

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

FIFTH SECTION

DECISION

Application no. 22245/22
Constantine Richard KTISTAKIS
against the Czech Republic
(see appended table)

The European Court of Human Rights (Fifth Section), sitting on 19 December 2024 as a Committee composed of:

Diana Sârcu*, President*,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 28 April 2022,

Having regard to the declaration submitted by the respondent Government requesting the Court to strike the application out of the list of cases,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The details of the applicant, a British national, are set out in the appended table.

2. The applicant was represented by Mr A. Pantazopoulos, a lawyer practising in Prague.

3. The applicant's complaints under Articles 6 and 8 of the Convention concerning the principle of legal certainty and the right to respect for family life were communicated to the Czech Government ("the Government").

4. At the same time the Court invited the Government of the United Kingdom to intervene in the case however, they expressed no wish to do so.

THE LAW

5. After the failure of attempts to reach a friendly settlement, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by the above-mentioned

complaints. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

6. The declaration provided as follows:

> "The Government hereby acknowledge that in case no. 22245/22, there was a violation of Articles 6 and 8 of the Convention on account of the legal insecurity stemming from divergent decisions given by the domestic courts, the increase in the number of proceedings and adverse repercussions of the passage of time.
>
> The Government offer to pay the applicant the sum of EUR 3,500 (three thousand five hundred euros), covering any non-pecuniary damage, and the sum of EUR 800 (eight hundred euros), covering all costs and expenses, plus any tax that may be chargeable to the applicant on these amounts, converted into CZK (Czech korunas) at the rate applicable on the date of payment. This sum will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the Convention. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> The Government note in this context that according to Article 3 § 4 (d) of Act. No. 586/1992, on income tax, payment of just satisfaction awarded by the Court or stemming from a settlement of the case before the Court based on a friendly settlement or a unilateral declaration made by the Government is not subject to personal income tax."

7. The Government observed, *inter alia*, that the present application does not disclose any systemic shortcomings but rather an isolated and regrettable failure of the domestic courts in the proceedings conducted by the applicant, the central issue of which was the interpretation and application of EU law to the particular facts of the case.

8. The Government further noted that the recent practice of the Constitutional Court (namely the decision of the plenary no. Pl. ÚS 8/22 of 26 April 2022) seems to indicate that the reopening of the proceedings before the Constitutional Court is not possible following a decision by which the Court struck out an application on the basis of the Government's unilateral declaration. The Government declared to be aware that the reopening of the case, if requested, represents in principle an appropriate way of redressing the breaches of the requirements of Article 6 of the Convention. They were, however, of the view that, in the case at hand, a degree of uncertainty as to the admissibility of an application for reopening of the proceedings before the Constitutional Court following a unilateral declaration of the Government does not preclude the Court from accepting the present unilateral declaration. Underlining that the applicant's son has been living in the Czech Republic since 2013 and that the applicant has not asked that the return orders issued by the British courts in 2014 be declared enforceable in the Czech Republic (while still having the possibility to do so), they considered that the reopening of any of the domestic proceedings that were at the origin of the application, be it the proceedings for the applicant's child's return to the United Kingdom

or the proceedings for the enforcement of the British court's orders, could not provide any remedy for the violation of the applicant's complaints raised before the Court.

9. The applicant, who had been sent the terms of the Government's unilateral declaration, did not accept them. In his view, the Government attempted to downplay the failure of the domestic courts, which could not be considered an isolated incident (he referred in this respect to the Court's judgment in *Macready v. the Czech Republic*, nos. 4824/06 and 15512/08, 22 April 2010). He also submitted that in case of acceptance of the terms of the Government's unilateral declaration, he would not be able to reopen or to continue the court proceedings before the Czech courts, which would further deepen the impact on his family life.

10. The Court observes that Article 37 § 1 (c) enables it to strike a case out of its list if:

> "... for any other reason established by the Court, it is no longer justified to continue the examination of the application".

11. Thus, it may strike out applications under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued (see, in particular, the *Tahsin Acar v. Turkey* judgment (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

12. The Court has established clear and extensive case-law concerning complaints relating to the issue of legal certainty with regard to divergent court decisions (see, for example, *Beian v. Romania (no. 1)*, no. 30658/05, ECHR 2007, and *Mullai and others v. Albania*, no. 9074/07, 23 March 2010) as well as to the right to respect for family life in the context of child return proceedings (see, for example, *Macready v. the Czech Republic*, nos. 4824/06 and 15512/08, 22 April 2010, and *X v. Latvia* [GC], no. 27853/09, ECHR 2013).

