



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

THIRD SECTION

CASE OF Á.F.L. v. ICELAND

(Application no. 35789/22)

JUDGMENT

Art 14 (+ Art 8) • Discrimination • Family life • Non-discriminatory decision depriving the disabled applicant of the custody of his daughter not based on his disability but in the child's best interests once all support measure were exhausted • Domestic authorities implemented multiple individualised and flexible support measures to strengthen the applicant's ability to provide parental care for his daughter • Efforts tailored to correct factual inequality created by his disability • Applicant's parental capacity assessed with reference to support measures provided • Comprehensive and detailed analysis of the facts • Well-reasoned and reasonable conclusions

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 June 2025

FINAL

03/11/2025

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

In the case of Á.F.L. v. Iceland,

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Lətif Hüseynov,

Darian Pavli,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva,

Canòlic Mingorance Cairat, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 35789/22) against the Republic of Iceland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Icelandic national, Mr Á.F.L. (“the applicant”), on 15 July 2022;

the decision to give notice to the Icelandic Government (“the Government”) of the complaints under Articles 8 and 14 of the Convention related to the alleged failure to provide the applicant with reasonable accommodation in the form of necessary support measures to assist him in caring for his daughter, which resulted in his being deprived of custody, and to declare the remainder of the application inadmissible;

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

the parties’ observations;

Having deliberated in private on 20 May 2025,

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

INTRODUCTION

1. The present case concerns the decision to deprive the applicant of custody of his daughter, which was allegedly discriminatory owing to the failure of the authorities to provide him with reasonable accommodation in the form of child-rearing support necessitated by his disability.

THE FACTS

2. The applicant was born in 1990 and lives in Seltjarnarnes, Iceland. He was represented by Mr Ómar Örn Bjarnþórsson, a lawyer practising in Reykjavík.

3. The Government were represented by their Agent, Ms Fanney Rós Þorsteinsdóttir, Attorney General, and Ms Sonja H. Berndsen, Appeal Court Attorney.

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

I. BACKGROUND

5. The applicant was diagnosed as a child by the State Counselling and Diagnostic Centre with autism spectrum disorder, attention deficit hyperactivity disorder (ADHD) and a mild intellectual disability. In expert assessments of his parenting capacity, while being tested with cognitive challenges, he did not test at the level of a person with an intellectual disability (see paragraphs 14 and 38 below).

6. The applicant completed his secondary education at a technical school, following a programme designed for students with learning difficulties. He was a municipal employee for five years and since 2017 he has worked for the postal service. The applicant has a history of alcohol and drug abuse, but has been sober since 2012 and has regularly attended support group meetings.

7. In February 2019 he and his girlfriend had a daughter, V.F., and they shared custody and care of the child during the first weeks of her life. According to a report of the Reykjavik Child Protection Services (“the CPS”) dated 30 April 2019, the situation in the family home was psychologically strained and unstable. The report mentioned repeated instances of conflict between the parents, the applicant’s diagnoses and his girlfriend’s mental health issues, as well as the applicant’s self-reported violent behaviour towards her. After police intervention in the home on 30 March 2019, the parents were provided with support, which led to concerns about the well-being of their daughter.

8. Subsequently, the applicant and his girlfriend ended their relationship and she assumed most of the care of their daughter. In summer 2019 V.F. moved to her maternal grandmother’s home, where the mother received assistance from the employees of a support and counselling company, YLFA, engaged by the CPS. During this period the CPS received various reports, including reports from a YLFA counsellor, about the mother’s mental health problems and concerns for the well-being of the child.

9. On 3 September 2019, after an incident between the applicant’s girlfriend and her mother, the CPS intervened and it was decided that the applicant would assume care of V.F., with the support of his mother.

II. STAY AT *MÁNABERG*

10. Following previous interventions, the CPS prepared a detailed plan for handling the applicant’s daughter’s case. In accordance with the plan, V.F. would be placed in *Mánaberg* (see paragraph below) and the parents would participate in the diagnosis and guidance programme provided at the facility. They would also continue to receive additional counselling at the Centre for Parents and Children and undergo an assessment of their parenting skills. On 10 September 2019 both parents consented to the plan, including V.F.’s

placement in the facility. The consent to the placement was subsequently extended until 11 December 2019.

11. *Mánaberg* is a residential facility operated by the CPS for the purposes of diagnosis and guidance. According to the Government's submissions, placement in *Mánaberg* is the most comprehensive and detailed support measure available in child protection cases, and a typical placement there lasts less than two months.

12. On 26 September 2019 both parents and the child arrived at *Mánaberg* and it was decided that the mother and V.F. would stay at the facility, while the applicant would visit and spend time with his daughter during the weekends.

13. On 8 October 2019 the mother left *Mánaberg*. The applicant took over care of his daughter and joined her at the facility. During their stay the girl spent the day in daycare, while the applicant, with the support of the staff, took care of her in the morning, in the evening and at night. Detailed and comprehensive guidance was continuously given to the applicant and parenting goals were set where necessary. The staff gradually promoted independent parental care by working on the necessary skills and, when they considered this possible, transferring the applicant from a continuously supervised section to a supported living "apartment" within the facility. It is not disputed by the parties that the staff knew about the applicant's impairment and took that into account from the very beginning of his stay. The applicant's progress was monitored during weekly meetings, where goals and results were reviewed.

14. On 3 December 2019 T.S., a psychologist, issued a parenting capacity assessment report, relying on cognitive and psychological tests, as well as the family and social history of both parents. In respect of the applicant, the report noted that although he was not testing at the level of a person with an intellectual disability, he had cognitive difficulties which affected his parenting skills, in addition to the diagnosis of autism spectrum disorder. He was interested in the well-being of his daughter, had good insight into his own impairment and needs, and had been able to make good use of the support provided to him. At the same time, the report concluded that the applicant needed extensive assistance in taking good care of his daughter and that he was unable to care for her without it. The report recommended further support and advised against the applicant being allowed to take the girl away from *Mánaberg* to care for her by himself.

15. A report of 9 December 2019 produced by the *Mánaberg* staff indicated that it had been clear from the beginning of their stay that the applicant needed extensive guidance in relation to taking care of and stimulating his daughter's development, and that he felt insecure about those tasks. During his stay he had continuously received instructions and advice (in meetings, in writing, in conversation and through demonstrations) on virtually all aspects of parenting and independent care. While some progress

had been made, the applicant had difficulties in recognising his daughter's needs, and in maintaining the skills he had acquired and transferring them from one situation to another. Although he was clearly affectionate towards the child and usually cared for her adequately, at times he had not responded sufficiently to her needs. In addition, he had shown little initiative in performing household tasks such as cooking and cleaning, and had expressed that he found those tasks difficult. The report concluded that the staff had concerns that the applicant would not be able to cope with the ever-changing circumstances that accompanied children's development, and that he was not ready to provide adequate care for the child without assistance and support.

