



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

Legal summary

April 2026

Novák v. the Czech Republic - 6656/24

Judgment 9.4.2026 [Section V]

Article 8

Article 8-1

Respect for 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: *violation*

Facts – The applicant and the mother of his two daughters stopped living together in April 2021 and agreed to share custody of the children. In her divorce petition the mother sought sole custody and, from January 2022, stopped observing their agreement (although she continued to allow the applicant regular contact with the children). In June 2022, while the proceedings were pending, the appellate court rejected the applicant's application for an interim shared custody measure. In July 2022 the first-instance court awarded the parents shared custody.

Before the mother's suspensive appeal against this judgment was heard, she relocated with the children to Prague – 200 km from their original place of residence – and enrolled them in a school there, without the applicant's knowledge or consent. Subsequently, in August 2022, she sought a court order authorising the children's relocation and change of school. The applicant unsuccessfully applied for interim measures seeking custody and the children's return to their original place of residence. His appeals were dismissed in December 2022; the appellate court held that there was no urgent need to adjust the children's situation by means of an interim measure and that the issue of their place of residence and schooling was to be determined in proceedings on the merits.

In April 2023 the appellate court overturned the first-instance judgment on shared custody granting the mother sole custody and the applicant contact rights every second weekend and during holidays.

The applicant's constitutional appeals against the decision of December 2022 and the judgment of April 2023 were dismissed.

From March 2023 onwards the mother refused to hand over the children to the applicant.

In December 2023, after repeatedly ordering the mother to facilitate contact between the applicant and his children, another first-instance court – to which territorial competence had been transferred – ordered the enforcement of the judgment of April 2023, imposed several fines on the mother, rejected the applicant's application for

sole custody and authorised the children's relocation and change of school in the absence of the applicant's consent.

By subsequent decisions between May 2024 and February 2025, the domestic courts, *inter alia*, dismissed the applicant's claim for increased contact with his children and applications made by both him and the mother for a change to his contact rights, fined the mother in respect of missed handovers of the children, and convicted her of obstructing the enforcement of the decision on the applicant's contact rights, giving her a suspended sentence and ordering her to seek psychological counselling.

Law – Article 8:

By relocating with her children to Prague, the mother had not only obstructed the applicant's contact with his children, but had also acted in breach of domestic law under which the right to decide on the children's place of residence formed part of the parental responsibility exercised jointly by both parents. In the event of disagreement, one of the parents had to bring the matter before a court. Instead of asking the court beforehand to determine the children's place of residence, the mother had sought a court order authorising the change of their place of residence, in the absence of the applicant's consent, only *ex post factum*.

In such circumstances, the State authorities had been expected to take measures to reconcile the conflicting interests of the parties, keeping in mind the paramount interests of the children. Namely, they had been 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.

By seeking interim measures for custody and to ensure the children's return to their previous place of residence, the applicant had provided the courts with sufficient opportunity to redress the situation created by the mother's wrongful conduct, which had been detrimental both to him and to the minor children. The first-instance court had dismissed his application for interim measures essentially on the ground that the children had not been exposed to a level of danger sufficiently serious as to necessitate such intervention with reference to the reasoning of the appellate court's decision of June 2022 according to which the applicant had continued to have access to the children and the mother had remained responsible for taking care of them. However, such an argument could not 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. No consideration had been 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 had been made of the mother's conduct or of any attempt to establish the reasons for her relocation. While the appellate court had acknowledged that the mother had acted unlawfully and had taken into account the children's best interests, like the first-instance court, it had left the issue to be addressed in the proceedings on the merits, disregarding the crucial importance of time in matters involving children. The resolution of the situation thus had been postponed until a future date. That practice had been previously criticised by the Constitutional Court.

The dismissal of the applicant's applications for interim measures and the absence of a decision granting him enforceable contact rights had resulted, with the passage of time, in the consolidation of the situation unlawfully created by the mother, rendering the possibility for him to obtain sole or shared custody of his children merely theoretical. Moreover, such a sequence of events had been likely to foster a sense of impunity on the part of the mother, who had subsequently continued to obstruct the applicant's contact

with his daughters by accusing him, apparently without substantiation, of inappropriate behaviour towards one of them.

Despite that risk, the appellate proceedings on custody had proceeded as normal and had not complied with the domestic law requirement for courts to decide on custody matters concerning minor children with urgency. The judgment of April 2023 had been based largely on the fact that the circumstances had significantly changed since the first-instance judgment on shared custody, given that the children had adapted to their new environment (where they had been living for eight months). The appellate court had deemed that, although both parents had been clearly capable of caring for the children, the distance between their respective homes had precluded shared custody, because it would have required the children to undertake onerous weekly travel and attend two different schools. Although the reasons adduced might be considered relevant, the Court was not convinced that they had also been sufficient. No due consideration had been given to the reasons for the significant change of circumstances and to the applicant's unsuccessful attempts to prevent it. Nor did it appear that had it been considered 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. Although the appellate court had appeared intent on sanctioning the mother's conduct, it had merely obliged her to organise and pay for the children's return travel arrangements from the applicant's place of residence following contact visits. Lastly, the applicant's demonstrable interest in and commitment to maintaining a proper and permanent relationship with his children had not been considered.

Ultimately, the decision of December 2023 authorising the children's relocation and change of school in the absence of the applicant's consent – a decision which the applicant had been instructed to await when his applications for interim measures had been dismissed – had effectively legitimised the mother's actions. The fact that she had been later fined and subjected to criminal prosecution for failing to respect the applicant's contact rights had come too late to compensate for the lack of earlier measures against her.

Accordingly, the domestic courts had failed to strike a fair balance between the interests of all the parties involved in the proceedings.

Conclusion: violation (unanimously).

Article 41: EUR 12,000 in respect of non-pecuniary damage.

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