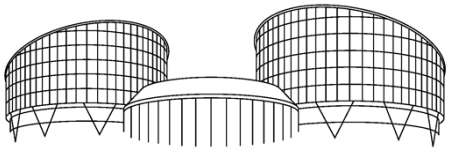

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF NOVÁK v. THE CZECH REPUBLIC

(Application no. 6656/24)

JUDGMENT

Art 8 • Family life • Domestic courts' failure to strike a fair balance between the interests of all the parties in custody proceedings after the mother of the applicant's children unilaterally and unlawfully relocated with them • Decisions dismissing applicant's interim measure applications lacking sufficient reasons • Domestic courts' decisions consolidated and eventually legitimised the situation unlawfully created by the mother rendering the possibility for the applicant to obtain sole or shared custody of his children merely theoretical

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 April 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Novák v. the Czech Republic,

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

Andreas Zünd*, President*,
Kateřina Šimáčková,
Georgios A. Serghides,
Diana Sârcu,
Mykola Gnatovskyy,
Vahe Grigoryan,
Sébastien Biancheri*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 6656/24) 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") by a Czech national, Mr Stanislav Novák ("the applicant"), on 26 February 2024;

the decision to give notice of the application to the Czech Government ("the Government");

the parties' observations;

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

Having deliberated in private on 18 March 2026,

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

INTRODUCTION

1. The application concerns the appellate court's refusal, in April 2023, to uphold the first-instance court's judgment on shared custody of the applicant's children after the children's mother had unilaterally decided to relocate with them. The applicant had unsuccessfully tried to prevent the relocation by applying for interim measures. The application raises issues under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1989 and lives in Brno. He was represented by Ms I. Spoustová, a lawyer practising in Prague.

3. The Government were represented by their Agent, Mr P. Konůpka, of the Ministry of Justice.

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

5. The applicant is the father of two daughters, born in 2014 and 2018. In April 2021, when they stopped living together in Brno, the applicant and the children's mother agreed that they would share custody of the children.

6. In September 2021 the mother filed a petition for divorce and sought sole custody of the children. The applicant filed a petition for shared custody.

7. From January 2022 onwards the mother refused to share custody of the children with the applicant, deeming that shared custody would be detrimental to them. During that period, the applicant maintained weekly contact with the children, with overnight visits on Tuesdays, and visits every other weekend. The family also made repeated visits to a counselling centre, but no custody agreement was reached.

8. Consequently, while awaiting a court decision on the merits, the applicant applied for an interim shared custody measure. The Brno Municipal Court granted his application on 18 May 2022; however, on 14 June 2022 the Brno Regional Court overturned that decision on appeal, finding that there was no need for an interim custody measure because the children were being properly cared for by their mother, and the applicant had regular contact with them.

9. On 14 July 2022 the Municipal Court awarded the parents shared custody of the children on a weekly basis. Referring to a report issued by the above-mentioned counselling centre (which accorded with the opinion of the children's guardian *ad litem*, who had spoken with them), the court deemed that the children had a positive relationship with both parents who were capable of raising the children properly.

The mother lodged an appeal against that decision. The appeal had suspensive effect.

10. On 28 August 2022 the mother emailed the applicant to inform him that she had relocated from Brno to Prague with the children and had enrolled them in a school there. She suggested that he see the children every other weekend and during school holidays, in addition to maintaining contact by telephone and online.

11. On 29 August 2022 the mother sought a court order authorising the children's relocation and change of school in the absence of the applicant's consent.

12. The applicant informed the social welfare authority, acting as the children's guardian *ad litem*, of the children's relocation. The authority subsequently declared the children as being "endangered" *(ohrožené)* within the meaning of section 6 of the Act on the social and legal protection of children (Law no. 359/1999).

13. On 7 September 2022, relying on Articles 75c and 102 § 1 of the Code of Civil Procedure, the applicant applied for an interim measure granting him custody of the children and the mother fortnightly contact with them until the final decision on the merits. He argued, in particular, that by unilaterally relocating the children, the mother had breached Article 877 § 1 of the Civil Code. He therefore intended to bring proceedings under that provision seeking that a court determine the children's place of residence and school.

On the same day he applied for an interim measure ordering the mother to return the children to their previous place of residence and to re-enrol them in their original schools.

14. On 12 September 2022 the Municipal Court contacted the children's guardian *ad litem* by telephone in order to obtain its opinion on the situation and to identify the best interests of the children. While acknowledging that the mother had acted unlawfully, the children's guardian *ad litem* expressed concern for the children, who had already been subjected to repeated fundamental changes; it took the view that it was unclear how they would cope with yet another change.

15. On 12 September 2022 the Municipal Court accordingly dismissed the applicant's application for an interim shared custody measure. Referring to the Regional Court's decision of 14 June 2022 (see paragraph 8 above) – and noting that the applicant continued to have access to the children and that the mother was taking good care of them – it found no urgent need to adjust the minors' situation on an interim basis.

