CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Applications nos. 55762/00 and 55974/00
by Ilyas TIMISHEV
against Russia

The European Court of Human Rights (Second Section), sitting on 30 March 2004 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr A. KOVLER,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above applications lodged respectively on 25 February and 9 March 2000,

Having regard to the partial decision of 8 July 2003 as well as the decision of the same date to join the applications,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ilyas Yakubovich Timishev, is a Russian national who was born in 1950 and lives in the town of Nalchik, in the Kabardino-Balkaria Republic of the Russian Federation. The applicant is a lawyer. The

respondent Government are represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant is an ethnic Chechen; he was born and lived in the Chechen Republic. On 31 December 1994 his property in the town of Groznyy was destroyed as a result of a military operation. Since 15 August 1996 the applicant has been living in Nalchik as a forced migrant.

In 1997 the applicant applied for permanent residence registration in Nalchik. His application was refused by reference to the local laws of Kabardino-Balkaria prohibiting former residents of the Chechen Republic from obtaining permanent residence in Kabardino-Balkaria. The refusal of the local authorities was upheld by the Nalchik Town Court on 19 September 1997 and by the Supreme Court of the Kabardino-Balkaria Republic on 23 October 1997.

1. Alleged denial of the right to liberty of movement

On 19 June 1999 the applicant and his driver travelled by car from Nazran in Ingushetia to Nalchik in Kabardino-Balkaria.

According to the applicant, at about 3 p.m. their car was stopped at check-point "Urukh" on the administrative border between Ingushetia and Kabardino-Balkaria. Officers of the State Inspectorate for Road Safety of Kabardino-Balkaria (*ГИБДД МВД КБР*) refused him entry referring to an oral instruction of the Ministry of the Interior of Kabardino-Balkaria not to admit persons of Chechen ethnic origin. He had to turn round and make a detour of 300 kilometres to reach Nalchik through a different check-point.

According to the Government, the applicant attempted to jump the queue of cars waiting for their turn at the check-point, but he was refused priority treatment and had to leave.

The applicant complained to a court about the unlawful acts of police officers; he also claimed compensation for non-pecuniary damage.

On 25 August 1999 the Nalchik Town Court found that, by an order of the head of the State Inspectorate for Road Safety of the Kabardino-Balkaria Republic, in force as of 2 p.m. on 19 June 1999, the police had been instructed to enforce a stricter control of vehicles and passengers at check-points. The court questioned the officers who had been on duty on 19 June 1999. They maintained that on that day stricter controls had resulted in a longer queue of waiting cars and people; the applicant's car had attempted to jump the queue, but had been refused priority treatment; the applicant had not been denied entry because of his ethnic origin. Moreover, on the same

day, over seventy buses with Chechen passengers had been allegedly admitted. The court noted that the applicant had, in any event, gained entry into Kabardino-Balkaria through a different check-point. It concluded that there had been no violation of the applicant's right to liberty of movement and dismissed his complaint.

On 21 September 1999 the Supreme Court of the Kabardino-Balkaria Republic upheld, on the applicant's appeal, the judgment of 25 August 1999. The court pointed out that the burden of proof was on the applicant who failed to show that he had been denied entry because of his Chechen origin.

On 5 October 1999 and 26 January 2000 the Supreme Court of the Kabardino-Balkaria Republic refused the applicant's requests for supervisory review.

The applicant also complained to the Russian Ombudsman and to the Prosecutor General of the Russian Federation.