16. With reference to the above, the CPS recommended that the stay at *Mánaberg* should be extended until 31 January 2020, with the aim of assisting the applicant in developing his parenting capacity, in the light of his diagnoses. The applicant agreed to the continued stay and to a new case-handling plan on 11 and 12 December 2019. On 13 December 2019 the CPS, the *Mánaberg* staff and the applicant concluded that the period for a standard diagnosis and guidance placement had ended, but that the applicant and his daughter would remain in the "apartment" at the facility, emulating independent living and care as much as possible.

17. On 14 January 2020 the Centre for Parents and Children confirmed that since November 2019 the applicant had attended four counselling sessions aimed at enhancing the parent-child relationship and parents' responsiveness to a child's needs. V.F. had come to two sessions with him. The applicant had engaged in therapeutic work. He had acknowledged that he felt that parenting was difficult, but his relationship with V.F. seemed good and he had been responsive to her needs.

18. A report of 24 January 2020 produced by the *Mánaberg* staff indicated that the applicant had progressed in maintaining V.F.'s hygiene and her sleep and feeding routine. He was clearly affectionate towards her and the parent-child relationship had strengthened. He also had more initiative than before and towards the end of the stay he had made progress in keeping the living space clean and uncluttered. The report highlighted that the applicant's self-confidence and stamina as regards childcare and managing independent living had increased, that he had been positive and cooperative, and that he had stressed his wish to fulfil the role of a father. He had shown that he could acquire the relevant skills, but owing to his impairments he needed more time than others to do so. The report concluded that at the time of the assessment the applicant was able to take care of the child, but only with targeted support and guidance. Specifically, the applicant needed support in responding to changing circumstances and access to trusted persons who could guide him in matters of daily life. It was also important that he be provided with counselling on how to maintain and strengthen his relationship with his daughter. The *Mánaberg* staff also advised that the applicant should have access to a support family in the future and considered that he would benefit

from autism and anxiety counselling. Lastly, the report concluded that he should be supervised and guided by the CPS through regular visits two to three times per week.

III. DISCHARGE FROM *MÁNABERG* AND ASSISTANCE AT THE APPLICANT'S HOME

19. On 28 January 2020 the CPS held a case management meeting during which the case was discussed and a plan for continued support was developed. It was proposed that the applicant and V.F. would move into the paternal grandmother's home on the basis of a case management plan whereby *Mánaberg* staff would conduct follow-up visits four times per week to begin with. The CPS would also apply for services from YLFA and a counsellor from that company would visit twice a week for six weeks to provide support tailored to the applicant's disability. The process of engaging a support family for periodic care to lighten the burden on the applicant would also be set in motion, and the applicant would continue to receive counselling at the Centre for Parents and Children and from a psychologist. On 29 January 2020 the applicant agreed to the case management plan, which also included commitments from the CPS to cooperate with V.F.'s daycare facility and therapists, and to work towards providing support from municipal services. The plan was to be followed until 28 April 2020.

20. Following the above decision, the applicant and his daughter moved into the paternal grandmother's house. A support family was engaged in February 2020 and started caring for V.F. four days per month as of 1 March 2020. *Mánaberg* staff conducted regular visits and reported on 12 March 2020 that the applicant was able to maintain routine in V.F.'s life, but lacked the initiative to engage in suggested activities outside the home. In the period between 2 February and 11 March 2020 the allocated YLFA counsellor also conducted support visits twice a week. It appears from the case file that the YLFA counsellor, H.F.D., was a certified psychologist and developmental therapist, who also had a diploma in disability studies and extensive experience of working with autistic people.

21. According to a report of 13 March 2020 produced by YLFA, the applicant, although attached to his daughter and capable of most basic care, lacked insight into her physical, social and emotional needs and had trouble recognising the signs of those needs. He also lacked ideas and initiative on how to stimulate her development. The report noted the child's overall lack of stimulation and nurturing interaction with her parent, as well as problems with developing motor skills. The report further noted that the applicant's mother was on an extended trip abroad. The report concluded that the applicant's difficulties in providing care could be explained by his impairment, and recommended more extensive support.

22. On 17 and 18 March 2020 the CPS considered the above information, concerns raised by the applicant's psychologist about the applicant's fatigue, and a request by the applicant for increased support. The decision was taken to increase the intensity of the support provided to the family by the YLFA counsellor for a period of five weeks, while applying for follow-up services from a municipal service provider. The assistance provided by the support family would also be increased to seven days per month. In addition, the applicant's psychological counselling would be continued.

23. It appears from the case file that the applicant's mother was abroad for nineteen days and returned home in late March 2020. The visits from the YLFA counsellor, which by then were taking place three times a week, were cancelled for two weeks after her arrival, owing to COVID-19 restrictions.

24. A report of 4 May 2020 produced by YLFA included information and findings similar to those from two months earlier. While maintenance of the household had improved upon the applicant's mother's return, he was often indifferent to the child's needs, delayed addressing them or got distracted and annoyed. During outings he seemed to rely on the counsellor to ensure the child's safety. The lack of communication and engaged play persisted, as did the problems with the child's motor skills. The YLFA counsellor expressed worry that V.F. had poor emotional control, showed signs of self-stimulation, sought comfort from her (the counsellor) instead of the applicant and showed little interest in playing with other children. She considered that these might be signs of an attachment disorder due to neglect in the first months of V.F.'s life and the lack of opportunity to establish pre-attachment from birth, or signs of autism. She noted, however, that V.F. had good eye contact and could easily be engaged in cooperation and play if her needs were met. The report also noted that the applicant's mother had confirmed her support of the applicant, but suggested that more assistance be provided to him in view of his autism. The report concluded that while it was clear that the applicant was very attached to his daughter, he lacked the important skill of insight into her needs, which was necessary to ensure her normal development. V.F.'s placement in foster care was thus recommended, but with more than the usual amount of contact with her father.

25. On 4 May 2020 the CPS decided to extend the validity of the above-mentioned case management plan until 1 June 2020, given that the services had been disrupted by COVID-19 restrictions and the applicant's mother had returned from abroad. On 6 May 2020 the applicant agreed to the extension.

26. A report of 1 June 2020 produced by YLFA reiterated the previous findings of the counsellor. While the return of the grandmother had contributed to increased emotional stability and better care, concerns about symptoms resembling an attachment disorder had grown. For example, the previously observed signs of self-stimulation had increased, and V.F. did not seem to seek comfort from the applicant. According to a statement made by her daycare provider, the girl had been calmer and more stable when she had

stayed with the support family, as opposed to the days when she had been cared for by the applicant. She had also exhibited signs of a willingness to bond with anybody, which, the report noted, could also be a sign of a lack of attachment to her primary caregivers. The report highlighted that the girl showed symptoms of an attachment disorder, which were likely caused by the lack of pre-attachment and the applicant's inability to recognise and meet her needs as a result of his autism. The report concluded that the girl's lack of emotional control, disinhibited attachment to people and self-stimulation should be taken seriously, and that she urgently needed a primary caregiver who could provide her with the security required for her emotional, social and psychological development.