Concerning the applicant's application seeking the return of the children to their original place of residence, the court noted that such an application could be examined only if a deposit of approximately 400 euros (EUR) were paid on the day of the making of the application. As that condition had not been met, it dismissed the applicant's application.

Acknowledging, in that regard, that his deposit had been received by the court only on 8 September 2022, the applicant did not lodge an appeal, but instead made a new application for an interim measure.

16. The applicant made a second application on 20 September 2022, by which he sought an interim measure ordering the mother to return the children to their original place of residence and to re-enrol them in their original schools. That application was dismissed on 21 September 2022.

Referring to section 12 of the Special Court Proceedings Act, the court noted that an interim measure might be ordered automatically, provided that the severity of endangerment to a minor child necessitated the adoption of such a measure. Referring again to the Regional Court's decision of 14 June 2022, the Municipal Court found there to be no endangerment in the present case of such a level as to require an order (even on a temporary basis) determining where the children resided and went to school. It held that the issue would be addressed in the proceedings on the merits, regard being had to the appellate court's decision on custody.

17. The appeals lodged against those decisions by the applicant were dismissed on 2 December 2022. The Brno Regional Court found that, although the mother had relocated with the children without reaching prior agreement with the applicant (or waiting for a decision in proceedings on the merits), the applicant had not asserted or demonstrated that the care of the minor children in their new place of residence would be seriously impaired or endangered. It noted, moreover, that the mother had allowed the applicant

to see his children every other weekend, and that it was not in the children's best interests to be subjected to further change. Accordingly, the court found that there was no urgent need to adjust the children's situation by means of an interim measure and that the issue of the children's place of residence and schooling was to be determined in proceedings on the merits, provided that either parent initiated such proceedings.

18. On 5 November 2022 and 15 January 2023 the applicant made, through his lawyer, two applications with the Regional Court for the examination of the case on the merits to be expedited, alleging that the mother was taking advantage of the situation and only letting him see the children occasionally.

On 6 February 2023 his lawyer was informed that, given the number of ongoing disputes involving child arrangements, a hearing was likely to be scheduled for March 2023.

19. The Regional Court subsequently requested, *inter alia*, a report from the children's schools and asked their guardian *ad litem* to gather the children's views on the custody arrangements. According to the guardian *ad litem*'s report of 16 March 2023, although communication between the parents was characterised by mutual distrust, they had been able to agree to a schedule in respect of contact between the applicant and his daughters (namely, at weekends). It was also noted that the children had settled into their new home without any great difficulties. The guardian *ad litem* concluded, however, that there had been a significant change in circumstances and that the case should therefore be sent back to the Municipal Court for fresh examination.

20. In March 2023 the mother lodged a criminal complaint against the applicant, alleging that he had engaged in inappropriate behaviour towards one of the daughters after she had taken a shower. She also informed the applicant that she would not hand over the children to him until the issue had been resolved.

While the outcome of that criminal complaint is not known to the Court, the conclusions made by the expert appointed to examine the applicant were later referred to by the civil courts (see paragraphs 27 and 30 below).

21. By decision no. II. ÚS 566/23 of 5 April 2023, the Constitutional Court dismissed as manifestly ill-founded a constitutional appeal lodged by the applicant against the Regional Court's decision of 2 December 2022 (see paragraph 17 above). Noting the very cautious approach generally adopted in such matters, it found that the lower courts had thoroughly explained their reasons for concluding that the conditions for ordering an interim measure had not been met.

22. In a report dated 11 April 2023, a local social welfare authority described the children's place of residence and noted that they both enjoyed living in Prague. When asked about potential custody arrangements, the elder daughter had expressed a preference for staying in Prague with her mother

and visiting her father in Brno, whereas the younger daughter had said that she liked going to visit her father and would appreciate it if he could also visit them in Prague during the week.

23. On 20 April 2023 the Regional Court overturned the judgment of 14 July 2022 and granted the mother sole custody of the children; the applicant was granted contact rights every second weekend and during holidays. The court ruled that although both parents were clearly able to care for the children, the situation had significantly changed since the first-instance court's decision on shared custody, in so far as the children had adapted well to their new environment (where they had been living for eight months), which was, moreover, close to other family members. It also observed that the distance between the parents' homes precluded a shared custody arrangement, as this would place an undue weekly travel burden on the children and force them to attend two different schools.

Taking into account the wishes of the children – as noted by the social welfare authority (see paragraph 22 above) – to stay with their mother in Prague and to visit the applicant in Brno, the Regional Court ruled that it was clearly not in the children's best interests to be uprooted for two weeks every month and to impose on them a lifestyle change contrary to their own wishes. The contact rights granted to the applicant were considered sufficient to allow him to remain involved in caring for his children, with whom he enjoyed a very good relationship and who wished to continue seeing him. As it was the mother who had relocated with the children to a location that was more than 200 km away from the applicant without his consent, the court deemed it reasonable that the mother be responsible for collecting the children from Brno at the end of their visits with the applicant and to share half of the financial costs associated with their travelling.

