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

FIFTH SECTION

DECISION

Application no. 5400/23
W
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 3 April 2025 as a Committee composed of:

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

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 5400/23) 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 23 January 2023 by a Czech national, W ("the applicant"), who was born in 1973, lives in Úvaly and was represented by Ms I. Švarcová, a lawyer practising in Prague;

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

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

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the refusal by the domestic courts of the applicant's request to be granted alternating custody of his children, instead of which he was granted contact rights extending to twelve days per month (Articles 6, 8 and 14 of the Convention).

A. Background

2. When the applicant and his ex-wife, both serving judges, divorced in 2017, they agreed that their two children, aged two and six at the time, would stay in the custody of the mother who was on parental leave, and that the applicant would pay child maintenance and meet the children regularly.

3. In August 2018 the applicant sought alternating custody and reduction of the child maintenance.

4. On 23 November 2018 the Prague 9 District Court rejected the applicant's request but granted him contact rights extending to ten non-consecutive days per month; it further ruled that there was no reason to lower the applicant's child maintenance since the children remained in the mother's custody.

5. Following the applicant's appeal, the Prague Municipal Court issued a judgment on 12 March 2019 by which it extended the applicant's contact rights to twelve non-consecutive days per month. It observed that only a short time had elapsed since the parental agreement in 2017 and that it was in the children's interest to stay in the mother's custody, to whom they got used, and to enjoy a stable regime. The court refused to lower the applicant's child maintenance, referring to his level of income and growing needs of the children.

6. On 17 July 2019 the Constitutional Court (no. I. ÚS 1906/19) dismissed a constitutional appeal by the applicant as being manifestly ill-founded. It admitted, however, that the reasons against the alternating custody were not particularly persuasive and that the costs incurred by the applicant in connection with his extensive contact rights were close to costs incurred in case of an alternating custody, which would, in principle, justify lowering his maintenance payments. It also expressed the view that, were the courts to decide again in future, they should duly explain why extensive contact rights correspond to the children's best interest better than alternating custody.

B. Impugned proceedings

7. In January 2020 the applicant filed a new action seeking alternating custody and reduction of his maintenance payments.

8. After an unsuccessful mediation, and taking into account the parents' statements, the position of the older child who had repeatedly stated that he wished the current arrangement to be maintained, as well as an expert opinion according to which the parents did not respect each other in their parental roles, and were unwilling to communicate (and to undergo a therapy), which had a negative impact on the children, the District Court dismissed the applicant's action on 3 November 2021. It concluded that the change sought would not be in the minors' interest at the time, since the children needed stability and calm while a different custody arrangement

could trigger fresh conflicts between the parents. It also observed that the applicant had broad contact rights which gave him ample opportunity to exercise his parental role, and that the amount of the maintenance corresponded to his income and the children's growing needs.

9. On 1 April 2022 the Municipal Court dismissed an appeal by the applicant and upheld the District Court's judgment, endorsing that there had been no fundamental change of circumstances justifying a revision of the existing arrangements under which both parents retained their capacity to decide on matters of importance to the children. As to the maintenance paid by the applicant, the court observed, in holding that there was no reason to reduce it in view of the applicant's broad contact rights, that its amount had not changed since 2017 despite an increase in the children's legitimate needs and a rise in the applicant's income, which would normally justify an increase of the maintenance.

10. The applicant challenged the lower courts' judgments by a constitutional appeal, in the summary of which he invoked his rights to a fair trial, to respect for family life, and to protection of property. He added, in the reasoning of the appeal, that the courts' decisions were not determined by the specifics of the case, but by a value attitude of Czech judges in general, disclosing an indirect discrimination of fathers based on sex. Relying on some statistical data, he argued that alternating custody was rarely ordered in situations where it had not been agreed upon by parents, and, instead, custody was granted to mothers on the grounds that they had cared for children during their maternity/parental leave; thus, apparently neutral criteria such as the child's interest and stability of the child's environment had a negative impact on fathers and placed them at disadvantage. The applicant further argued that ministerial guidelines on child maintenance did not reflect the extent of fathers' contact rights.

11. On 6 September 2022 the applicant's constitutional appeal was dismissed as manifestly ill-founded (no. I. ÚS 1732/22). The Constitutional Court found that the courts had duly established all relevant circumstances, and observed that the crucial reason why any change of custody had been ruled out in the present case was a constant rivalry between the applicant and his ex-wife, who were unable to overcome their communication difficulties, and refused to undergo a therapy. The applicant's complaint of indirect discrimination was not explicitly addressed.

THE COURT'S ASSESSMENT

A. Complaints under Article 6 § 1 of the Convention

12. Firstly, the applicant argued that the domestic courts had failed to reduce his maintenance obligation following the extension of his contact rights which had been since 2019 more akin to alternating custody.