27. In May and June 2020 several meetings and consultations took place between the CPS and the applicant; at times, the meetings also included his mother, his lawyer and the YLFA counsellor. During the meetings all aspects of the case were discussed and the way to move forward was considered, including the child's placement with a foster family. The applicant was initially prepared to accept temporary foster care with sufficient contact arrangements.

28. On 19 June 2020, having reviewed all of the available information, the CPS adopted a report recommending V.F.'s placement in temporary foster care while the applicant's parenting capacity was reassessed. On the same day the applicant and his lawyer met with the CPS and agreed to the reassessment of the applicant's parenting capacity, but objected to his daughter being taken from their home.

IV. TEMPORARY FOSTER CARE AND REASSESSMENT OF PARENTING CAPACITY

29. On 6 July 2020, having heard the applicant's lawyer, the Reykjavik Child Protection Committee ("the CPC") ruled under Article 27 of Act no. 80/2002 on Child Protection that V.F. should be removed from her home for a period of two months. The reasoning of the decision indicated that extensive and tailored support measures had been tried without rendering the expected results, and that the best interests of the child required her placement outside the home, pending the reassessment of the applicant's parenting skills.

30. On 13 July 2020 the applicant took V.F. to *Mánaberg*, where she stayed until her placement with the foster family.

31. A report of 14 July 2020 produced by YLFA, signed by H.F.D. and two other counsellors involved in the case from 15 June to 3 July 2020, referred to previous findings and expressed grave concerns related to V.F.'s development and safety. The report stressed the applicant's inability to identify the feelings and needs of his daughter, and described signs that the child was beginning to realise that she could not expect her needs to be met.

Despite the applicant's goodwill, his impairment prevented him from meeting V.F.'s physical needs and establishing the secure attachment needed for her proper emotional and psychological development. However, measures should be taken to ensure that contact between him and his daughter was preserved while she was in foster care.

32. Requests made by the applicant for V.F. to be placed in foster care with his mother or with his sister in Scotland were rejected. On 17 July 2020 the foster family met the girl and her father for the first time and the child moved in with them on 22 July 2020. The applicant's contact rights were fixed at three hours every two weeks at his mother's house.

33. On 20 August 2020 B.E., a psychologist, issued a report on the parenting capacity assessment. The report was based on the applicant's case file, his family and social history, observations of meetings between the applicant and his daughter, observation of the child in her foster home, information from the foster family, and psychological testing. The report acknowledged the applicant's attachment to the child, his goodwill and his overall readiness to learn and cooperate with support services. The report further noted that V.F.'s relationship with her father was good and that while she had potentially had problems with attachment, there was no cause to conclude that her attachment to the applicant had been severed or that she might have autism. Nevertheless, V.F. had seemed like "a different child" when she had been with the applicant compared with when she had been with the foster parents. With the applicant, she had been agitated and restless and had mostly communicated by screaming, whereas she had been content, calm and more communicative at the foster home. The report stressed that the applicant's autism spectrum disorder and intellectual challenges restricted his insight into the role of a parent, as well as his ability to acquire basic parenting skills and to recognise and meet the needs of his child. In addition, he had few coping strategies for dealing with difficult behaviour or new and unforeseen situations, and struggled to apply the acquired knowledge to his daily routine. Despite extensive support measures, he still had difficulty in meeting the most basic needs of his daughter, who had progressed greatly after being taken out of his care. The report thus concluded that while continued contact between them was recommended, the applicant did not have the necessary skills to care for her.

34. The progress in V.F.'s development and the improvement in her emotional state and communication skills while in foster care was confirmed in a report of 20 August 2020 produced by YLFA.

35. On 24 August 2020 the Reykjavik District Court rejected an action lodged by the applicant against the ruling of the CPC on the removal of V.F. from his home. Having heard the applicant, his lawyer and numerous witnesses, and having examined the available evidence, the District Court noted that the applicant had been diagnosed with autism spectrum disorder and concluded that despite his goodwill and desire to raise his child, he had

not been able to apply the knowledge, imparted to him through various support measures, to his daily routine. The girl's well-being had deteriorated from March 2020 onwards until she had been placed in foster care, and the best interests of the child justified the decision of the CPC.

36. On 1 September 2020 the CPC reconsidered the case and concluded that despite the applicant's goodwill and the extensive and specialised support provided to him, including V.F.'s exceptionally long stay with a support family for seven days per month, the child had been exhibiting signs of neglect. The applicant had not acquired the skills necessary to ensure her psychological and emotional development, and the scope of the available measures to assist him in parenting had been exhausted. In the opinion of the CPC, the child needed to establish a stable bond with her future caregivers as soon as possible. The interests of a child were of paramount importance and in the light of the available evidence, no less restrictive solution other than permanent foster care was viable. The CPC further noted that V.F. had progressed greatly during her placement in foster care. It was decided to seek the applicant's cooperation by requesting that he relinquish custody and, in the event of his refusal, to initiate proceedings to deprive him of custody.

V. PROCEEDINGS TO DEPRIVE THE APPLICANT OF CUSTODY

37. On 1 September 2020, having heard the applicant's lawyer and in view of the fact that the applicant had refused to relinquish custody, the CPC decided to initiate proceedings to deprive him of custody.

38. A request lodged by the applicant on 14 September 2020 for a court-ordered expert assessment of his parenting skills was initially refused by the District Court, in view of two recent assessments of the same matter (see paragraphs 14 and 33 above). However, on appeal, on 26 November 2020 the Court of Appeal (*Landsréttur*) ruled otherwise. It found that a new assessment was necessary, since the previous reports had not sufficiently examined the issue of whether support measures under Act no. 38/2018 on Services for Disabled People with Long-Term Support Needs could change the assessment.

39. R.H.A., a psychologist, conducted court-appointed expert assessment of the applicant's parenting capacity. In the course of the assessment the expert established that there was no need to engage an expert in disability studies, since the aspects of the alleged disability were all within his competence. However, he consulted such an expert to obtain information on the rights of persons with disabilities as regards support and accommodation in the parenting context. On 25 April 2021 the expert issued his report, which was based on a review of the applicant's family and social history, the available documentary evidence, cognitive and psychological testing, and interviews with the applicant, his mother, the foster parents, V.F.'s daycare provider and the YLFA counsellor most involved in providing support to the

applicant. The expert also consulted with T.S. and B.E., who had previously assessed the applicant's parenting capacity, and observed a meeting between the applicant and his daughter. Overall, the report validated the findings of the previous assessments.