24. By decision no. IV. ÚS 2049/23 of 17 October 2023, the Constitutional Court dismissed as manifestly ill-founded the applicant's constitutional appeal against the Regional Court's judgment of 20 April 2023 (see paragraph 23 above). In its view, the appellate court had taken account of all relevant elements and had convincingly explained why a shared custody arrangement was not a suitable option, given the specific circumstances of the case. It also observed that it was the responsibility of the parents to foster a non-stressful environment for their children and to have a healthy relationship with them.

25. From March 2023 onwards the mother refused to hand over the children to the applicant (see paragraph 20 above), prompting him to make repeated applications seeking the enforcement of the Regional Court's judgment of 20 April 2023.

26. It appears that in November 2023 the mother entered into an agreement with a specialised centre to facilitate the applicant's supervised visits with the children. It also appears from the case file that, although the applicant had not been a party to that agreement, he had complied with it and

several supervised visits had taken place between November 2023 and March 2024 (when the centre discontinued its involvement).

27. On 6 December 2023, after repeatedly ordering the mother to facilitate contact between the applicant and his children, the Prague 6 District Court – having received the case file on 31 August 2023 following the decision of the Brno Municipal Court to transfer territorial competence – ordered the enforcement of the decision of 20 April 2023 on the applicant's contact rights. It imposed several fines on the mother in respect of 11 missed visits between June and November 2023, noting that the mother's allegations of the applicant's inappropriate behaviour towards the children had not been substantiated. It also rejected the applicant's application seeking sole custody of his daughters, finding that the relevant circumstances had remained unchanged since the custody decision of 20 April 2023 and that it would undoubtedly be contrary to the children's best interests to change their place of residence. Accordingly, it granted the mother's application for a court order authorising the children's relocation and change of school in the absence of the applicant's consent (see paragraph 11 above).

28. On 21 May 2024 the Prague Municipal Court dismissed an application made by the applicant for increased contact with the children; furthermore, it largely upheld the District Court's judgment of 6 December 2023, and reduced the number of missed visits in respect of which the mother had been fined.

29. On 29 July 2024 the District Court was informed that an expert who had examined the applicant observed no signs of "deviance" *(deviace)* in him. On the same day, taking into account the fact that the children had expressed their wish to spend time with the applicant, the District Court ordered that the children be removed from the mother and handed over to the applicant for the purpose of his contact visit. Subsequent contact visits between the applicant and his children took place.

30. In its judgment of 24 September 2024, the District Court ruled that, according to the expert evidence, the applicant did not present any danger to the children. It fined the mother in respect of 12 missed handovers of the children between December 2023 and July 2024 and dismissed new applications made by the applicant and the mother for a change to the applicant's contact rights. The outcome of the subsequent appeal proceedings is unknown.

31. On 20 February 2025 the mother was convicted of obstructing the enforcement of the decision on the applicant's contact rights, was given a suspended sentence, and was ordered to seek psychological counselling.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CIVIL CODE

32. Article 858 of the Civil Code provides that parental responsibility encompasses the obligations and rights of parents relating to a child's care. That responsibility covers the child's health and supporting the child's physical, emotional, intellectual and moral development. It also involves ensuring the child's protection, maintaining personal contact, providing upbringing and education, determining the child's place of residence, representing the child's best interests, and managing the child's property.

33. Under Article 865 § 1 and Article 876 § 1, parental responsibility is shared by both parents who exercise it by mutual agreement.

34. Under Article 877 §§ 1 and 2, in cases where the parents are not in agreement about an issue of importance to the interests of the child, the courts will decide on that issue upon an application by a parent (such proceedings are governed by the Special Court Proceedings Act). This also applies when one parent excludes the other from making a decision on an issue of importance to the child. Important matters include non-routine medical or other interventions and decisions concerning the child's place of residence, education, and profession.

II. THE CODE OF CIVIL PROCEDURE

35. Under Articles 74 and 75 of the Code of Civil Procedure, a presiding judge may, upon an application made by a party, order an interim measure if it is temporarily necessary in order to adjust the parties' situation. Such a decision is taken without hearing the parties and without undue delay – but no later than seven days after the lodging of the application.

36. Under Article 102, the court may order an interim measure if it is necessary, after the initiation of proceedings, in order temporarily to adjust the parties' respective situations or if there are concerns that the execution of a court decision delivered during the proceedings could be jeopardised.

III. SPECIAL COURT PROCEEDINGS ACT (LAW NO. 292/2013)

37. Under section 12 of the Special Court Proceedings Act, if proceedings are initiated of the court's own motion, the court may also order an interim measure of its own motion.

38. A special interim measure under section 452 applies to situations where (i) the well-being of a minor child is endangered owing to a lack of proper care, or (ii) the child's life, normal development, or another important interest is seriously endangered or threatened. In issuing decisions on interim measures in order temporarily to adjust a child's situation, the child's best

interests are the overriding consideration, even where this outweighs the interest in preserving family relationships.

