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

FIFTH SECTION

DECISION

Application no. 44870/19
Pallav AGARWAL
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 13 December 2022 as a Chamber composed of:

Georges Ravarani*, President*,
Carlo Ranzoni,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lado Chanturia,
Mattias Guyomar,
Kateřina Šimáčková*, judges*,

and Victor Soloveytchik, *Section Registrar*,

Having regard to the above application lodged on 16 August 2019,

Having regard to the decision to give notice of part of the application to the respondent Government and to declare the remainder inadmissible,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the fact that the Government of the United Kingdom, who had been informed of their right to intervene in the light of the applicant's nationality (Article 36 § 1 of the Convention and Rule 44 §§ 1 and 4 of the Rules of Court), did not avail themselves of that right,

Having deliberated, decides as follows:

INTRODUCTION

1. The present application mainly concerns the refusal of the applicant's request to be granted custody of his daughter, which was in his view due, in particular, to him being a foreign national (Articles 8 and 14 of the Convention).

THE FACTS

2. The applicant, Mr Pallav Agarwal, is a British national who was born in 1972 and lives in Solihull. He was represented before the Court by Mr J. Netto and Ms C.M. Pedreno, lawyers practising in London.

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

The circumstances of the case

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant met his future wife, a Czech national, online in 2012 and then in 2013 in person in the United Kingdom. They resided together first in the United Kingdom and then in the Czech Republic where they got married in 2014 and where their daughter was born in March 2015. After that, their relationship became conflictual and the applicant left to work in the United Kingdom, where he was subsequently joined by his wife and daughter. In November 2015 the applicant's wife and daughter returned to the Czech Republic; the applicant's subsequent application for the return of the child to the United Kingdom, under the Hague Convention on the Civil Aspects of International Child Abduction, was dismissed by a Czech court on the ground that the child's habitual place of residence was in the Czech Republic.

6. On 12 November 2015 the child's mother applied for custody of the child. In the subsequent proceedings, the child was appointed a guardian, the Prague 4 Municipal Office, and the applicant was assisted by an interpreter. Given their strained and conflictual relationship, throughout the proceedings the parents were offered mediation, psychological support and assistance by the child's guardian as well as by specialised centres. Several individual child protection plans were drawn up between 2017 and 2020, aimed at supporting contact between the applicant and his daughter and helping to build their relationship.

7. On 10 December 2015 the Prague 4 District Court rejected an application lodged by the mother seeking an interim measure granting her custody of her daughter, considering that there was no need for such an urgent measure. It held, in an *obiter dictum*, that should the applicant wish to seek custody, he would have to stop moving house, stabilise his situation and maintain contact with his daughter by visiting her in the Czech Republic. Moreover, it was hardly possible to envisage alternating or joint custody when the parents lived in different countries.

8. It follows from the information in the file that between December 2015 and December 2017 the applicant was able to see his daughter during his numerous trips to the Czech Republic and also when the mother took her on

several occasions to the United Kingdom; otherwise, their contact took place on Skype.

9. In November 2016, the applicant asked that he and the mother be awarded cross-border alternating custody. He subsequently admitted that there was a significant language barrier between him and his daughter because he could not speak Czech and his attempts to speak Hindi to the child had been unsuccessful.

10. At a hearing held on 8 January 2018, the applicant informed the court that he had moved to the Czech Republic in December 2017, living for the time being in a hotel, that he had since been seeing his daughter every week, and that he wished to apply for sole custody.

11. On 12 January 2018, in response to an application lodged by the child's mother, the District Court issued an interim measure giving the applicant the right to see his daughter every other weekend, without sleepovers, and every Tuesday and Thursday afternoon. It noted that given the child's age and her limited contact with the applicant in the past, as well as the language barrier, she was not ready for longer periods of contact. The applicant appealed against that decision, seeking more extensive visiting rights. On 26 February 2018 the Prague Municipal Court upheld the decision, observing that the applicant was not yet on a secure footing in the Czech Republic and that the child was only three years old and only able to speak Czech.

12. By a judgment of 15 January 2018, the District Court awarded custody of the child to the mother and dismissed the applicant's application to be granted sole or alternating custody. It relied mainly on the statements made by the parents in their oral and written submissions and on the report of the child's guardian, which had found the mother's care to be exemplary and recommended granting custody to the mother.