On 1 February 2000 a prosecutor of the Main directorate for the North Caucasus of the Prosecutor General's office (*прокурор отдела Главного Управления Генеральной прокуратуры РФ на Северном Кавказе*) informed the applicant that, following an inquiry into the facts, the prosecutor's office had ordered the Ministry of the Interior of Kabardino-Balkaria to remove a violation of Article 27 of the Russian Constitution (*представление об устранении нарушений статьи 27 Конституции РФ*) committed by officers of the State Inspectorate for Road Safety and to take measures to avoid similar violations in the future. The report on the violation attached to the order and dated 19 August 1999 read, in the relevant part, as follows:

> "The Prosecutor's General office inquired into [the applicant's] complaint about unlawful actions of [police officers]... It has been established that on 19 June 1999 [the applicant] and his driver V., on passage from the town of Nazran in the VAZ-2106 car, were stopped by police officer Kh. at check-point 'Urukh' for an inspection of the car and an identity check; following the identity check they were denied entry into Kabardino-Balkaria.
>
> Junior sergeant Kh., questioned during the inquiry, explained that at a staff meeting, before taking over his duty, he had received an oral instruction from the shift commander warrant officer M. not to allow persons of Chechen ethnic origin travelling by private cars from the Chechen Republic to enter Kabardino-Balkaria. From the explanation given by warrant police officer M. it follows that he had also received a similar oral instruction from the operative officer on duty in the Ministry of the Interior of Kabardino-Balkaria... On the basis of the foregoing, [the applicant and his driver] were refused entry into Kabardino-Balkaria, although they did not engage in any unlawful activity...
>
> Thus, the actions of [police officers] M. and Kh... have grossly violated the constitutional rights of Russian nationals of Chechen ethnic origin who freely move within the territory of the Russian Federation... These encroachments on the rule of law were caused as a result of the irresponsible approach of road police officers to

their service duties and weak control [over their actions] on the part of the leadership of the road police department of the Ministry of Interior of Kabardino-Balkaria...”

On 3 March 2000 Lieutenant-General Shoguenov, the Minister of the Interior of the Kabardino-Balkaria Republic, forwarded a summary of the results of an internal inquiry to a human rights activist who had lodged complaints on behalf of the applicant. The summary bore no date and it was signed by Colonel Temirzhanov, deputy head of the internal security department of the Ministry of the Interior, confirmed by Colonel Kerefov, head of the internal security department, and approved by the Minister of the Interior himself. The summary established:

“When questioned... by employees of the prosecutor's office of the Kabardino-Balkaria Republic, Kh. [the officer who stopped the applicant] explained that at a staff meeting, before taking over his duty, he had received an oral instruction from the shift commander M. not to allow persons of Chechen ethnic origin travelling by private cars from the Chechen Republic to enter the territory of the Kabardino-Balkaria Republic. M. justified giving such an instruction by reference to a similar oral instruction that he had received from the deputy head of the public safety police of the Ministry of the Interior, Colonel Efendiyev...

On 25 August 1999 ... the Nalchik Town Court decided to dismiss [the applicant's] complaint because the [police] officers who had initially maintained that they had not let the said persons enter the Kabardino-Balkaria Republic, pursuant to an oral instruction by Colonel Efendiyev, started to insist before the court that [the applicant and his driver] had wanted to pass the check-point without waiting in the queue, had been refused and left...”

The summary then went on to praise the achievements of local police officers on duty at check-points who had seized large quantities of weapons, drugs, counterfeit currency, etc., and had detained many wanted persons. Colonel Temirzhanov concluded:

“1. Information on the prohibition on entry into the Kabardino-Balkaria Republic by officers at the Urukh check-point of [the applicant and his driver] on the ground of their ethnicity ... shall be considered untrue on the basis of the legally binding court judgments in the matter.

2. Because of their low morale and professional qualities, which became apparent when they gave contradictory statements to the Ombudsman, the Prosecutor's office and the City and Supreme courts of the Kabardino-Balkaria Republic concerning the circumstances of the prohibition on entry of [the applicant and his driver], officers of the State Inspectorate for Road Safety, M. and Kh., should be subject to disciplinary liability. However, having regard to the fact that the [applicant's] complaint was dismissed as unsubstantiated by the Nalchik Town and Supreme Courts, M. and Kh. are to be discussed at a meeting of the heads of the State Inspectorate for Road Safety and the measures taken shall be reported to the internal security department.”

The summary concluded with a recommendation to avoid in the future similar situations impairing the constitutional rights of citizens.