39. Section 454 provides that a court may order such interim measures only upon an application made by the social welfare authority. The court must take such a decision without undue delay, but in any event within 24 hours of the lodging of the application.

40. Pursuant to section 471 § 2, the court must decide on custody matters concerning minor children with urgency. In the absence of special circumstances, the court usually gives a decision on the merits within six months of the start of the proceedings. If the decision is given later than six months after the start of the proceedings, the court must give reasons why the time-limit was not met.

IV. CASE-LAW OF THE CZECH CONSTITUTIONAL COURT

41. In decision no. I. ÚS 955/15 of 14 March 2017 regarding (i) a mother's unilateral decision to move with the child (placed in shared custody) 200 km away from their previous residence and (ii) a subsequent interim measure granting her sole custody and granting the father fortnightly contact with the child, the Constitutional Court ruled that in a situation where a parent and the child had previously shared a common household, it was generally unacceptable (unless there were very serious reasons) that their contact be drastically reduced to four hours every two weeks. It also held that the distance between parents' homes was not in itself a reason for limiting contact. Reiterating that one parent cannot make a significant change to the child's place of residence against the will of the other parent, the court noted that a parent should not benefit from such unlawful conduct and that such conduct must be taken into account when determining custody and contact arrangements; for example, the handover of a child should, in principle, take place in that child's original place of residence.

42. In decision no. IV. ÚS 3332/17 of 13 February 2018, the Constitutional Court held that the decision to determine a child's place of residence was an element of parental responsibility shared by both parents and that, in a situation where one parent had unilaterally decided to change the child's place of residence, the other parent should not bear disproportionate costs as a result. As a matter of principle, a significant change to a child's place of residence could not be made against the will of the other parent and such a change should certainly not hinder the contact rights of the non-custodial parent. Nevertheless, the Constitutional Court noted that even in such situations, it would intervene only if it was in the best interests of the child.

43. In decision no. III. ÚS 188/18 of 3 April 2018, the Constitutional Court agreed with the appellate court that there was no urgent need and that it would not be in the best interests of the children in the case to order

an interim measure (as sought by the father) prohibiting the mother from relocating the minor children (who had been placed in her sole custody). The Constitutional Court noted that the mother had moved to her parents' house after the termination of her tenancy agreement and that the father could challenge her unilateral decision by bringing an action under the Civil Code. It also observed that the best interests of the children had to be respected not only by the courts but also by the parents, as parental disagreements regarding the children's upbringing might hinder the children's psychological development.

44. In judgment no. I. ÚS 3784/19 of 1 June 2020, the Constitutional Court quashed the appellate court's decision which, without having been supported by any evidence, had found no reason to respect or reinforce a mother's unilateral decision to change her children's place of residence and to place the children in the father's custody in order to protect his parental rights. In doing so, the appellate court had failed to take into account the overall circumstances of the case and to prioritise the best interests of the minor children.

45. By decision no. II. ÚS 765/21 of 30 March 2021, the Constitutional Court dismissed a constitutional appeal lodged by a mother against an interim measure ordering her, at the father's request, to return their minor child to his previous place of residence after she had unilaterally relocated with him 150 km away against the father's wishes.

46. By decision no. I. ÚS 2570/21 of 11 January 2022, the Constitutional Court dismissed a constitutional appeal lodged by a mother, who had unilaterally relocated with the child and had only thereafter sought a court interim measure authorising the children's relocation in the absence of the father's consent for the move. The appellate court had rejected that application and had ordered the mother to return the child to her original place of residence and school. The Constitutional Court endorsed the appellate court's line of reasoning, blaming the mother for hindering the father's contact rights and disrespecting the rights of both the father and the child. It also endorsed the appellate court's conclusion that there was an urgent need to regulate the child's situation by means of an interim measure ordering the child's return; otherwise the child would have risked being permanently alienated from her father, contrary to her best interests. It noted that, as the proceedings on the merits (regarding the mother's application for a court order authorising the children's relocation in the absence of the father's consent) were likely to last a long time, it would be unacceptable in the meantime to endorse the mother's unlawful conduct. By unilaterally deciding on an important issue concerning the child, she had abused her parental responsibility – to the detriment of both the child and the father.

47. In judgment no. I. ÚS 3399/23 of 28 February 2024, the Constitutional Court considered that the unilateral relocation of a minor child by his mother, against the wishes of the father, had amounted to "domestic abduction".

Given the circumstances of the case, the courts had been called to ensure of their own motion the effective protection of the right to family life of the other parent and the child – even though they had found the applications for an interim measure made by the father and the child's guardian to be unfounded. Indeed, section 12 of the Special Court Proceedings Act enabled the courts to order of their own motion an interim measure under Article 102 of the Code of Civil Procedure – even where the conditions for ordering a special interim measure under section 452 of the above Act were not met. The Constitutional Court also observed that deferring the resolution of the issue to a later stage could, with the passage of time, directly hinder the best interests of the minor child.