40. Significantly, the new assessment report considered the rights of persons with disabilities under the UN Convention on the Rights of Persons with Disabilities (CRPD) and the advice provided by the disability studies expert. In answering questions regarding the possibility of further support measures, including those available under Act no. 38/2018 on Services for Disabled People with Long-Term Support Needs, the report noted that the applicant's capacity was limited, both in terms of his parenting skills and his ability to benefit from support. The applicant lacked all basic skills to raise a child and was slow in acquiring them. When he had had access to support around the clock, there had been some progress, albeit slow, but the support provided thereafter had not been sufficient. In order to take care of his daughter, the applicant would initially need daily guidance, with the aim of progressing to independent living. The expert further noted that when V.F. had been taken out of the applicant's care, she had shown serious signs of an attachment disorder or autism, which pointed towards neglect. Soon after being placed in foster care, she had started to progress and was currently thriving. In his opinion, putting her back in the situation she had been in previously for the purpose of trying again and "hoping that things would go better" was not justified and would be contrary to the child's interests and well-being. The report noted that this was the opinion of most of the persons involved in her case, just like the recommendation that the applicant should be able to maintain contact with her.

41. In the applicant's case, the District Court was composed of a panel of two professional judges and a psychologist acting as a lay judge. Before the court, the applicant claimed, *inter alia*, that he had not been provided with enough support to assist him in parenting his daughter, and that his condition had improved since he had begun to take medicine for his ADHD. On 30-31 August 2021 the District Court heard almost twenty witnesses. In statements, *Mánaberg* and CPS staff confirmed that the applicant's stay at *Mánaberg* had been exceptionally long. When asked whether additional support measures under Act no. 38/2018 on Services for Disabled People with Long-Term Support Needs would have enabled the applicant to care for his daughter, H.F.D., the YLFA counsellor most involved in the applicant's case, testified that she considered that the lack of physical and emotional care and bonding with the child was the problem, and that the provision of additional services could not compensate for that. Witnesses called by the applicant, including disability experts, highlighted that he had begun taking medicine for his ADHD around a year earlier, that he was entitled to targeted assistance and that previously adopted measures had failed to fully take into account his needs and condition.

42. On 15 September 2021 the District Court deprived the applicant of custody of his daughter, with reference to Article 29(1)(a) and (d) of the Act on Child Protection. The judgment noted that the applicable international, constitutional and legislative provisions unequivocally provided that the best interests of the child were of paramount importance. It took note of the applicant's diagnoses and highlighted that various and extensive measures had been put in place under the Act on Child Protection to assist him in caring for his daughter. However, the child's needs had not been met, even though the applicant had also received support from his mother. The District Court further noted that the court-appointed expert had assessed the applicant's parenting capacity after he had begun taking medicine for his ADHD, but had found that despite the applicant's goodwill and efforts, his parenting capacity was severely impaired, in particular with respect to identifying his daughter's needs and creating a parental bond with her. In response to the applicant's arguments that additional support measures should have been implemented, the court noted that the issue had been considered by the court-appointed expert and the applicant had not indicated any realistic measures of this kind himself. In the opinion of the court, a prolonged stay at *Mánaberg* was the most extensive measure that existed, and the pursuit of additional support measures was indefensible in the light of the best interests of the child. Taking into account the contact rights between the applicant and his daughter, the court further noted that it was important to maintain the stability that had now been achieved in her life, which had been conducive to her well-being and development.

43. The applicant appealed to the Court of Appeal, which was composed of a panel of two professional judges and a psychologist acting as a lay judge. It upheld the District Court's judgment on 4 February 2022. It stated in particular that under the CRPD, as confirmed by the Icelandic Supreme Court, disability alone could not be a reason for depriving a person of custody. In the case at hand, however, a reasoned position had been taken on whether the conditions for deprivation of custody under Article 29(1)(a) and (d) of the Act on Child Protection had been fulfilled, and the applicant's neurological limitations and the practical experience gained from the extensive support measures provided to him had been taken into account.

44. A request by the applicant for leave to appeal to the Supreme Court was denied on 28 March 2022.

VI. OTHER DEVELOPMENTS

45. It appears from the case file that on 13 October 2020 the CPC ruled that during the course of the proceedings to deprive the applicant of custody, he would have contact with his daughter once a month for three hours at a time. The applicant challenged the ruling before the Welfare Appeals Committee, which quashed it on 12 February 2021. The case file also

indicates that subsequently the applicant generally had contact with his daughter twice a month for three hours at a time. Once the decision to deprive him of custody became final, V.F.'s placement with the foster family became permanent.

46. On 12 July 2022, referring to an assessment of the applicant's relationship with his daughter, the expert reports prepared in his case and applicable national and international standards, including the case-law of this Court under Article 8 of the Convention, the CPC ruled that contact should take place once a month for one and a half hours at a time, under the supervision of CPS staff. The ruling was upheld by the Welfare Appeals Committee on 28 October 2022.

47. On 22 March 2024 the District Court refused an action by the foster parents for the annulment of the above ruling on contact rights. According to the information made available by the parties, contact takes place on a regular basis.

48. It appears that in April 2024 the foster family asked the CPC to reduce the visits to three times per year, for one and a half hours each. The request alleged that the frequent visits had a negative psychological impact on V.F.'s mental state, and is currently under consideration.

49. According to a letter from the CPS dated 10 September 2024:

“[T]he girl is thriving in the care of the foster parents and all her needs are well taken care of there. However, the girl's behaviour and care is very demanding, and a preliminary diagnosis strongly suggests severe ADHD symptoms. Owing to her young age, the diagnosis cannot be confirmed. A reassessment will take place when the girl begins primary school next autumn.”

RELEVANT LEGAL FRAMEWORK

I. THE CONSTITUTION

50. The Constitution of the Republic of Iceland of 1944 provides:

Article 71

“Everyone shall enjoy freedom from interference with privacy, home, and family life.

...

Notwithstanding the provisions of the first paragraph above, freedom from interference with privacy, home and family life may be otherwise limited by statutory provisions if this is urgently necessary for the protection of the rights of others.”

Article 76

“The law shall guarantee for everyone the necessary assistance in [the] case of sickness, invalidity, infirmity by reason of old age, unemployment and similar circumstances.

...

For children, the law shall guarantee the protection and care which is necessary for their well-being.”

II. ICELANDIC LEGISLATION ON CHILD PROTECTION

51. At the relevant time, the provisions of Act no. 80/2002 on Child Protection provided as follows:

Article 1 Rights of children and duties of parents

“Children have a right to protection and care. Their rights shall be ensured in accordance with their age and maturity.

All those involved in the care and upbringing of children shall treat them with respect and consideration ... Parents shall treat their children with care and consideration and fulfil their duties relating to upbringing and care in a manner that best suits their child’s interests and needs. They shall create satisfactory conditions for their children to grow up in and ensure their welfare in all respects.”

Article 2 Objectives and jurisdiction

“The objective of this Act is to ensure that children who are living in unacceptable circumstances or children who place their health and development at risk receive the necessary help. Efforts shall be made to achieve the objectives of the Act by strengthening families in their child-rearing role and applying measures to protect individual children when appropriate ...”