Admitting that both parents had strong emotional ties to the child, the court pointed out that the girl was less than three years old and that she had until then been in her mother's care which had been found to be very good in all respects. As to the applicant's situation, the court observed that while he had been established in the United Kingdom, he had also mentioned his plans to return to India, his country of origin, or to relocate to the United States of America; despite having first excluded relocating to the Czech Republic, where he was not able to practise as a medical doctor, he had eventually moved there in December 2017 but was only just settling in there, not having found a flat or work, and was living off his savings. In the court's view, those facts raised serious concerns as to whether he was ready to provide his daughter with the stable environment that she needed. The court further noted that communication between the applicant and his daughter was not a negligible issue either, since there was a language barrier between them and their non-verbal communication could only suffice for short meetings, which resulted in their relations being rather distant at that time. Lastly, the court

observed that time was needed to reinforce the relationship between the applicant and the child, that the mother was not preventing this and that it could not be secured by forcibly removing the child from her mother's care.

The applicant's proposal to commission expert reports in psychiatry and psychology was dismissed as redundant, given that no relevant evidence on possible mental problems of the parents had been submitted by either party and their parental competence had not been put in doubt.

13. By a judgment of 11 October 2018, adopted following a hearing during which both parents and the child's guardian were heard, the Municipal Court upheld the judgment of 15 January 2018 on a subsequent appeal, considering that granting custody to the mother was in the child's best interest. On the basis of additional written evidence, it admitted that the applicant's housing situation had become stable, the applicant having rented a flat; however, he was still living off his savings alone, and had admitted that he would soon have financial difficulties and would have to move abroad to be able to work. The court further noted that the applicant had not done anything to improve his ability to communicate in Czech, thus a language barrier still existed between him and the child and the applicant was not able to communicate with the child's day-care facility and other institutions. In such circumstances, and given also the strained relationship between the parents who were unable to communicate with each other, the court was not convinced that the applicant would be able to create the necessary environment for raising the child if awarded sole or – as requested by the applicant in his appeal – alternating custody.

As to the applicant's contact with his daughter, the court noted that it was taking place in accordance with an interim measure, which had been requested by the child's mother (see paragraph 11 above), while the applicant himself had not requested that the question of contact arrangements be addressed until the proceedings on appeal; however, given that that issue had not been dealt with by the first-instance court in its judgment of 15 January 2018, it could not now be the subject of the appellate judgment.

14. Given that the interim measure of 12 January 2018 had been superseded by the Municipal Court judgment, which did not rule on the issue, on 14 December 2018 the applicant lodged an application in which he sought increased visiting rights compared to those specified in the above interim measure. In his additional submissions he informed the court that between January 2018 and February 2019 he had spent 104 afternoons and 104 weekend days with his daughter; according to a report of a specialised centre, the child spoke positively about her relationship with her parents but still refused to sleep over at her father's flat.

The proceedings concerning the applicant's visiting rights were still pending in January 2021.

15. In his subsequent constitutional appeal directed against the judgments of 15 January and 11 October 2018, the applicant complained, under

Articles 6 and 8 of the Convention, that the courts had not gathered sufficient evidence, in particular because they had not ordered an expert report on the parents' parental abilities, and had not taken into account the child's best interest which required his increased involvement as a father. He asserted that the fact that the child did not speak any English was attributable to the mother not teaching her any languages other than Czech.

The applicant further claimed that the courts had discriminated against him on the grounds of his being a foreign national; he was of the view that instead of appreciating his great efforts to move closer to his daughter in order to comply with the requirements for alternating custody, the courts had painted him in a very negative light, emphasising that he did not have stable housing or a job in the Czech Republic and that he was not able to communicate with the child.

16. By decision no. I. ÚS 43/19 of 19 February 2019, the Constitutional Court dismissed the applicant's constitutional appeal as manifestly ill-founded. It held that, in line with the requirements set out in its case-law, the lower courts had duly considered, when seeking the most appropriate arrangement, all the relevant circumstances of the case and the child's best interest, and that they had pursued the aim of stabilising the family situation. The first-instance court had also explained to the applicant why it had not considered it necessary to order expert reports. As to the applicant's complaint of discrimination, the Constitutional Court considered that nothing in the applicant's submissions or in the reasoning adopted by the courts supported such allegations.

17. In the course of 2019, the District Court repeatedly ruled on applications for interim measures by the parents concerning the applicant's visiting rights.