V. CONCLUSIONS REACHED BY A FAMILY-LAW SYMPOSIUM ORGANISED BY THE CZECH JUDICIAL ACADEMY ON THE UNLAWFUL CHANGE OF A MINOR CHILD'S RESIDENCE BY ONE OF THE PARENTS

48. A family-law symposium organised by the Czech Judicial Academy on the unlawful change of a minor child's residence by one of the parents – attended by numerous judges and experts – had the aim of finding model solutions that met the requirements of a modern childcare justice system. The conclusions reached by that symposium, as revised on 25 October 2024, read as follows in their relevant parts:

> "It is primarily [the obligation of] the parent who intends to change the child's place of residence to discuss that situation with the other parent within a reasonable time before the move – irrespective of whether he or she has been granted custody of the child. If no agreement can be reached, the parent must ask the court to determine the child's place of residence. Until the court's decision is made, he or she is not entitled to change the child's place of residence. ...
>
> If one parent has changed the place of residence of a minor child, the parent who does not agree with the change can request, within a reasonable time, an interim measure by means of which he or she can either ask to be granted interim custody of the child (if there is no previous court decision granting him custody) or that the child be returned to the previous place of residence. ...
>
> A parent who has unilaterally changed a minor child's place of residence without the agreement of the other parent or without a court decision has acted wrongfully – irrespective of whether he or she had been granted custody. This does not automatically mean that a court should, upon the application of the other parent or of its own motion, restore the previous status quo. It will always be necessary to assess the reasons which led the parent to change a place of residence unlawfully and to give primary consideration to the child's best interests. The return of the child should generally be ordered if there is a risk of harm to the relationship between the child and the parent. If the court does not order the return, it should – [if need be] of its own motion – adjust the child's situation on an interim basis; the child's handover should then take place primarily at his or her previous place of residence."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

49. The applicant complained that by granting sole custody to the mother after she had unlawfully relocated with the children to another city and by awarding him limited contact rights, the Regional Court had breached his right to respect for family life. He relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his (...) 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."

A. Admissibility

50. The Government submitted that, in so far as the applicant complained of the Regional Court's failure to act with sufficient flexibility and speed, he had not exhausted the available domestic remedies, as he had not used the preventive remedy provided for in section 174a of the Courts and Judges Act, or the compensatory remedy provided for by the State Liability Act. In this connection, they referred to the Court's judgment in *Drenk v. the Czech Republic* (no. 1071/12, §§ 69-70, 4 September 2014). They noted that the applicant had made only two applications for the examination of his case to be expedited (see paragraph 18 above) but, contrary to his arguments before the Court, neither could amount to actions under the Courts and Judges Act.

51. The applicant argued that his above-mentioned actions in the Regional Court should, according to their contents, be considered as having been filed under section 174a of the Courts and Judges Act. He further submitted that the compensatory remedy had been ineffective as it was incapable of having any positive impact on his family life or providing him with adequate redress.

52. The Court observes that in the relevant part of the application form the applicant complained under Article 8 of the Convention that the Regional Court's decision had validated the mother's wrongful conduct and had disregarded his parental rights. He further asserted, referring to the Court's judgment in *Koudelka v. the Czech Republic* (no. 1633/05, § 68, 20 July 2006), that the Regional Court had not acted with sufficient flexibility since it had enabled the unlawful situation to continue for eight months and it had thereafter based its decision on the fact that the children had, in the meantime, adapted to their new environment.

53. Considering the wording of the applicant's complaint, and despite the arguments put forward in his subsequent observations, the Court does not consider that the length of the proceedings in the Regional Court is an issue which lies at the heart of the present application or that the applicant should

be blamed for not having exhausted domestic remedies pertaining to length-of-proceedings complaints under Article 6 of the Convention (see *Drenk*, cited above).

54. Accordingly, the Court is of the view that the remedies suggested by the Government are unrelated to the core issue of the application, and that the Government's objections in that regard must therefore be dismissed.

B. Merits

1. The parties' arguments

55. The applicant argued that the interference with his rights under Article 8 of the Convention had not been in line with domestic law and had breached the relevant settled case-law. In that regard, he argued that the Constitutional Court case-law relied on by the Government (see paragraphs 42-44 above) was irrelevant, as his children had not been placed in the mother's sole custody before the relocation, and were not suffering from any health issues. He instead relied on the Constitutional Court's decision of 14 March 2017 (see paragraph 41 above), which he submitted was the leading authority in similar matters. He inferred from the Constitutional Court's decisions of 30 March 2021 and 28 February 2024 (see paragraphs 45 and 47 above) that, in circumstances similar to his own, the courts could order an interim measure of their own motion ordering a parent to return the child to his or her previous place of residence. Given that in his case the courts had made no effort to redress the unlawful situation caused by the mother's unilateral decision to relocate the children and, moreover, had rejected his applications for interim measures, he submitted that they had not pursued any legitimate aim or prioritised the children's best interests and had therefore failed to strike a fair balance between the interests at stake.