It appears that the summary was prepared in late August – early September 1999 because on 29 September 1999 Mr Shoguenov reported to

the Prosecutor General's office that the order to remove the violation could not be implemented. He referred to the conclusions of the summary and the court decisions alleging that the applicant and his driver had attempted "to pass the check-point without waiting their turn in the queue" and that they had "failed to produce passports, mission orders or migrants' cards". The Minister concluded as follows:

> "Having regard to these court decisions and bearing in mind the specific conditions of the service at check-points [on the border] with adjacent crime-generating regions that are often under fire, which leaves a certain mark on the regime and nature of the service of police officers... it has been suggested to discuss these events at an operative meeting in the division".

Finally, on 12 July 2000 Mr Volodin, head of a department in the office of the Russian Ombudsman, responded thus to the applicant's complaint:

> "As it follows from the response of the Prosecutor General's office, the restriction of the constitutional rights of citizens to freedom of movement on the border of the Kabardino-Balkaria Republic was effected in connection with the threat of penetration of subversive groups of armed bandits into its territory and the restriction was only effective for a short period of time. Pursuant to Article 56 of the Constitution of the Russian Federation, the said restriction was legitimate."

2. Litigation over child benefits

On 1 April 1998 the applicant began paying taxes and social contributions in Kabardino-Balkaria. Subsequently he applied to a social security office for child benefits. His application was refused by the Ministry of Labour and Social Development of Kabardino-Balkaria because he had no permanent residence registration in Nalchik which made him ineligible for the benefits. The applicant appealed to a court.

On 18 February 2000 the Nalchik Town Court dismissed the applicant's claim.

On 21 March 2000 the Supreme Court of the Kabardino-Balkaria Republic quashed the judgment of 18 February 2000 and remitted the case for a new examination. The court pointed out that the first-instance court had failed to take into account that every parent who is a Russian citizen should be entitled to child benefits at the place where he lived and official residence registration could not be a prior condition for the receipt of emoluments.

On 23 August 2000 the Nalchik Town Court again dismissed the applicant's claim. The court established that the substantive right of the applicant to receive child benefits was undisputed. However, the applicant had failed to obtain residence registration, pursuant to the relevant regulations, and had refused to give any explanations on this matter before the court, claiming that this issue was immaterial for the determination of his claim. According to the court, the burden of proof was on the applicant,

and the latter had failed to show that he was eligible for child benefits in the town of Nalchik.

On 12 September 2000, on the applicant's appeal, the Supreme Court of the Kabardino-Balkaria Republic upheld the judgment of 23 August 2000.

On 5 September 2002 the Presidium of the Supreme Court of the Kabardino-Balkaria Republic quashed, by way of supervisory-review proceedings, the judgments of 23 August and 12 September 2000 and remitted the case for a new examination.

On 28 November 2002 the Nalchik Town Court granted the applicant's claim for child benefits. The court also ordered a retroactive adjustment of the outstanding amounts in order to take account of inflation. However, the court refused an award in respect of default penalty interest.

On 25 December 2002 the Supreme Court of the Kabardino-Balkaria Republic quashed the judgment of 28 November in the part concerning the default penalty interest and referred this part of the claim for a new hearing.

On 14 February 2003 the Nalchik Town Court made an additional award in respect of the penalty interest.

3. Alleged denial of the right to education

Between September 1998 and May 2000 the applicant's 9 year old son and 7 year old daughter attended secondary school no. 8 in Nalchik.

On 24 December 1999 the applicant received compensation for the property he had lost in the Chechen Republic. In exchange for compensation, the applicant had to surrender his migrant's card (*миграционная карта*), a locally required document confirming his lawful residence in Nalchik and his status as a forced migrant from Chechnya.

On 1 September 2000[*] the applicant's son and daughter went to the school, but they were refused admission because the applicant could not produce his migrant's card. The director of the school agreed to admit the children informally, but he advised the applicant that the children would be immediately suspended if the education department became aware of this arrangement.