13. Without ignoring the Constitutional Court's reserved attitude towards the initial decisions on the matter (see paragraph 6 above), and recalling that it is not called, in principle, to question under Article 6 § 1 of the Convention the national courts' assessment, the Court agrees with the Government that the domestic courts' refusal to reduce the amount of the applicant's maintenance cannot be regarded as arbitrary or manifestly unreasonable. It observes that, in particular in the second set of the proceedings, the courts explained why the amount agreed upon by the parents in 2017 was still adequate even in a situation of extended contact rights granted to the applicant (see paragraph 9 *in fine* above). Moreover, it was not disputed that the applicant had had the benefit of adversarial proceedings at first instance and on appeal.

14. Second, the applicant complained that the Constitutional Court had not addressed his claim of discrimination.

15. Although the Government pleaded that the applicant had failed to duly raise and substantiate his complaint of discrimination in his constitutional appeal, the Court is of the view that the applicant had given the Constitutional Court sufficient opportunity to consider the substantive merits of his discrimination complaint which he now raises before the Court (see paragraph 10 above).

16. According to the Court's established case-law, the domestic courts should adequately state the reasons on which their decisions are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 84, 11 July 2017).

17. The Court observes that, even though the Constitutional Court did not provide the applicant with a specific and explicit reply to his discrimination complaint, it can be inferred from its decision, namely from its conclusion as to what had been the crucial reason for the refusal of alternating custody (see paragraph 11 above), that it did not find the lower courts' decisions discriminatory. Its decision also provides a sufficient indication of the grounds on which it was based.

18. Thus, the Court cannot conclude that the Constitutional Court's decision, viewed as a whole, breached the very essence of the applicant's right to a court.

19. This part of the application must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Complaint under Article 8 of the Convention

20. The applicant complained that, although the domestic courts had recognised that he and his ex-wife had equal parental skills and had granted him broader contact rights, they had refused to put in place alternating

custody. As a consequence, he is still required to pay child maintenance although he cares for his children twelve days per month and although the mother as a serving judge has a comparable income; furthermore, he cannot claim an income tax reduction on account of dependent children.

21. The Court recalls that the domestic authorities enjoy a wide margin of appreciation, in particular when deciding on custody, and should strike a fair balance between the interests of the children and those of the parents, while attaching particular importance to the best interests of the children.

22. The Court observes that when refusing, in the impugned proceedings, the applicant's request for alternating custody, the courts relied on the statements made by the parents and the older child as well as on an expert opinion, which all made apparent the strained relations between the parents and the need to secure a stable environment for the children. It is of great significance for the Court that, as follows from their decisions, the courts placed the children's best interests first, as required by Article 8 of the Convention.

23. While the Court admits that the fact that the existing arrangement was not designated as alternating custody (be it asymmetrical) may be perceived by the applicant as a lack of recognition of his equal parenting role, and may have repercussions in public law, it cannot constitute a breach of Article 8, particularly given the applicant's extensive contact with his children and his ability to fully exercise parental responsibility. As to the decision on the maintenance, the Court has already concluded that it had been adequately reasoned (see paragraph 13 above).

24. The Court notes that there is nothing to indicate that the findings reached by the domestic courts were unreasonable and thus fell outside the wide margin of appreciation afforded to the domestic authorities in this area. Given that the national authorities are in principle better placed than an international judge to evaluate the evidence before them, it is not the Court's task to take their place in establishing and assessing the facts and deciding what is in the best interests of the child in the present case (see *Leonov v. Russia*, no. 77180/11, § 72, 10 April 2018).

25. Furthermore, the decisions at issue were reached following adversarial proceedings, throughout which the applicant, represented by counsel, had the opportunity to present – both in writing and orally – all arguments in support of his claims.

26. Against the above background, the Court does not consider that the present application has disclosed any appearance of any manifest deficiencies in the protection of the applicant's rights under Article 8 of the Convention.

27. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

C. Complaint under Article 14 of the Convention

28. The applicant also complained that the courts decisions in his case amounted to an indirect discrimination and revealed persisting prejudices against fathers, in that the Czech courts almost never order alternating custody without the mothers' agreement.

29. The Court agrees with the applicant that stereotyping and prejudice against fathers must be avoided in any situation and that, in his case, the courts' decisions may have negative repercussions, causing him frustration (see paragraph 23 above).

30. It observes nevertheless that the statistics submitted by the Government did not confirm the applicant's claim about indirect discrimination. They instead demonstrate a growing trend over the years toward judicial decisions ordering alternating custody, even when parents disagree.

31. In the present case, the Court is also satisfied that an individualised assessment was carried out and that acceptable reasons were given by the courts as to why the applicant's motion for alternating custody had been refused and his maintenance obligation remained unchanged. As the Court has already examined those decisions under Articles 6 and 8 of the Convention, it considers that no issue in this respect arises under Article 14 of the Convention read in conjunction with the above provisions.

32. Accordingly, this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and, therefore, must be declared inadmissible pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 9 May 2025.

Martina Keller Deputy Registrar	María Elósegui President