On 4 June 2019, the applicant was granted the right to see his daughter during the summer holidays for progressively longer periods, eventually being allowed to spend nine days, including sleepovers, in a row with her. According to the report on the applicant's meeting of 31 July 2019 with the child's guardian, contact was taking place as planned but the applicant was unhappy about the extent of it.

Following the applicant's application of 30 August 2019, on 4 November 2019 the District Court issued an interim measure allowing the applicant to see his daughter every other weekend (from Friday evening to Monday morning) and every other Wednesday and Thursday. That decision was upheld by the Municipal Court on 12 December 2019.

In October 2019 the District Court rejected two applications by the applicant seeking to take his child to India during the Diwali festival; the court considered that a three-week separation from her mother would be too long for a four-year-old child, and noted that the applicant had not provided any evidence concerning the conditions in which the child would be living in

India, the child's vaccination status, or his ability to pay for the travel. This was upheld on a subsequent appeal by the Municipal Court.

On 4 December 2019 the District Court issued a decision on the applicant's contact with his daughter during the Christmas holidays.

18. Given that the applicant subsequently moved back to the United Kingdom, the District Court ruled on 29 September 2020 that the applicant's contact with his daughter would take place on Skype. The Municipal Court upheld this on a subsequent appeal.

19. Since the applicant's return to the Czech Republic in December 2020, his contact with his daughter has resumed as set out in the interim measure of 4 November 2019 (see paragraph 17 above).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. The Civil Code (Law no. 89/2012)

20. Under Article 907, a court may place a child in the sole custody of one of the parents or in alternating or joint custody. In its decision, the court must respect the child's best interest. In doing so, it must take into account the child's personality, especially its aptitudes and abilities in relation to its development potential and to the parents' situation, as well as the child's emotional ties and family background, each parent's parenting abilities and the current and expected stability of the environment in which the child is to live in the future. The court must also always take into account which of the parents has up until that point duly taken care of the child and provided for their emotional, intellectual and moral upbringing, as well as which of the parents is better placed to ensure the healthy and successful development of the child. Furthermore, the court must consider the child's right to the care of both parents and to regular contact with them, and the non-custodial parent's right to receive regular information about the child; it must also take into account the parents' ability to agree with each other on the child's upbringing.

B. Case-law of the Czech Constitutional Court

21. Under the Constitutional Court's case-law (for example judgment no. I. ÚS 1506/13 of 30 May 2014, and decision no. IV. ÚS 101/18 of 1 February 2018), alternating custody should only be considered when it meets the priority requirement of the child's best interest. It can only be ordered when a certain number of criteria are fulfilled, starting with the interest both parents have demonstrated in taking care of the child, their ability to reach at least some basic agreement and the possibility to provide the child with adequate facilities.

22. In its decision no. II. ÚS 1582/19 of 31 October 2019, concerning nationality-based discrimination, the Constitutional Court had considered

that the ability of a parent to communicate with his or her child, the child's preschool and various other authorities was relevant for assessing the parent's ability to take care of the child. It held, however, that it would not be possible to accept an insufficient command of the Czech language as the sole or essential ground excluding alternating custody, and that granting custody to only one parent had to be justified by other relevant and constitutionally acceptable reasons.

COMPLAINTS

23. Relying on Article 8 of the Convention, the applicant complained that he had not been granted either sole or alternating custody of his daughter, and that the courts had not granted him proper contact with her.

24. Under Article 14 of the Convention taken in conjunction with Article 8, he asserted that he had been discriminated against on the grounds of his nationality on account of the allegedly discriminatory nature of the reasons given to refuse to grant him custody.

THE LAW

A. As to the Government's plea of non-exhaustion regarding the applicant's visiting rights

25. The Government submitted that the applicant had failed to raise his complaint concerning his visiting rights before the Constitutional Court. Indeed, in his constitutional appeal of 7 January 2019 (see paragraph 15 above) he had only challenged the judgments of 15 January and 11 October 2018, in which those courts had ruled solely on the custody of the child.

26. The applicant did not comment on this issue, apart from stating that he was still waiting for a judgment ruling on his visiting rights.

27. The Court observes that the applicant's visiting rights were first determined, following an application lodged by the mother, in the interim measure of 12 January 2018, which was upheld on 26 February 2018 (see paragraph 11 above). That measure was superseded on 11 October 2018 when the District Court's judgment of 15 January 2018, which, in the absence of a request by the applicant, had not addressed the contact issue, became final (see paragraph 13 *in fine* above). While the proceedings concerning the applicant's visiting rights were still pending in January 2021 (see paragraph 14 above), the issue was again determined by an interim measure of 4 November 2019, which was upheld on 12 December 2019 (see paragraph 17 above).