On 4 September 2000 the applicant complained to a court about the refusal of the Education and Science Department of Nalchik (*Департамент образования и науки Администрации г. Нальчик*, "the Department") to admit his children to school. The Department replied that, since 24 December 1999, the applicant had had no lawful grounds to remain in Nalchik and that his requests amounted to an encroachment on the lawful rights of other children because school no. 8 had been severely overcrowded even without the applicant's children.

On 1 November 2000 the Nalchik Town Court dismissed the applicant's complaint for the following reasons:

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[*] After the summer break in all Russian schools the classes start uniformly on 1 September.

> "[The applicant] and his family members reside in the town of Nalchik without [an appropriate residence registration]. In these circumstances his requests to admit his children to school no. 8 are unsubstantiated...
>
> According to a certificate produced by the director of school no. 8, as of 11 October 2000 the school was teaching 459 children, whereas it was designed to accommodate 230..."

The court relied on these arguments to dismiss the applicant's complaints as unsubstantiated.

On 21 November 2000, on the applicant's appeal, the Supreme Court of the Kabardino-Balkaria Republic upheld the judgment of 1 November 2000.

4. Refusal to issue an international passport

In November 1999 the applicant applied to the Registration and Visas Department of the Ministry of the Interior of the Kabardino-Balkaria Republic (*ОВИР МВД КБР*) for an international passport, the identity document which entitles Russian citizens to leave the country and travel abroad. His application was refused by reference to an instruction of the Passports and Visas Service of the Ministry of the Interior of the Russian Federation (*Паспортно-визовая служба МВД РФ*) of 17 September 1999, pursuant to which the processing of applications and the issue of international passports to Russian nationals who were current or former residents of the Chechen Republic was suspended.

On 7 March 2000 the applicant renewed his application for an international passport. This time the application was accepted and the passport was issued on 20 July 2000.

The applicant filed with a court a request to declare unlawful the instruction of 17 September 1999 that restricted his constitutional right to leave the territory of the Russian Federation.

On 8 September 2000 the Nalchik Town Court delivered its judgment. The court noted that the Passports and Visas Service had accepted the applicant's complaint as a valid one, but pointed out that the restriction imposed had only been temporary. The court ruled as follows:

> "Pursuant to Article 27 § 2 of the Russian Constitution, everyone shall be free to leave the Russian Federation. It follows from Instruction no. 15/4-3612 of 17 September 1999 issued by the Ministry of the Interior of the Russian Federation that the processing of passport applications and the issuance of international passports to Russian nationals having residence registration in the Chechen Republic at their place of stay were suspended. Not only is the above Instruction contrary to the Russian Constitution, it also impairs the rights guaranteed by the Constitution. In pursuance of this instruction, between November 1999 and July 2000 the Ministry of the Interior refused to issue an international passport to [the applicant], thus unlawfully creating obstacles for his exit from the Russian Federation..."

The court declared the instruction of 17 September 1999 unlawful. The judgment was not appealed against and became final ten days later.

The applicant then brought an action against the Ministry of the Interior of the Russian Federation for compensation for non-pecuniary damage which he had allegedly suffered as a result of the restriction.

On 21 December 2000 the Zamoskvoretskiy District Court of Moscow dismissed the applicant's action. The court agreed that the applicant had suffered non-pecuniary damage as a result of a restriction on his constitutional rights. However, the Ministry of the Interior could not be held liable for the restriction. According to the court, following several terrorist attacks in September 1999, the Government of the Russian Federation had instructed the Ministry of the Interior to identify and isolate terrorist groups, especially those with international connections. The instruction of 17 September 1999 was issued as a result. The court concluded:

> "Under Article 6 of the Federal Law on the Fight against Terrorism of 25 July 1998, the Ministry of the Interior of the Russian Federation is in charge of the fight against terrorism within its competence; however, an instruction imposing a restriction on citizens' rights as protected by the Constitution (in particular, Article 27 § 2) was beyond the competence of the Ministry of the Interior; nevertheless, the court considers that the Ministry of the Interior is not liable for the restriction on the applicant's right to leave freely the Russian Federation because such restriction had been effected in the interests of the State and for a short period of time and, therefore, the action shall be dismissed."