56. Furthermore, referring to the Constitutional Court's case-law requiring the courts to properly ascertain (if possible directly) the child's opinion when determining the child's best interests, the applicant submitted that in the present case the courts had failed to properly establish the children's views. He mainly criticised the fact that, when deciding on his application for an interim measure, the Municipal Court had sought only the guardian *ad litem*'s opinion (see paragraph 14 above), without hearing the children directly. He also argued that the courts had failed to contact the children directly and had disregarded their genuine views, which (despite their young age) the children were capable of articulating. As a result, the Regional Court had wrongly concluded that the children preferred being with their mother. In the applicant's view, the courts had therefore violated the children's right to be heard directly by the court.

57. The applicant also emphasised that, according to the domestic courts' findings, he had a very good relationship with his daughters and no deficiencies had been found in his caregiving or parenting skills. In his view,

preference should therefore have been given to granting him sole custody, as the mother had acted unlawfully (he referred in that regard to the Constitutional Court's decision cited in paragraph 41 above). However, instead of rectifying the mother's arbitrary decision to relocate the children and ordering her to return them to their place of residence – in keeping with the objective of protecting the children's stable environment – the courts had allowed the outcome of the case to be *de facto* determined by the mere passage of time. Such an approach could not be regarded as proportionate.

58. The Government noted, at the outset, that the domestic courts had dealt with the applicant's case while the divorce proceedings had been pending, that communication between the applicant and the children's mother had been undermined by mistrust, and that the original agreement on shared custody (see paragraph 5 above) had broken down.

59. The Government conceded that the Regional Court's judgment of 20 April 2023 (placing the children in the mother's sole custody) had interfered with the applicant's rights under Article 8. They maintained, however, that the judgment had (i) been based on the Civil Code and on the relevant case-law; (ii) pursued the legitimate aim of protecting the children's interests; and (iii) struck a fair balance between the interests at stake. They emphasised that the Regional Court had been best placed to assess the overall family situation and had demonstrated its commitment to finding the solution for the children which was the most appropriate and the least intrusive and which would protect their emotional and psychological stability. Moreover, it had set out in detail why it had considered it appropriate – despite the fact that the mother had unilaterally relocated with the children to Prague without the applicant's consent – to prioritise the children's need for a safe and stable environment in which they were happy, and why a shared custody arrangement (which would have required uprooting the children from their home in Prague every week and extensive travelling and their attending two different schools) no longer corresponded to their best interests. By taking that approach, it had also taken into account the children's views – which, in the light of their young age – had been established through the social welfare authority. The Government were therefore convinced that the Regional Court's judgment had been supported by relevant and sufficient reasons.

60. The Government further submitted that in both the proceedings on interim measures and those on the merits, the best interests of the children had been the primary concern of the courts when weighing up the respective interests of the parties. The children's positive relationship with the applicant and their wish to continue seeing him had been reflected in the final decision on the applicant's contact rights, which had sought to preserve and develop their family relationship. In this connection, the Government submitted that, after the end of the custody proceedings, the competent court had taken appropriate measures aimed at ensuring the enforcement of the applicant's contact rights.

61. Furthermore, the Government maintained that the custody proceedings had been conducted with the requisite diligence and that the applicant had been duly involved in the decision-making process, in so far as he had been represented by a lawyer, had attended the court hearings in person and had availed himself of the opportunity to make oral and written submissions and to make use of available remedies.

62. Lastly, the Government disagreed with the applicant's argument (see paragraph 55 above) that in a case involving the unilateral relocation of a child by one parent, the domestic courts usually order an interim measure of their own motion. Moreover, to the extent that the applicant argued in his observations that his right to respect for family life had been breached by the courts' failure to order an interim measure and by their failure to hear the children directly, the Government noted that those arguments had not been raised either at the domestic level or in the applicant's application to the Court.

2. The Court's assessment

63. The parties did not dispute that the decision refusing the applicant custody of his children and granting him limited contact rights had amounted to an interference with his right to respect for his family life as guaranteed by Article 8 § 1 of the Convention. Having regard to its case-law on the matter, the Court sees no reason to hold otherwise. Indeed, the decision in question had restricted the applicant's enjoyment of his daughters' company, it being understood that the mutual enjoyment by a parent and a child of each other's company constitutes a fundamental element of family life protected by Article 8 (see, for example, *Iosub Caras v. Romania*, no. 7198/04, §§ 29-30, 27 July 2006, and *Adžić v. Croatia (no. 2)*, no. 19601/16, § 79, 2 May 2019).

64. The Court reiterates in this context that although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference. In addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private and family life. These obligations may involve the adoption of measures designed to secure respect for private and family life even in the sphere of the relations of individuals between themselves. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance to be struck between the competing interests (see, among many other authorities, *S.H. and Others v. Austria* [GC], no. 57813/00, § 87, ECHR 2011).