28. The Court notes that, as stated by the Government and not disputed by the applicant, the applicant did not challenge any of the interim measures in a constitutional appeal. Thus, the applicant did not use all the domestic

remedies available in this regard (see *Prodělalová v. the Czech Republic*, no. 40094/08, § 46, 20 December 2011). In so far as the applicant can be understood to be complaining about the length of the proceedings on the merits (described in paragraph 14 above), the Court cannot but conclude that he has also failed to exhaust domestic remedies which have been considered effective in this respect (see *Drenk v. the Czech Republic*, no. 1071/12, §§ 69-71, 4 September 2014).

29. It follows that the applicant's complaint about restrictions placed on his visiting rights is inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and must be rejected pursuant to Article 35 § 4 thereof.

B. As to the refusal of custody

30. The applicant complained that by ruling in favour of the mother, who had been given sole custody, without properly assessing all the relevant elements and the child's best interest, the domestic courts had breached his right to respect for private and family life. He relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of the rights and freedoms of others."

1. The parties' submissions

31. The Government submitted that the decision to confer sole custody of the child to the mother had been taken in accordance with the relevant provisions of the Civil Code, that it had pursued the legitimate aim of protecting the child's rights and that it could not be considered disproportionate.

32. They observed that throughout the proceedings the courts had established a number of elements which had to be taken into account, namely: that the relationship between the parents was tense and conflictual but the mother had not prevented the applicant from seeing the child; that there had been a language barrier between the applicant and his daughter and that the applicant had had unrealistic expectations as to the child's capacity to speak English and Hindi; and that the applicant had been vague about his professional plans, and his situation after relocating to the Czech Republic had been unstable, since at first he had been living in a hotel, had not had a job and had been living off of his savings. In such circumstances the courts had been doubtful that the applicant would be able to provide adequate care to the child, who was only three years old, and had considered, together with

the child's guardian, that granting custody to the mother, who had already been providing a stable environment, was in the child's interest.

33. In the Government's view, the courts' decisions had been based on relevant and sufficient reasons, guided by the child's best interest and they had not exceeded the wide margin of appreciation allowed in this domain to the domestic authorities. Besides, the family ties between the applicant and his daughter had been suitably developed. Indeed, the domestic authorities, including the child's guardian, had supported their contact, which had been progressively increased, thereby fulfilling the positive obligations incumbent on the State.

34. The applicant submitted that the interference consisting in granting custody to the mother had not been necessary in a democratic society and had been disproportionate to the legitimate aim pursued. He was convinced that he had demonstrated a very pressing interest and commitment to be close to his daughter, to bring her up and to have meaningful contact with her, which however had not been duly taken into account by the courts when balancing the various interests at stake.

35. Instead, the courts had relied on reasons which had no link to his capacity to parent his daughter and which had not been sufficient to justify the interference with his rights, such as the language barrier and limited contact between him and his daughter, both of which were attributable to the mother. In particular, the courts had focused from the very beginning on the instability of his situation, ignoring that he had resided in one place from the child's birth until December 2017 and that he had been compelled to move to the Czech Republic, where he was unable to work, because of the mother's unilateral decision to relocate there with the child. The applicant found it striking that the points raised, without having taken any evidence, by the District Court in its decision of 10 December 2015 (see paragraph 7 above) had proved to be the same as those underlying the final decision granting custody to the mother.

36. In the applicant's view, the domestic authorities had failed to take any significant steps to prevent the deterioration of his relationship with his daughter and had allowed him to spend only limited time with her, which had exacerbated the difficulties of which he had then been reproached. The fact that he had recently managed to develop some positive relations with his child had not been a result of the Czech authorities' actions but of his expensive and draining litigation.

2. The Court's assessment

(a) General principles

37. The Court reiterates that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, even if the relationship between the parents has broken down, and domestic

measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see, among many other authorities, *Elsholz v. Germany* [GC], no. 25735/94, § 43, ECHR 2000-VIII).