On 28 June 2001, on the applicant's appeal, the Moscow City Court upheld the judgment of 21 December 2000.

B. Relevant domestic law

Constitution of the Russian Federation of 12 December 1993

Article 19 provides for the equality of all before the law and courts of law, and equality of rights and liberties.

Article 27 provides that everyone lawfully within the territory of the Russian Federation shall have the right to move freely and choose his or her place of stay or residence. It further provides that everyone shall be free to leave the territory of the Russian Federation.

Article 43 provides that everyone shall have the right to education. Secondary education in State and municipal educational institutions shall be accessible to all and free. Parents shall ensure that their children receive secondary education.

Article 56 provides that, in a state of emergency, rights and freedoms may be restricted for the protection of national security and the constitutional foundations. The state of emergency may only be declared in accordance with a federal constitutional law.

COMPLAINTS

1. The applicant complains that the refusal to admit him into Kabardino-Balkaria on 19 June 1999 violated Article 2 § 1 of Protocol No. 4, read alone or in conjunction with Article 14 of the Convention.

2. The applicant complains that the refusal to grant him child benefits, and the subsequent court decisions upholding that refusal, violated his rights under Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention.

3. The applicant complains under Article 2 of Protocol No. 1 about a violation of his children's right to education.

4. The applicant complains under Article 2 § 2 of Protocol No. 4 and Article 6 § 1 of the Convention about the decisions of domestic courts whereby the violation of his constitutional right to leave freely the Russian Federation was left without redress.

THE LAW

1. The applicant complains under Article 2 § 1 of Protocol No. 4 and Article 14 of the Convention that he was refused admission to Kabardino-Balkaria through the "Urukh" check-point because of his Chechen national origin. Article 2 of Protocol No. 4 reads, in the relevant part, as follows:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> ...
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
>
> 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Government dispute as untenable the applicant's assertion that he had to make a detour of 300 kilometres to enter Kabardino-Balkaria through a different check-point. They point out that the farthest distance between check-point "Urukh" and check-point "Tashkent" was 18 kilometres and

between those two check-points there were two more check-points. They further refer to section 11 § 22 of the Russian Law on Police that confers on the police the power to impose temporary limitations or prohibitions on the circulation of vehicles and pedestrians, as well as to prevent individuals from accessing specific areas for the protection of health, life and others' property and the performance of investigative and retrieval measures. Citing the "complicated operational situation" in the Southern Federal Region of Russia on and about 19 June 1999, the Government claim that police officers were guided by the above provision of the Law on Police and sought to prevent potential offences and guarantee public safety. Finally, they submit that the applicant's right to liberty of movement was not violated because the police would not have prevented him from entering Kabardino-Balkaria, had he waited for his turn in the queue, and because he had eventually gained admission through a different check-point. As to the applicant's complaint about discrimination, the Government reject it as unsubstantiated because the Russian Constitution does not require a citizen to make known his ethnic origin and a person's ethnic origin is not indicated in one's identity documents.

The applicant submits that the fact that he was refused admission to Kabardino-Balkaria was confirmed in the letter from the Prosecutor General's office of 1 February 2000 that recommended that measures be taken to remedy the violation and to avoid its repetition in the future. Furthermore, the undated summary approved by the Minister of the Interior of Kabardino-Balkaria (forwarded to the applicant's representative on 3 March 2000) also referred to the fact that rank-and-file police officers had received from their superiors an oral instruction not to admit Chechens. However, according to the operative part of the summary, officers were to be reprimanded not for the implementation of unlawful orders, but for presenting contradictory versions of events to various authorities. The thrust of this reprimand demonstrates, in the applicant's opinion, that the Minister was not concerned about a violation of human rights by police officers, but, rather, was worried about "their inability to lie consistently".