65. In the present case the Court does not consider it necessary to decide whether it would be more appropriate to analyse the case as one concerning a positive or a negative obligation since it is of the view that the core issue in

the present case is whether a fair balance was struck between the competing interests involved.

66. In answering that question, the Court has to assess whether, in the light of the case as a whole, the reasons adduced to justify the impugned decision were relevant and sufficient and whether the domestic courts took all reasonable measures to react to the children's mother's behaviour and to secure the applicant a regular contact with his children (see, *mutatis mutandis*, *A.T. v. Italy*, no. 40910/19, §§ 78 and 82, 24 June 2021). Undoubtedly, consideration of what lies in the best interests of the child is of crucial importance in every case of this kind. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. 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 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, *Sahin v. Germany* [GC], no. 30943/96, § 64, ECHR 2003-VIII, and *Z.J. v. Lithuania,* no. 60092/12, § 96, 29 April 2014).

67. 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, *Petrov and X v. Russia*, no. 23608/16, § 98, 23 October 2018, and *Giannakopoulos v. Greece*, no. 20503/20, § 51, 3 December 2024).

68. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Thus, the Court has recognised that the authorities enjoy a wide margin of appreciation when deciding on custody matters. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (see *Sahin*, cited above, § 65).

69. Turning to the present case, the Court observes that when they stopped living together in April 2021 (see paragraph 5 above), the applicant and the children's mother agreed to share custody of the children. However, in her subsequent petition for divorce, the mother sought sole custody and, from January 2022, stopped observing the above-mentioned agreement (although she continued to allow the applicant to have regular contact with the children

– see paragraph 7 above). While the applicant's application for shared custody by means of an interim arrangement was initially dismissed, it was subsequently granted by the first-instance court in the proceedings on the merits (see paragraphs 8 and 9 above). However, before the mother's appeal against that judgment was heard, she relocated with the children to Prague – 200 km from their original place of residence in Brno – and enrolled them in a school there, without the applicant's knowledge or consent. By relocating, she not only obstructed the applicant's contact with his children, but also acted in breach of domestic law. Indeed, under the Czech Civil Code, the right to decide on the children's place of residence forms part of the parental responsibility exercised jointly by both parents. In the event of disagreement, one of the parents has to bring the matter before a court (see paragraphs 32-34 above, and the Constitutional Court's judgment cited in paragraph 47 above, which ruled that such a unilateral relocation to amount to "domestic abduction"). It must be noted that, in the present case, instead of asking the court beforehand to determine the children's place of residence, the mother sought a court order authorising the change of the children's place of residence, in the absence of the applicant's consent, only *ex post factum* (see paragraph 11 above).

70. The Court notes that, in such circumstances, the State authorities were expected to take measures to reconcile the conflicting interests of the parties, keeping in mind the paramount interests of the children (see, in general, *Neulinger and Shuruk*, cited above, § 135, and *Z. v. Poland*, no. 34694/06, § 75, 20 April 2010). Namely, they were expected to use all reasonable means to avoid disrupting ties and personal relations between the applicant and his children, including, where appropriate, by restoring – pending a final decision on custody – the status quo that had existed before the children's unlawful relocation (see, *mutatis mutandis*, *X v. Latvia* [GC], no. 27853/09, § 97, ECHR 2013, and *Michnea v. Romania*, no. 10395/19, § 37, 7 July 2020).

71. The Court observes that the applicant asked the courts to order interim measures ensuring the children's return to their previous place of residence and granting him custody (see paragraphs 13 and 16 above). By doing so, he provided the courts with sufficient opportunity to redress the situation created by the mother's wrongful conduct, which was detrimental both to him and to the minor children. The applicant argued that the courts should have ordered an interim measure of their own motion (see paragraph 55 above) in response to the mother's conduct; the Government contested that argument (see paragraph 62 above). The Court does not consider it necessary to deal with this issue, which depends on the interpretation of domestic law.

72. However, the applicant's application for interim measures was dismissed by the first-instance court on the grounds, in essence, that the children were not exposed to a level of danger sufficiently serious as to necessitate such intervention (see paragraphs 15 and 16 above). In taking that approach, the court referred to the reasoning of the Regional Court's decision

of 14 June 2022 (see paragraph 8 above) according to which the applicant continued to have access to the children and the mother remained responsible for taking care of them. According to the Court, however, such an argument cannot be construed as constituting an effective examination of the children's best interests, but rather as a mere observation of the situation at that particular moment (see, *mutatis mutandis*, *Cristian Cătălin Ungureanu v. Romania*, no. 6221/14, § 32, 4 September 2018). The Court observes, furthermore, that no consideration was given to the fact that the situation had significantly changed owing to the children's unlawful relocation – which had interrupted their regular contact with the applicant – or to the fact that, at that time, no enforceable decision on custody had been adopted. Also, no mention was made of the mother's conduct or of any attempt to establish the reasons for her relocation. Admittedly, while the appellate court acknowledged that the mother had acted unlawfully and took into account the children's best interests (see paragraph 17 above), it, like the first-instance court, left the issue to be addressed in the proceedings on the merits, disregarding the crucial importance of time in matters involving children. The Court notes that in this way the resolution of the situation was postponed until a future date, a practice previously criticised by the Constitutional Court – see paragraphs 46-47 above).