38. In determining whether the refusal of custody was justified under Article 8 § 2 of the Convention, the Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient and whether the decision-making process, seen as a whole, was fair. The domestic authorities should strike a fair balance between the interests of the child and those of the parents; 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. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see, for example, *Sommerfeld v. Germany* [GC], no. 31871/96, §§ 64 and 66, ECHR 2003-VIII (extracts)).

39. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. Thus, the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding child custody and access issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation (see, for example, *Sommerfeld*, cited above, § 62; *Dostál v. the Czech Republic*, no. 26739/04, § 55, 21 February 2006; and *Z.J. v. Lithuania*, no. 60092/12, § 96, 29 April 2014). To that end the Court must ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the child (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 139, ECHR 2010, and *Leonov v. Russia*, no. 77180/11, § 64, 10 April 2018).

(b) Application to the present case

40. The Court considers that the decision to grant custody of the child to the mother, and not to the applicant, amounted to an interference with the applicant's right to respect for his family life. It has not been disputed between the parties that the interference had a basis in national law and pursued the legitimate aim of protecting the rights of others, namely of the applicant's minor daughter. It remains to be examined whether the interference was "necessary in a democratic society".

41. In this connection, the Court notes that the domestic courts enjoy a wide margin of appreciation, in particular when deciding on custody (see *Sommerfeld*, cited above, § 63; *C. v. Finland*, no. 18249/02, § 53, 9 May 2006; and *Leonov*, cited above, § 65), and that it is not called upon in the present case to examine the issue of the applicant's visiting rights (see paragraphs 27-29 above), which would require stricter scrutiny. It also accepts that in reaching decisions on childcare measures, national authorities and courts are often faced with a difficult task, and reiterates that consideration of what lies in the best interest of the child is of crucial importance in every case of this kind.

42. In the present case, the Court notes that the custody proceedings were initiated by the mother when the child was only eight months old (see paragraph 6 above). Subsequently, the applicant, who lived in the United Kingdom at the time, applied for cross-border alternating custody (see paragraph 9 above) and, after he moved to the Czech Republic, for sole and/or alternating custody (see paragraphs 10 and 13 above). When refusing the applicant's request and granting custody to the mother, both levels of courts relied mainly on the statements made by the parents and the child's institutional guardian (see paragraph 6 above). In this context, the Court observes that the child was less than three years old at the time of that decision and could obviously not be heard.

43. It is of great significance for the Court that, as follows from their decisions (see paragraphs 12-13 above), the Czech courts placed the child's best interests first, as is required by Article 8 of the Convention, as well as by the national law and international instruments. Taking into account the strained relations between the parents, as well as the fact that they both had strong emotional ties to the child, they pointed out that the girl had always been in her mother's care, which was exemplary according to the child's guardian, whereas the applicant's situation was not stable and there was a persisting language barrier between him and his daughter. In such circumstances, the courts were not convinced that the applicant was able to create the proper environment for raising his daughter, and considered that time was needed to reinforce their relationship, which was rather distant at the time of their decisions.

44. In the Court's view, the considerations in favour of keeping the child in her mother's custody appear to have been sufficiently sound and weighty. Indeed, the Court accepts that, given her young age, a change of residence and separation from her mother could have had a negative impact on the child's psychological state. The Court reiterates in this respect that a parent cannot be entitled to have such measures taken as would harm the child's health and development (see paragraph 38 *in fine* above). There is nothing to indicate that the findings reached by the domestic courts, which had the benefit of direct contact with all the persons concerned, were unreasonable and thus fell outside their wide margin of appreciation.

45. In examining the different aspects of the applicant's case, the Court turns next to the decision-making process. It notes that the decisions at issue were reached following adversarial proceedings in which the applicant, assisted by an interpreter, was placed in a position enabling him to put forward all of his arguments in support of his application for custody, and he also had access to all relevant information that was relied on by the courts. The first-instance court's refusal of his proposal to order psychiatric and psychological examinations of the parents was adequately reasoned (see paragraphs 12 *in fine* and 16 above). Thus, the Court is satisfied that the applicant was involved in the decision-making process to a degree sufficient to provide him with the requisite protection of his interests.

46. The Court concludes from the above that the decision-making process was fair in so far as it allowed the applicant to present his case fully and that the reasons advanced by the domestic courts were relevant and sufficient. Accordingly, by granting custody of the child to the mother, the domestic courts did not overstep their wide margin of appreciation.