The applicant further contends that the liberty of movement was first and foremost impaired because blanket checks of all vehicles and their passengers had been organised by the Russian police on a normal motorway whereas no state of emergency had been declared. In his opinion, section 11 § 22 of the Law on Police relied on by the Government does not give a right to set up barriers on a motorway on the pretext that "putative criminals might supposedly use the motorway for passage". The Government's arguments were far too abstract: the Government did not identify any actual threat to the health, life or property of the population. Nor did they claim that the police carried out specific investigative or retrieval actions at the "Urukh" check-point.

Finally, as regards the discrimination issue, the applicant interprets the Government's argument as a suggestion that he should have concealed his ethnicity in order to have unhindered passage through the check-point. He indicates that five days later, on 24 June 1999, when he stated at the same check-point that he was an Avar,[*] he had no problems with passage. However, on 19 June 1999 he could not hide his own ethnicity because his travel companion spoke Russian with a Chechen accent and their car had licence plates of the Chechen Republic.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant complains under Article 6 of the Convention and Article 1 of Protocol No. 1 about the domestic authorities' refusal to pay him child benefits on the ground that he lacked permanent registration in Kabardino-Balkaria.

On 2 July 2003 the applicant informed the Court of his intention to withdraw this part of the application because the domestic courts had granted his claims. He confirmed his intention in the observations.

The Government take note of the applicant's intention.

The Court notes that the applicant does not intend to pursue this part of his application within the meaning of Article 37 of the Convention, which, in the relevant part, reads:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application;
>
> ...
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

The Court considers that respect for human rights as defined in the Convention and its Protocols does not require it to continue the examination of this part of the application.

In these circumstances it considers that this part of the application should be struck out in accordance with Article 37 § 1 (a) of the Convention.

3. The applicant complains under Article 2 of Protocol No. 1 about the domestic authorities' refusal to secure his children's right to education on the

[*] Avars are the main ethnic group in Dagestan, a Russian region adjacent to Chechnya.

ground that he had no residence registration in Nalchik. Article 2 of Protocol No. 1, in the relevant part, reads as follows:

> "No person shall be denied the right to education..."

The Government accept that the right of the applicant's children to education was restricted unlawfully. Pursuant to the Russian Law "On the right of Russian citizens to liberty of movement, choice of place of stay and residence in the territory of the Russian Federation", rights and freedoms may not be restricted on account of residence registration or its absence. Furthermore, section 5 of the Russian Law on Education guarantees the right to education irrespective of the place of residence. However, the Government indicate that on 1 February 2003 the new Code of Civil Procedure of the Russian Federation became effective. Pursuant to the Code, supervisory review proceedings may only be set in motion at the request of a party to the original proceedings. As the applicant never lodged such a request, the Government consider that he did not exhaust the domestic remedies available to him.

The applicant notes that in September 2000 when his children returned to school to resume their studies after the summer break, the refusal to admit them was grounded precisely on the fact that both he and his wife had no residence registration and no migrants' cards, which only former Chechen residents were required to carry. The argument about the overcrowded state of the school only surfaced later, after the applicant had complained to a court. As regards the exhaustion issue, the applicant believes that the remedy indicated by the Government cannot be considered "effective" for the purposes of the Convention because the decision to open supervisory-review proceedings is made by a single judge of a higher court.

The Court reiterates that the purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). It further recalls that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with it (see *Baumann v. France*, no. 33592/96, § 47, 22 May 2001). Nevertheless, this rule is subject to exceptions, which may be justified by the particular circumstances of a case.

The Court observes that in the instant case the Government did not indicate any such circumstances that might warrant a departure from the general rule. Accordingly, the basic principle that the exhaustion requirement must be assessed with reference to the time at which the application was lodged applies.