Article 4 Principles of child protection work

“In child protection work, those arrangements shall be made which may be expected to be best for the child. The interests of children shall always be paramount in the work of child protection authorities.

...

Child protection work shall promote stability during childhood.

...

Child protection authorities shall, as far as possible, ensure that general measures to support the family are tried before other measures are taken. The aim shall also be to apply the minimum measures to achieve the desired results. Coercive measures shall only be applied if the legally required objectives cannot be achieved by other, lesser measures.

...”

Article 24 Measures with parental consent

“The child protection committee ... shall, with parental consent and, if applicable, in consultation with the child, provide assistance by, among other things

- a. providing guidance to parents on the child’s upbringing and conditions;
- b. working in collaboration with the relevant agencies to have measures applied under the terms of other legislation;

- c. arranging suitable support or treatment for the child;
 - d. providing the child or family with a contact person, personal counsellor or support family;
 - e. assisting parents or an expectant mother in seeking treatment for illness, alcohol or substance abuse, or other personal problems;
- ...

Article 25 Measures outside the home with the consent of parents and [a] child

“The child protection committee may ..., with the consent of a parent and a child aged at least 15

- a. assume custody or care of the child and place the child in foster care;
- b. assume custody or care of the child and place the child outside the home in a home or institution, or seek other measures as provided for in Sections XIII and XIV, for care, tests, treatment and support ...”

Article 27 Child protection committee ruling on placement of a child outside the home

“[If measures as provided for in Articles 24 and 25 have not proved to be effective in the view of the child protection committee, or if the child protection committee has reached the conclusion that such measures are inadequate], and if justified by compelling interests of the child, a child protection committee may, by a ruling against the will of parents or of a child aged at least 15

- a. rule that a child shall remain where he/she is resident for up to two months;
 - b. rule that a child shall be removed from the home for up to two months, and on necessary arrangements, such as the placement of the child in foster care or in a home or institution, or seek other measures under Sections XIII and XIV to ensure the child’s safety, or in order that suitable tests on the child may be carried out, and necessary treatment and care may be provided.
- ...

Article 29 Loss of custody

“A child protection committee may take court action for a parent or parents to be deprived of custody if the committee believes

- a. that daily care, upbringing or relations between the parents and the child are grossly defective, taking account of the age and maturity of the child;
- ...
- d. that it is certain that the child’s physical or mental health or his/her development is at risk because the parents are clearly unfit to have custody, owing to, for instance, drug use, mental instability or low intelligence, or that the behaviour of the parents is likely to cause the child serious harm.

Deprivation of custody shall only be requested if it is not possible to apply other and lesser measures for improvement, or if such measures have been tried without acceptable results.

...

52. Act no. 19/2013 on the UN Convention on the Rights of the Child incorporates the provisions of that Convention into Icelandic law. This includes its Article 3, which provides that 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.

III. ICELANDIC LEGISLATION ON SUPPORT FOR PERSONS WITH DISABILITIES

53. Act no. 38/2018 on Services for Disabled People with Long-Term Support Needs defines disability as the result of impairments and barriers that arise from the interaction between persons with long-term physical, mental, intellectual or sensory impairments and the environment and attitudes that hinder their full and effective participation in society on an equal basis with others (Article 2).

54. The Act aims to ensure equality and conditions that enable persons with a disability to live independently by providing the best services tailored to their specific needs and in line with Iceland's international obligations, including the provision of reasonable accommodation (Article 1). It secures the right of access to all general services and additional specialised services under the Act, which shall be provided by the municipal authorities unless otherwise stated (Article 3). The support services under the Act include, *inter alia*, services tailored to assist disabled parents in the care and upbringing of their children (Article 8).

IV. INTERNATIONAL MATERIAL

55. The relevant parts of the UN Convention on the Rights of Persons with Disabilities (CRPD), 24 January 2007, UN Doc. A/RES/61/106, provide as follows:

Article 1 - Purpose

“The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

Article 2 - Definitions

“For the purposes of the present Convention:

...

‘Discrimination on the basis of disability’ means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

‘Reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

...”

Article 5 - Equality and non-discrimination

“1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

...”

Article 23 – Respect for home and the family

“1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others ...

2. ... States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

...

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

...”

56. In its General Comment No. 6 (2018) on equality and non-discrimination, 26 April 2018, UN Doc. CRPD/C/GC/6, the CRPD Committee noted the following:

C. Article 5 (2) on the prohibition of discrimination and equal and effective legal protection

“18. ...

(c) ‘Denial of reasonable accommodation’, according to article 2 of the Convention, constitutes discrimination if the necessary and appropriate modification and adjustments (that do not impose a ‘disproportionate or undue burden’) are denied and are needed to ensure the equal enjoyment or exercise of a human right or fundamental freedom.”

...

D. Article 5 (3) on reasonable accommodation

“23. Reasonable accommodation is an intrinsic part of the immediately applicable duty of non-discrimination in the context of disability. Examples of reasonable accommodations include ... enabling access to support personnel without disproportionate or undue burden.

24. ...

(b) As an *ex nunc* duty, reasonable accommodation must be provided from the moment that a person with a disability ... wants to exercise his or her rights. ... The duty to provide reasonable accommodation is an individualized reactive duty that is applicable from the moment a request for accommodation is received... It is important to note that the duty to provide reasonable accommodation is not limited to situations in which the person with a disability has asked for an accommodation or in which it could be proved that the alleged duty bearer was actually aware that the person in question had a disability. It should also apply in situations where a potential duty bearer should have realized that the person in question had a disability that might require accommodations to address barriers to exercising rights.

25. ...

(a) ... the reasonableness of an accommodation is a reference to its relevance, appropriateness and effectiveness for the person with a disability. An accommodation is reasonable, therefore, if it achieves the purpose (or purposes) for which it is being made, and is tailored to meet the requirements of the person with a disability;

(b) ‘Disproportionate or undue burden’ should be understood as a single concept that sets the limit of the duty to provide reasonable accommodation. Both terms should be considered synonyms insofar as they refer to the same idea: that the request for reasonable accommodation needs to be bound by a possible excessive or unjustifiable burden on the accommodating party.

...”

J. Article 23 on respect for home and the family

“61. ... Separation of a child from his or her parents based on the disability of the child or parents or both is discrimination and in violation of article 23.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

57. The applicant complained that the Icelandic authorities had violated his right to respect for private and family life and the prohibition of discrimination under Articles 8 and 14 of the Convention by failing to explore and adopt measures to assist him in taking care of his daughter, therefore unjustifiably denying him reasonable accommodation, which had resulted in his being deprived of custody. The relevant parts of the above provisions read as follows:

Article 8

“1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... or other status.”

A. Preliminary considerations

1. *The scope of the case*

58. The Court notes the diversity of the legal issues and arguments submitted by the applicant in the present case. By virtue of the *jura novit curia* principle, the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant. It cannot, however, base its decision on facts that are not covered by the complaint (see, among other authorities, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018).

