised before national courts. That makes a lot of sense. A State cannot be held responsible for actions that it has not had an opportunity to address domestically. The same logic, however, leads to the conclusion that the Court cannot grant protection to children who have not been properly considered at the national level. The Court is thus faced with the major problem of how to protect children’s rights and interests when both the State in whose territory they reside and the parent whose residence permit is in dispute have failed to do so. The procedural shortcoming on the part of the parent is not necessarily intended; he or she may simply lack the necessary knowledge, belong to a disadvantaged group or not have been given sufficient leeway under national law. At the same time, in the present case, the best interests of the children needed to be balanced against the allegation that their father was a security risk. However, although the State had been monitoring him since 2014, it had never brought any criminal or administrative charges against him.

12. This relatively straightforward case can be seen as one of an alien who was not granted a new residence permit, because he was found to be a security risk to the State and because his family ties did not counterbalance that risk. For me, however, it is more particularly about minor children who are at risk

of losing either their homeland or their father as a result of the proceedings. I ask myself whether we have taken the children's best interests sufficiently into account and how we can ensure that we do so in similar cases to come.