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

FIFTH SECTION

DECISION

Application no. 1422/24
Marcel TŮMA
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 29 January 2026 as a Committee composed of:

María Elósegui*, President*,
Kateřina Šimáčková,
Gilberto Felici*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 1422/24) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 21 December 2023 by a Czech national, Mr Marcel Tůma ("the applicant"), who was born in 1966, lives in Třebíč and was represented by Mr J. Neshyba, a lawyer practising in Jihlava;

the decision to give notice of the application to the Czech Government ("the Government"), represented by their Agent, Mr P. Konůpka, from the Ministry of Justice;

the parties' observations;

the decision to dismiss the Government's objection to the examination of the application by a Committee;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the decision to award custody of the applicant's daughter to her grandmother rather than to the applicant.

2. The applicant is the father of K., who was born in 2009. In January 2020, within divorce proceedings, K.'s parents agreed that custody of their daughter would be awarded to the mother, who would enable the applicant to see the child regularly.

3. Following the mother's death in September 2021, K.'s maternal grandmother moved in with her and requested an interim measure awarding her custody. On 21 October 2021, in an interview with the guardian *ad litem* appointed for her, K. stated that she wanted to keep things as they were and remain with her grandmother; nevertheless, the guardian proposed to dismiss that request, noting that the applicant had full parental responsibility and intended to take custody of his daughter.

4. On 25 October 2021 the grandmother's request was dismissed on the grounds that there was no need for an interim arrangement because the applicant had regular contact with the child and wished to take custody of her. Subsequently, the grandmother applied to be granted custody of K.

5. On 3 February 2022, in line with the guardian's view, the Třebíč District Court granted a request by the applicant for an interim measure ordering the grandmother to hand the child over to him. That decision remained unenforced.

6. At a hearing on 29 March 2022 the District Court questioned the applicant, the grandmother, and K., who stated that she wished to stay with her grandmother (with whom she could keep her dog), that the applicant was not interested in talking to her and that their relationship was not that good; she confirmed, however, that she saw the applicant regularly because he drove her back from her after-school activities.

7. By a judgment of 31 March 2022, the District Court dismissed the grandmother's claim. Referring to Article 953 of the Civil Code, the court emphasised that no reasons had been found to suggest that the applicant could not care for K. Acknowledging the child's wish to stay with her grandmother, the court considered, however, that her wishes could not be equated to her best interests, which called for maintaining and reinforcing her bond with the applicant.

8. At a case conference held on 2 June 2022 in order to assess the family situation, K. reiterated her wish to stay with her grandmother and to see the applicant at weekends.

9. Following the grandmother's appeal against the judgment of 31 March 2022, the Brno Regional Court held a hearing on 14 September 2022, at which it interviewed all the persons involved, including K.

10. On 21 September 2022 the Regional Court overturned the first-instance judgment and granted custody of K. to her grandmother, considering that it was in her best interests to continue living in the safe and familiar environment that her grandmother provided. Although it found no subjective or objective grounds under Article 953 of the Civil Code preventing the applicant from taking care of his daughter, it held that the clear and consistent opinion of K., aged 13, was a significant factor which had to be taken into consideration. The court also took into account the parties' statements and the reports of the child's guardian, including a record of the

latest interview, in which K. had reiterated her wish to live with her grandmother and continue seeing the applicant. However, pointing out that K.'s statements had been very similar to her grandmother's and that she had probably heard the applicant being described negatively by her maternal grandparents, the guardian maintained that the applicant – who had parental responsibility for K. – was fully competent and duly discharged all his duties. Lastly, the court took into consideration an expert report of 9 September 2022 submitted by the grandmother, according to which (i) the latter was very close to K., since she had cared for her from an early age and had given her a lot of support after the death of her mother; (ii) K. – who was mature enough to express her preference – was used to seeing her grandmother virtually every day; and (iii) it would be better for K.'s mental health if tensions between her father and her grandparents gradually eased and she were allowed to maintain contact with all her relatives in line with her wishes, without being forced into anything. The expert report also acknowledged the positive relationship between K. and the applicant and recommended that they spend time together in shared activities so as to build an even closer relationship.

11. By a judgment of 29 August 2023 (no. IV. ÚS 2884/22), the Constitutional Court dismissed a constitutional appeal lodged by the applicant, finding that the Regional Court had properly reasoned its decision to depart from the rule laid down in Article 953 of the Civil Code by referring to the need to consider the best interests of the child. It also noted that according to the latest report of the child's guardian, the applicant and the grandmother were now on good terms, a situation about which K. was happy. The applicant was helping the grandmother, actively participating in K.'s upbringing and deepening his relationship with her through his genuine interest. Given that situation, the Constitutional Court was of the view that quashing the Regional Court's judgment and continuing the proceedings would have a negative effect on the child. Urging the parties to solve the situation by mutual agreement, it did not rule out the possibility for K. to accept being taken into the applicant's care without any judicial intervention.

One of the three judges dissented, considering that the interference was unlawful since the conditions of Article 953 of the Civil Code had not been met.

THE COURT'S ASSESSMENT

12. Relying on Article 8 of the Convention, the applicant submitted that the reversal decision of the Regional Court awarding custody of his daughter to the grandmother had amounted to an interference with his right to respect for family life which had been disproportionate and contrary to domestic law. In that connection, he referred to Article 953 of the Civil Code, which provided that custody of a child could be awarded to another person only if neither parent was willing or able to take care of the child and if such a

decision was in line with the child's best interests. He also argued that the best interests of his daughter could not simply be equated to her wishes.