59. Having regard to the manner in which the applicant formulated his complaints, the main points of contention between the parties and the issues addressed by the national authorities, the Court, being the master of characterisation to be given in law to the facts of the case, considers that the present case falls to be examined from the standpoint of Article 14 in

conjunction with Article 8 of the Convention in so far as it concerns the applicant – as a person with a disability – allegedly being denied reasonable accommodation in the form of the provision of adequate support measures.

2. The applicant's status as a person with a disability

60. The Court notes that in the parties' submissions in the present case, significant attention was given to the issue of whether the applicant could be regarded as a person with a disability under Icelandic law, whether the authorities or the applicant should have taken steps to have that status formally granted, what degree of disability should have been recognised, and whether that should have been a prerequisite for obtaining certain specialised services.

61. The Court is aware of the definition of a person with a disability in Article 1 of the CRPD (see paragraph 55 above) and the fact that the applicant was diagnosed with autism spectrum disorder and ADHD at an early age (see paragraph 5 above). It is also aware that the definition of a person with a disability in Article 2 of Act no. 38/2018 on Services for Disabled People with Long-Term Support Needs (see paragraph 53 above) is virtually identical to the one in Article 1 of the CRPD. The material available in the case file strongly suggests that the applicant may fall under these definitions.

62. The Court does not, however, find it necessary to rule itself on whether the applicant should have been considered to have a disability under national law, the degree and extent of that disability, or the manner in which that status could have been attributed to him. In the Court's opinion, the State obligation to take a person's disability into account and to provide tailored support measures, including reasonable accommodation, should not in itself be subject to any formal recognition or classification of that disability once the national authorities become sufficiently aware of it (compare *Glor v. Switzerland*, no. 13444/04, §§ 53 and 91, ECHR 2009).

63. The material in the case file clearly demonstrates that all authorities (see paragraphs 19, 35, 38, 42 and 43 above) and professionals (see paragraphs 13-18, 22, 29, 31, 33, 39-40 above) accepted the applicant's impairment and disability, irrespective of any formal status ascribed to him.

64. In the light of the foregoing, the Court has no grounds to approach the issue differently and draw any inference from the lack of formal recognition of the applicant's disability. Therefore, it will consider the applicant as a person with a disability.

B. Admissibility

65. The Government maintained that nothing in the case file indicated that there had been a breach of the applicant's Convention rights.

66. The applicant argued that he had been subjected to discrimination due to the authorities' failure to adequately recognise his needs and provide

assistance tailored to those needs, which had resulted in his being unjustifiably deprived of custody.

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

C. Merits

1. The parties' submissions

68. The applicant argued that the Icelandic authorities involved in his case had failed to provide him with adequate support and reasonable accommodation in the light of his disability. In his opinion, there had been no detailed inquiry into his needs as a parent or proper assessment of those needs. That had resulted in the measures provided being unfit for the situation. In any event, the measures employed had been neither extensive nor sufficiently long-term, given his disability. He further maintained that the services provided by YLFA had been mostly supervisory and had not been suitable for a person with a disability, and that he had had no say in shaping them. There had also been issues in collaborating with H.F.D., the YLFA counsellor most involved in the case. The applicant also indicated that the approach of the court-appointed expert who had assessed his parenting capacity had not been compatible with his needs as a person with a disability. In his opinion, the failure to provide him with reasonable accommodation in the form of support measures tailored to his disability had been discriminatory and had resulted in his being unjustifiably deprived of custody of his daughter.

69. The Government contested the applicant's claims and argued that the Icelandic authorities had acted in full compliance with their obligations under both national and international law. They stressed that the available documents clearly indicated that the applicant's impairment and needs had been consistently and appropriately acknowledged by all persons involved in his case, and therefore the support measures provided to him had been individualised, specific, intensive and exceptionally long-term. The Government stated that the child protection authorities had made every effort to improve the applicant's parenting skills, but no tangible progress had been achieved owing to his neurological impairment. The applicant had not been deprived of custody on the basis of his disability, and the authorities had initiated that action only after being confronted with well-documented negative effects on his daughter's well-being and development. The domestic courts had decided to deprive the applicant of custody after careful consideration of his condition and all the available material, including multiple consistent expert assessments. Those courts had specifically inquired into the scope, intensity and duration of the support provided to the applicant and had concluded that no further effective measures were available. The Government stressed that the child protection authorities and

the courts had been guided by the best interests of the child, as the paramount concern, while having due regard to the applicant's disability and the need to provide him with reasonable accommodation.

2. *The Court's assessment*

(a) **General principles regarding prohibition of discrimination**

70. The Court reiterates that “discrimination” means treating differently, without an objective and reasonable justification, people in relevantly similar situations, and that a difference in treatment is devoid of any “objective and reasonable justification” where it does not pursue a “legitimate aim” or there is no “reasonable relationship of proportionality between the means employed and the aim sought to be realised” (see *Enver Şahin v. Turkey*, no. 23065/12, § 61, 30 January 2018).

71. However, this is not the only facet of the prohibition of discrimination under Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States, without an objective and reasonable justification, fail to treat differently people whose situations are significantly different (see *J.D. and A. v. the United Kingdom*, nos. 32949/17 and 34614/17, § 84, 24 October 2019, with further references, notably *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV).

72. The States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 76, ECHR 2013, and *Toplak and Mrak*, cited above, § 113). The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background, but the final decision as to the observance of the Convention's requirements rests with the Court (see *Biao v. Denmark* [GC], no. 38590/10, § 93, 24 May 2016). A wide margin is usually allowed to the State when it comes to general measures of economic or social strategy (*ibid.*).

73. The Court also notes that the Convention should, as far as possible, be interpreted in harmony with other rules of international law of which it forms part (see *Enver Şahin*, cited above, § 60), and that therefore the provisions regarding the rights of people with disabilities set out in the CRPD should, along with other relevant material (see paragraphs 55-53 above), be taken into consideration.

74. In previous cases concerning the rights of people with disabilities, the Court, referring to the CRPD, has found that Article 14 of the Convention has to be read in the light of the requirements of those texts regarding “reasonable accommodation” – understood as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case” – which people with disabilities are entitled to

expect in order to ensure “the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms” (Article 2 of the CRPD – see paragraph 55 above). Reasonable accommodation helps to correct factual inequalities, and its denial may amount to discrimination (compare *Çam v. Turkey*, no. 51500/08, § 65, 23 February 2016, and *Toplak and Mrak*, § 114, cited above).

75. The Court is aware that each person with a disability has specific needs, and it acknowledges that reasonable accommodation may take a variety of forms and emphasises that it is not its task to define the measures to be implemented. The national authorities, by reason of their direct and continuous contact with the vital forces of their countries, are in principle better placed than an international court to evaluate individual and local needs and conditions in this regard (see, *mutatis mutandis*, *Çam*, § 66, and *Enver Şahin*, § 68, both cited above).