13. The Court further observes, as also admitted by the Government (see paragraph 8 above), that the recent practice of the Czech Constitutional Court seems to indicate that the reopening of the proceedings before the Constitutional Court is not possible following a decision by which the Court struck out an application on the basis of the Government's unilateral declaration. It notes in this connection that a retrial or the reopening of the case, if requested, represents in principle an appropriate way of redressing the violation in cases where an individual has been convicted following proceedings that have entailed breaches of the requirements of Article 6 of the Convention (see, in particular, *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, §§ 50 et 52, 11 July 2017; and *Stassart v. France* (dec.), no. 79356/17, 4 April 2023). In civil litigation, in particular where such litigation concerns third parties with their own legitimate interests to be protected, it is for the Contracting States to decide how best to implement

the Court's judgments without unduly upsetting the principles of *res judicata* or legal certainty (see *Bochan v. Ukraine* (no. 2) [GC], no. 22251/08, § 57, ECHR 2015).

14. It is nonetheless important to underscore that, in a spirit of shared responsibility on the part of States and the Court to ensure respect for Convention rights, applicants are entitled to expect the national authorities, courts included, to draw fair-mindedly the conclusions that follow from a unilateral declaration by the Government acknowledging a violation of the Convention and giving rise to a decision of the Court taking note of it (see, for example, *Boutaffala v. Belgium*, no. 20762/19, § 51, 28 June 2022, and *Deckmyn v. Belgium* (dec.), no. 44813/14, § 42, 7 November 2023). The Court observes that judicial practice in several countries has recently evolved on this point, with a view to enable the applicants to seek the reopening of domestic proceedings also on the basis of the Court's decision to strike out the case following the Government's unilateral declaration (see *Stassart v. France* (dec.), no. 79356/17, § 28, 4 April 2023, and *Dudek and Lazar v. Poland* (dec.), nos. 41097/20 and 39577/22, § 26, 8 October 2024).

15. The Court is thus of the view that if the applicant in the present case so wishes, he may seek reopening of the domestic proceedings before the Constitutional Court, asking the plenary to revise its current practice. In such case, it will be for the Constitutional Court to assess and decide whether re-opening of the proceedings would be possible.

16. The Court observes nevertheless that the last Constitutional Court's decision challenged by the applicant in the present application is the decision no. III. ÚS 1112/21 of 4 October 2021, in which the Constitutional Court endorsed the lower courts' conclusion that the return orders of the British courts could be enforced only if they were declared enforceable in the Czech Republic in accordance with Article 28 § of the Brussels II *bis* Regulation. The applicant did not challenge the Government's allegation that he has so far not asked for such a declaration and that he still has the possibility to do so (see paragraph 8 above). In such a situation, the Court takes note that, in order to seek redress of his family situation, the applicant has at his disposal remedies other than a reopening of the proceedings before the Constitutional Court, while the present decision is without prejudice to the possibility for him to exercise them (see *Jeronovičs v. Latvia* (dec.), no. 547/02, § 54, 10 February 2009, and *Taşdemir v. Turkey* (dec.), no. 52538/09, § 20, 12 March 2019).

17. As regards the divergent decisions issued in the past by the Czech courts, leading to a multiplication of the proceedings and protraction of the case, the Court agrees with the Government that the monetary payment offered in their unilateral declaration provides an adequate redress in respect of the applicant's claims.

18. Thus, noting the admissions contained in the Government's declaration as well as the amount of compensation proposed – which is

consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

19. In the light of the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

20. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application may be restored to the list in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

21. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration and of the arrangements for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 23 January 2025.

Viktoriya Maradudina	Diana Sârcu
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Articles 6 and 8 of the Convention (legal certainty, international child abduction)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Date of receipt of Government's declaration	Date of receipt of applicant's comments	Amount awarded for non-pecuniary damage per applicant (in euros)[1]	Amount awarded for costs and expenses per application (in euros)[2]
22245/22 28/04/2022	**Constantine Richard KTISTAKIS** 1978	Athanassios Pantazopoulos Prague	25/10/2024	25/11/2024	3,500	800

[1] Plus any tax that may be chargeable to the applicant
[2] Plus any tax that may be chargeable to the applicant