47. Consequently, the present complaint must be declared inadmissible as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

C. As to the alleged violation of Article 14 of the Convention read in conjunction with Article 8

48. The applicant complained that, having regard to the reasons given by the courts for their refusal to grant him custody, he had suffered discrimination in the enjoyment of his rights under Article 8 of the Convention on the grounds of his nationality, contrary to Article 14. The relevant part of that provision reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... national or social origin ..."

1. The parties' submissions

49. The Government considered that the substance of the applicant's complaint overlapped with his arguments under Article 8 and that there was therefore no need to consider the application separately under Article 14. They observed in this context that in his constitutional appeal the applicant had also not elaborated on his complaint about discrimination and that the Constitutional Court had not found anything in his submissions or in the courts' reasoning that would support such allegations (see paragraph 16 above). Given the absence of a more detailed justification or clarification of the discrimination complaint by the applicant, the Government invited the Court to dismiss it (they referred to *Bergmann v. the Czech Republic*, no. 8857/08, §§ 67-68, 27 October 2011, and *Moser v. Austria*, no. 12643/02, § 79, 21 September 2006).

50. The Government further maintained that the courts' decisions had been based on several cumulative and relevant reasons, not linked to the applicant's nationality. Those included the strained relationship between the parents, the applicant's inability to prove that he had been able to provide a stable environment for the child, the child's young age, the parents' different cultures and the language barrier stemming from the applicant's inability to speak Czech, the latter having been repeatedly put forward by the applicant. As it appeared from the Constitutional Court's decision in a similar case (see paragraph 22 above), a mere insufficient command of the Czech language would not be sufficient to exclude a certain custody model.

51. According to the Government, nothing in the file indicated that the courts had based their decisions on custody on the applicant's nationality or his national origin and the applicant had failed to prove that a Czech father in a situation similar to his would have received more favourable treatment.

52. The applicant submitted that every decision taken by the Czech courts had been predicated, explicitly and openly, on the fact that he was a foreigner, that he had first lived abroad and then had not had a job or property in the Czech Republic and that he did not speak Czech. Had he been Czech, it was clear in his view that the courts would have treated him differently. The Czech Constitutional Court's decision was very vague in this respect and had failed to address his key arguments.

53. The applicant further considered that the Government had failed to put forward very weighty reasons, within the meaning of the Court's case-law (he cited *Gaygusuz v. Austria*, 16 September 1996, § 42, *Reports of Judgments and Decisions* 1996-IV, and *A.H. and Others v. Russia*, nos. 6033/13 and 15 others, § 407, 17 January 2017), that the difference of treatment complained of had been reasonably justified.

2. The Court's assessment

54. It is the Court's established case-law that in order for an issue to arise under Article 14 there must be a difference in the treatment of individuals in relevantly similar situations. Such a difference in treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought. The Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment (see *Schalk and Kopf v. Austria*, no. 30141/04, § 96, ECHR 2010, and *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008). However, very weighty reasons would have to be put forward before the Court regarding a difference in treatment based exclusively on the ground of nationality as compatible with the Convention (see, for example, *Koua Poirrez v. France*, no. 40892/98, § 46, ECHR 2003-X;

Andrejeva v. Latvia [GC], no. 55707/00, § 87, ECHR 2009; and *Ponomaryovi v. Bulgaria*, no. 5335/05, § 52, ECHR 2011).

55. The Court has already concluded under Article 8 that the domestic courts assessed all the relevant circumstances and the parents' parental abilities in order to find the most appropriate solution. They found, in particular, that the child had lived with her mother for a long time and that the applicant's situation was not stable enough to provide for a proper environment for his daughter. Their decisions were based on objective grounds, the child's best interest being the paramount consideration. In this respect, the Court accepts, as did the Czech Constitutional Court (see paragraph 22 above), that the ability of a parent to communicate with his or her child, the child's preschool and various other authorities is relevant for assessing the parent's ability to take care of the child.

56. The Court agrees with the applicant that stereotyping and prejudice against foreign fathers must be avoided in any situation. In the present case, however, the applicant has not shown that, in a similar situation, a Czech father would have been treated more favourably. Such was also the opinion of the Constitutional Court (see paragraph 16 *in fine* above). The Court is therefore satisfied that, as regards the examination of the issue of custody, no difference of treatment on account of nationality existed in the domestic decisions adopted in the applicant's case.

57. It follows that this complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 January 2023.

Victor Soloveytchik Registrar	Georges Ravarani President