(b) General principles regarding family life of children and parents

76. The general principles under Article 8 of the Convention regarding the mutual enjoyment of family life by parents and children and domestic interference with this right have been set out in detail in the Grand Chamber judgment in *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 202-213, 10 September 2019).

77. In particular, and in so far as family life is concerned, the Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, ECHR 2010). Indeed, the Court has emphasised that in cases involving the care of children and contact restrictions, the child’s interests must come before all other considerations (see *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX).

78. In instances where the respective interests of a child and those of the parents come into conflict, Article 8 requires that the domestic authorities should strike a fair balance between those interests and that, in the balancing process, particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents (see, for instance, *Sommerfeld v. Germany* [GC], no. 31871/96, § 64, ECHR 2003-VIII (extracts)), and the references therein).

79. Generally, the best interests of the child dictate, on the one hand, that the child’s ties with his or her family must be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from his or her roots. It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to “rebuild” the family (see *Gnahoré*, cited above, § 59). On the other hand, it is clearly also in the child’s interests to ensure his or her development in a

sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see, among many other authorities, *Neulinger and Shuruk*, cited above, § 136; *Elsholz v. Germany* [GC], no. 25735/94, § 50, ECHR 2000-VIII; and *Maršálek v. the Czech Republic*, no. 8153/04, § 71, 4 April 2006).

80. It must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the care of children and the rights of parents whose children have been taken into public care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see, for example, *K. and T. v. Finland* [GC], no. 25702/94, § 154, ECHR 2001-VII). The Court thus recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care (*ibid.*, § 155). However, this margin is not unfettered. For example, the Court has in certain instances attached weight to whether the authorities, before taking a child into public care, had first attempted to take less drastic measures, such as supportive or preventive ones, and whether these had proved unsuccessful (see, for example, *Olsson v. Sweden (no. 1)*, 24 March 1988, §§ 72-74, Series A no. 130; *R.M.S. v. Spain*, no. 28775/12, § 86, 18 June 2013, § 86; and *Kutzner v. Germany*, no. 46544/99, § 75, ECHR 2002-I).

81. The Court further recalls that whilst Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8 (see *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 72, ECHR 2001-V (extracts)). In cases relating to public-care measures, what has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests and have been able fully to present their case (see *Strand Lobben*, cited above, § 212 with further references).

(c) The Court's approach in the present case

82. The Court acknowledges that parents with disabilities must not be perceived as lacking sufficient parenting skills and capacity, and that they must not be deprived of custody of their children only with reference to their disability and without assessing its impact on their ability to provide parental care (see, *mutatis mutandis*, *Cința v. Romania*, no. 3891/19, §§ 68-69, 18 February 2020, and *Kocherov and Sergeyeva v. Russia*, no. 16899/13, §§ 109-10, 29 March 2016; and compare *K. and T. v. Finland*, cited above,

§ 168). This position is fully consistent with the provisions of Article 23 § 4 of the CRPD as interpreted by the CRPD Committee (see paragraphs 55 and 56 above). Furthermore, the Court stresses that the absence of skills and experience in child-rearing, for whatever reason, in itself can hardly be regarded as a legitimate ground for restricting parental authority or keeping a child in public care (see *Kocherov and Sergeyeva*, § 106, cited above).

83. As regards parents with disabilities, the Court's case-law (see paragraphs 71 and 74-75 above) and the related provisions of Article 5 § 3 and Article 23 §§ 1 and 2 of the CRPD (see paragraph 55 above) indicate that their parental skills and competence, as well as the impact of their disability on the upbringing and well-being of their children, should be assessed not in the abstract, but with reference to the support measures available and provided to them. To do otherwise and assess their capacity to care for children in the absence of any support would in effect amount to assessing their capacity on the basis of their disability alone.

84. The State's positive obligation to provide persons with disabilities with reasonable accommodation, including support measures to facilitate the enjoyment of family life between parents and children, is well established in the case-law (see, for example, *Kacper Nowakowski v. Poland*, no. 32407/13, § 93, 10 January 2017). However, it is important to bear in mind that as regards reasonable accommodation afforded to parents in the light of their disability, the scope and extent of that accommodation is necessarily shaped and limited not only by the considerations relating to a "disproportionate or undue burden" (see paragraphs 55-56 and 74 above), but also and above all by the paramount consideration of the best interests of the child (see paragraphs 78-79 above).

(d) Application of these principles to the present case

85. Turning to the facts of the present case, the Court notes at the outset that the applicant was diagnosed with autism spectrum disorder and ADHD as a child. He successfully completed a secondary education programme for persons with learning difficulties and has held a steady job for many years. He has also had long-term success in overcoming substance addiction (see paragraphs 5-6 above). The material available in the case file clearly demonstrates his goodwill, his consistent commitment to acquire and improve his skills, and his overall readiness to cooperate with the support services provided to him (see, for example, paragraphs 14, 18, 33 and 40 above).

86. Soon after the applicant's daughter was born in February 2019 it became apparent that the new parents' situation was unstable and that they required assistance in parenting the child (see paragraphs 7-8 and 10 above). Once the mother had effectively relinquished her responsibility for the care of V.F., the applicant assumed care of the child. The material in the case file clearly indicates that the Icelandic authorities were alert and aware of the situation and the applicant's diagnoses, and that they implemented multiple

individualised measures aimed at strengthening his ability to provide parental care for his daughter. Those measures included a stay of almost four months at the *Mánaberg* residential facility for diagnosis, guidance and practice (see paragraphs 12-16 above), five months of specialised support from YLFA counsellors in the applicant's home (see paragraphs 20, 24, 26 and 31 above), engaging the services of a support family to ease the burden on the applicant (see paragraphs 20 and 22), and providing the applicant with counselling on how to strengthen his relationship with his daughter (see paragraph 17 above) and continuous counselling and therapy from a psychologist (see paragraphs 19 and 25 above). In the period leading up to July 2020, when the applicant's daughter was placed in temporary foster care, the assistance and support provided to the applicant were clearly intensive and diverse.

87. The implementation of the above support measures and the progress achieved were regularly and continuously monitored and evaluated (see paragraphs 15, 18, 21, 24 and 26 above), and adjustments and new treatment plans were introduced on the basis of the available information (see paragraphs 16, 19, 22, 25 and 28 above). The Court notes in this regard that after the applicant was discharged from *Mánaberg* it soon became apparent that the initial support measures provided in his home were not sufficient, and as of March 2020 they were increased so that the V.F. would spend seven days per month with the support family and the applicant would receive three visits per week from the YLFA counsellors. In addition, the applicant's mother provided daily assistance (see paragraphs 22-23 above).