13. The relevant principles emerging from the Court's case-law concerning refusal of custody or access are summarised in, for example, *C. v. Finland* (no. 18249/02, §§ 52-54, 9 May 2006) and *Malinin v. Russia* (no. 70135/14, §§ 63-66, 12 December 2017). The Court reiterates that in judicial decisions where the Article 8 rights of parents and a child are at stake, the child's rights must be the paramount consideration. If any balancing of interests is necessary, the interests of the child must prevail (see *Elsholz v. Germany* [GC], no. 25735/94, § 52, ECHR 2000-VIII, and *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 72, ECHR 2001-V).

14. In the present case, the Court observes that the custody dispute which the Czech courts were called upon to resolve lay between the applicant, who was the father of the child, and the child's grandmother, who was the mother of her deceased mother. Ultimately, the minor child was placed in the care of her grandmother, whom she knew well and who had also previously taken care of her.

15. The Court sees no reason to challenge the domestic courts' conclusion that the interference with the applicant's right to respect for family life was based on Article 953 of the Civil Code; it is also indisputable that it pursued the legitimate aim of protecting the best interests of the child. It remains to be examined whether the refusal to award the applicant custody of his daughter can be considered "necessary in a democratic society" and, in particular, whether the reasons adduced to justify that measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention. In carrying out that assessment, 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 (see *R. and H. v. the United Kingdom*, no. 35348/06, § 81, 31 May 2011).

16. While significant weight must be placed on the applicant's rights as the father, the Court notes that the impugned proceedings took place approximately two years after a court-approved divorce agreement by which the custody of the child had been awarded to her mother, and only several months after the mother had died. It was not disputed by the applicant that the maternal grandmother had always taken an active part in the child's upbringing and had cared for her during the mother's illness. Given that situation, the task of the domestic courts was to determine whether K.'s best interests lay in remaining with her grandmother, who had moved in with her, or awarding custody to the applicant.

17. Having examined the Regional Court's decision which overturned the first-instance judgment and gave custody of the applicant's daughter to her grandmother, the Court finds that that decision can be taken to have been made in the best interests of the child. The Regional Court, having heard K.,

took into account the fact that she had expressed a clear and consistent wish to remain living with her grandmother. The Court notes that K. was 12 years old when she was first interviewed by her guardian *ad litem* (see paragraph 3 above) and 13 years old when she was heard by the Regional Court (see paragraph 9 above); thus, she was already able to form her own opinion on the matter and to understand its consequences. The Court has previously found that as soon as children become mature and are able to formulate their own opinion on their relationship with their parents, the courts should give due weight to their views and feelings and to their right to respect for their private life (see *Gobec v. Slovenia*, no. 7233/04, § 133, 3 October 2013, and *Khusnutdinov and X v. Russia*, no. 76598/12, § 86, 18 December 2018). The Court further notes that K.'s position – which she expressed before the guardian, the courts, and the expert – remained the same throughout the whole proceedings and was supported by specific elements such as her strong attachment to her grandmother, her wish to keep her dog (a prospect about which the applicant did not seem very keen), and her somewhat distant relationship with the applicant at the time of the events (see, for similar reasoning, *Hokkanen v. Finland*, 23 September 1994, § 64, Series A no. 299-A, and *Yousef v. the Netherlands*, no. 33711/96, § 72, ECHR 2002-VIII).

18. The evidential basis for the domestic courts' decisions also included submissions by the applicant and the grandmother, several reports by the child's guardian *ad litem* (a childcare authority) and the expert opinion submitted by the grandmother. Having regard to that body of evidence, and having had the benefit of direct contact with all the people concerned, the Regional Court concluded that it was not in the child's interests to award custody to the applicant.

19. Turning to the procedural aspects of the case, the Court considers that the decision-making process, seen as a whole, provided the applicant with the requisite protection of his interests. The decision at issue was reached following adversarial proceedings in which the applicant, who had been represented by counsel, had been heard in person both by the District Court and the Regional Court and had had the opportunity to submit his arguments to them. He also had access to all the relevant information relied on by the courts.

20. It is true that there was no finding by the domestic courts that the applicant was in any way unfit as a father or incapable of taking care of K. and putting her interests first. The courts took into account that the applicant and his daughter were in regular contact, that their relationship was good and beneficial, that the applicant was providing for her needs and that K. had expressed a wish to continue seeing him. It also appears – notably from the considerations made by the Constitutional Court and from the Government's observations – that the Regional Court's decision to follow K.'s wishes and not to remove her from her safe environment, and the very sensitive

attitude of the applicant, contributed to the applicant and K. gradually extending their contact and consolidating their relationship. In view of that fact, it cannot be said that the applicant's rights under Article 8 were disregarded.

21. In view of the foregoing, and having regard to the wide margin of appreciation accorded to the domestic authorities in issues relating to custody (see, for example, *Elsholz*, cited above, § 49), the Court concludes that the Regional Court based its decision interfering with the applicant's right to respect for his family life on relevant and sufficient grounds and struck a fair balance between the competing interests. It has found no reason to conclude that the interference was not "necessary in a democratic society" or otherwise contrary to the Convention.

22. It follows that the application is manifestly ill-founded and must be dismissed in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 February 2026.

Martina Keller Deputy Registrar	María Elósegui President