73. The Court reiterates in this connection that, according to its established case-law, effective respect for family life requires that future relations between parent and child be determined solely in the light of all relevant considerations and not by the mere effluxion of time (see, among many others, *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 212, 10 September 2019). Proceedings relating to an award of parental responsibility – including the enforcement of a final decision – require urgent handling, as the passage of time can have irremediable consequences for relations between the child and the non-resident parent (see *M.A. v. Austria*, no. 4097/13, § 109, 15 January 2015). Similarly, because of their very nature and purpose, applications for interim custody measures must normally be treated with a certain degree of priority, unless there are specific reasons not to do so (see *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 68, 12 June 2008).

74. In the present case, the Court is of the view that the domestic court's dismissal of the applicant's applications for interim measures and the absence of a decision granting him enforceable contact rights necessarily resulted, with the passage of time, in the consolidation of the situation unlawfully created by the mother; this rendered the possibility for the applicant to obtain sole or shared custody of his children merely theoretical. Moreover, such a sequence of events was likely to foster a sense of impunity on the part of the mother, who subsequently continued to obstruct the applicant's contact with his daughters by accusing him, apparently without substantiation, of inappropriate behaviour towards one of them (see paragraphs 20 and 25 above).

75. The Court observes that, in the present case – despite the above-mentioned risk – the appellate proceedings on custody proceeded as normal, and the sole provision intended to ensure promptness – section 471 § 2 of the Specific Court Proceedings Act (see paragraph 40 above) – was not complied with. The subsequent decision of 20 April 2023 limiting the applicant's access to his daughters to every second weekend and to part of the school holidays was based largely on the fact that the circumstances had significantly changed since the first-instance court's decision on shared custody, given that the children had adapted to their new environment (where they had been living for eight months). The court deemed that, although both parents were clearly capable of caring for the children, the distance between their respective homes precluded shared custody, because it would require the children to undertake onerous weekly travel and attend two different schools (see paragraph 23 above).

76. Although the reasons adduced by the Regional Court to justify its decision may be considered relevant, the Court is not convinced that they were also sufficient. The Court observes, firstly, that the domestic courts failed to give due consideration to the reasons for the significant change of circumstances and to the applicant's unsuccessful attempts to prevent it. Secondly, it does not appear from the decision that the court took into account the fact that the unlawful relocation of the children should not be of benefit to the parent responsible for it, or that such disregard for the rights of the other parent should influence the decision on custody and contact arrangements (see paragraph 41 above). Among other things, although the Regional Court appeared intent on sanctioning the mother's conduct, it merely obliged her to organise and pay for the children's return travel arrangements from the applicant's place of residence following contact visits (see paragraph 23 *in fine* above). Lastly, no regard was had to the applicant's demonstrable interest in and commitment to maintaining a proper and permanent relationship with his children (see paragraph 26 above).

77. Ultimately, the Court considers that the decision of 6 December 2023 on the mother's application for a court order authorising the children's relocation and change of school in the absence of the applicant's consent (see paragraph 27 above) – a decision which the applicant had been instructed to await (see paragraph 17 *in fine* above) – effectively legitimised the mother's actions. The fact that she was later fined and subjected to criminal prosecution for failing to respect the applicant's contact rights (see paragraph 23, 30-31) came too late to compensate for the lack of earlier measures against her.

78. In the light of the foregoing, the Court considers that the domestic courts failed to strike a fair balance between the interests of all the parties involved in the proceedings.

79. There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

81. The applicant claimed 35,000 euros (EUR) in respect of non-pecuniary damage. In this respect, he emphasised the seriousness of the violation of his rights and the long-term consequences thereof.

82. The Government considered that amount to be highly excessive, given that the applicant had maintained contact – in person and online – with his daughters.

83. The Court considers that the applicant must have sustained non-pecuniary damage that cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

84. The applicant also claimed EUR 9,706 for the costs and expenses incurred in the domestic proceedings and EUR 2,798 for those incurred before the Court. He submitted itemised invoices issued by his lawyers, from which it appears that the lawyer representing him before the Court is a registered VAT payer.

85. The Government noted that the present application covered only the period from 28 August 2022 – when the children's mother informed the applicant of the relocation – to the Constitutional Court's decision of 17 October 2023. All the costs incurred before and after that period, and any undated invoices, should not therefore be considered relevant.

86. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, and the above-noted criteria, the Court considers it reasonable to award the sum of EUR 3,000 for costs and expenses in the domestic proceedings and the sum of EUR 2,798 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,798 (five thousand seven hundred and ninety-eight euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 April 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Andreas Zünd President