88. All of the above efforts were initially based on the observations and concerns of CPS staff, and subsequently on the first parenting capacity assessment report of 3 December 2019 (see paragraph 14 above) issued during the applicant's stay at *Mánaberg*, which found that the applicant was unable to care for his daughter without extensive assistance. At the end of the applicant's stay at *Mánaberg*, its staff also indicated that he could only take care of his daughter with targeted support and they suggested specific measures in this regard, which the CPS duly implemented (see paragraphs 18-19 above).

89. The subsequent YLFA reports (see paragraphs 21, 24, 26 and 31 above) and two expert assessments (see paragraphs 33 and 39-40 above) were all consistent in indicating that despite the applicant's goodwill, the increased support from YLFA counsellors, the involvement of the support family and the continuous assistance of his mother, it was becoming progressively more apparent that the applicant's impairment limited not only his parenting skills, but also his ability to acquire and put in practice the knowledge which the support measures aimed to impart. While some progress had been observed, it was rather limited and firmly dependent on intensive assistance. The same reports concluded that the applicant's impairment severely impacted his capacity to recognise and interpret his daughter's needs and to form a secure emotional and psychological bond with her, which had adverse effects on the

girl's well-being and development. The YLFA reports additionally urged the authorities to take the signs of neglect exhibited by the child seriously.

90. In the light of the evidence available to it, in July 2020 the CPC decided to place V.F. in temporary foster care (see paragraph 29 above), and following a thorough examination of the case and a new assessment of the applicant's parenting capacity (see paragraphs 33-36 above), it chose to initiate proceedings to deprive him of custody. The CPC specifically noted that despite the assistance provided to the applicant, the girl had been exhibiting signs of neglect, whereas she had made great progress in the foster parents' care. All available support measures had been exhausted and permanent foster care was the only solution consistent with V.F.'s best interests (see paragraph 36 above). The applicant was represented by his lawyer in the proceedings before the CPC.

91. The court-ordered expert assessment of the applicant's parenting capacity was based on interviews, observation and testing. It also provided a comprehensive review of all the available evidence and essentially confirmed the previous findings (see paragraph 39 above). Having considered the applicant's impairment and sought the advice of an expert in disability studies, the court-appointed expert concluded that no further support measures or attempts to keep V.F. in the applicant's care would be justified, in the light of her well-being (see paragraph 40 above).

92. The Icelandic courts made identical findings in proceedings to deprive the applicant of custody, in which he was effectively represented by his lawyer (see paragraphs 42-43 above). The District Court stressed that although extensive support measures had been implemented, the applicant had been unable to meet the needs of his daughter, and that the pursuit of additional support measures was not in the child's best interests (see paragraph 42 above). The Court of Appeal further clarified that while disability alone could not be a reason for depriving a person of custody, in the case at hand, a reasoned position had been taken in view of the applicant's neurological limitations and the practical experience gained from the extensive support services provided (see paragraph 43 above).

93. In view of the totality of the foregoing, the Court is unable to accept the applicant's assertion that the Icelandic authorities failed to protect him from discrimination in the enjoyment of his Article 8 rights by failing to take into account his impairment and provide him with reasonable accommodation. Although the Icelandic authorities did not formally grant him the status of a person with a disability, the Court notes that his impairment and needs were systematically recognised by the CPS, the CPC and all the professionals involved in his case. The assistance provided to the applicant was reasonable in the sense that it was focused on his parenting skills and tailored to his needs, both generally and with respect to his ability to identify and respond to his daughter's psychological and emotional needs and create a secure bond with her. The provision of support measures was

also flexible, notably as additional efforts were made when the usual level of assistance was not sufficient to ensure the well-being of the child. The Court reiterates that it is not its task to define which measures of reasonable accommodation should have been provided. The national authorities are in principle better placed than an international court to evaluate individual and local needs and conditions, and due deference should be given to their reasoned decisions in this regard.

94. In the Court's opinion, the main issue to be resolved by the CPC and the Icelandic courts in the proceedings to deprive the applicant of custody was not whether more extensive measures to support his parenting were available in theory or practice, but whether recourse to such measures would be compatible with his daughter's best interests, in the light of the existing and well-documented concerns over her well-being and development. In deciding on the matter and balancing the interests at hand, they relied on a comprehensive and detailed analysis of the facts (see paragraphs 33-34 and 39-40 above) and reached well-reasoned and reasonable conclusions (see paragraphs 36 and 42-43 above).

95. The Court notes that the best interests of the child required that the applicant be deprived of custody, and that in view of the negative impact of his custody on her well-being, his rights were reasonably and justifiably restricted by the Icelandic courts (see paragraph 42 above). The Court also finds it relevant that, in the circumstances of the present case, the deprivation of custody and placement with the foster family has not resulted in the complete severance of family ties and contact between the applicant and his daughter, and that they continue to enjoy regular contact (see paragraph 45 above).

96. In the light of the above, the Court finds that there is nothing in the available material to support the contention that the applicant was deprived of custody on the basis of his disability alone. On the contrary, it is clear that the Icelandic authorities never considered this a reason for restricting his parental rights and always assessed his capacity to provide parental care to his daughter with reference to the support available to him in practice (see notably paragraphs 14, 28, 33, 36, 40 and 42 above).

97. The Court therefore finds no grounds to cast doubt on the position of the Icelandic authorities as regards either the scope and extent of the reasonable accommodation provided to the applicant or their decision to deprive him of custody of his daughter. They consistently recognised the applicant's needs as a parent with a disability, provided him extensive individualised support, tailored their efforts to correct the factual inequality created by his disability, assessed his parenting capacity with reference to the support measures available to him and took the decision to deprive him of custody only when the best interests of the child called for that action.

98. Accordingly, the Court concludes that there has been no violation of Article 14 of the Convention taken in conjunction with Article 8.

II. REMAINING COMPLAINTS

99. The applicant further complained under Article 8 of the Convention about the fact that he had been deprived of custody of his daughter, and under Article 14 in conjunction with Article 8 that he had suffered indirect discrimination because the measures adopted under Act no. 76/2003 on Child Protection had not been tailored to account for the needs of disabled parents.

100. The Court finds that these complaints are closely linked to the one examined above (see paragraphs 65-67 and 70-98 above) and must therefore likewise be declared admissible. However, having regard to the reasons that led the Court to its finding of no violation of Article 14 of the Convention taken in conjunction with Article 8, the Court considers that it is not necessary to examine separately the remaining complaints (see similarly *Paketova and Others v. Bulgaria*, nos. 17808/19 and 36972/19, § 170, 4 October 2022).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* admissible the applicant's complaints;
2. *Holds* that there has been no violation of Article 14 of the Convention in conjunction with Article 8 in respect of the applicant's complaint concerning the alleged failure of the Icelandic authorities to provide him with reasonable accommodation in the form of support measures to assist him in taking care of his daughter, which resulted in his being deprived of custody;
3. *Holds* that it is not necessary to examine separately the merits of the remaining complaints.

Done in English, and notified in writing on 10 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Ioannis Ktistakis
President