The Government do not claim that at the date the application was introduced there were any domestic remedies that the applicant had failed to

exhaust (cf. *Baumann v. France*, cited above, § 47). The request for supervisory review, as it existed at that time, was not considered an "effective" remedy for the purpose of Article 35 § 1 (see *Pitkevich v. Russia* (dec.), no. 47936/99, 8 February 2001). In the present case the Court is not required to decide whether the procedure for supervisory review provided for in the new Code of Civil Procedure is an effective remedy because it only became available on 1 February 2003, i.e. after the present application was lodged. The Court therefore considers that the domestic remedies have been exhausted.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

4. The applicant complains under Article 6 § 1 of the Convention and Article 2 § 2 of Protocol No. 4 that the domestic authorities' refusal to issue him with a travel document violated his right to leave his country and that the Moscow courts' refusal to grant him compensation for non-pecuniary damage violated fair trial guarantees. Article 2 of Protocol No. 4 provides, in the relevant part, as follows:

> "2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others..."

Article 6 provides, in the relevant part, as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal..."

(a) The Government submit, firstly, that the refusal to issue an international passport does not automatically amount to a restriction on the right to leave one's own country because Russian nationals may visit certain states upon production of documents other than an international passport. Furthermore, they claim that the applicant could have applied to the Ministry of Foreign Affairs for an international passport, which he has not done. They also indicate that the applicant's right was not prejudiced since he only applied for the passport after the restriction had been lifted and on 7 March 2000 his application was accepted.

The applicant submits that since 1996 he had been living in Nalchik and his rights should not have been restricted only because he was a former

resident of Chechnya. He provides a copy of his passport application of 12 January 2000 that bore a hand-written refusal to process his application of the same date, signed by a deputy head of the Passports and Visas Service of the Ministry of the Interior of Kabardino-Balkaria. The reason given for the refusal was that "the processing of passport applications for forced migrants from the Chechen Republic [had been] temporarily suspended until further notice". Finally, the applicant contends that he had no legal right to apply to the Ministry of Foreign Affairs as this procedure was only available to Russian nationals living abroad.

The Court recalls at the outset that denial of the use of an identity document which, had the applicant so wished, would have permitted him to leave the country amounts to an interference within the meaning of Article 2 of Protocol No. 4 (see, as a recent authority, *Napijalo v. Croatia*, no. 66485/01, § 73, 13 November 2003, with further references). It observes, however, that the instruction, pursuant to which the applicant was denied the international passport, was declared unlawful by a final judgment of the Nalchik Town Court of 8 September 2000. In the same vein, the Zamoskvoretskiy District Court of Moscow confirmed in its judgment of 21 December 2000 that the Ministry of the Interior had acted *ultra vires* in restricting the issuance of international passports to former residents of the Chechen Republic. In these circumstances the question arises whether the applicant can still claim to be a victim within the meaning of Article 34 of the Convention.

The Court recalls that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

Turning to the facts of the present case, the Court notes that the Nalchik Town Court expressly acknowledged, in the judgment of 8 September 2000, a violation of the applicant's right to leave freely the Russian Federation. The judgment of the Zamoskvoretskiy District Court of Moscow contained an admission to the same effect.

The remaining question therefore is whether, in these circumstances, the applicant can be regarded as having been afforded adequate redress. On this point the Court observes in the first place that the Moscow courts dismissed the applicant's claim for damages on the ground that the restriction was necessary for the protection of national security and it was only introduced for a short period of time. It further has regard to the fact that at no stage of the proceedings did the applicant claim that the imposed restriction had thwarted his actual travel plans or that any circumstances required his presence outside the Russian Federation. The restriction in question was

more a formal and theoretical hindrance rather than a practical impediment to the exercise of the applicant's right to leave freely his country. Finally, the Court notes that the restriction was relatively short-lived: while it is undisputable that the applicant's request of January 2000 was refused, his passport application made two months later was accepted for processing without further obstacles.

In these particular circumstances, and bearing in mind that the Court itself has held in various cases that a finding of a violation in itself may constitute adequate just satisfaction under Article 41 of the Convention for any non-pecuniary damage suffered, the Court accepts that the domestic courts' finding of a violation of the applicant's right to leave freely his country may be regarded as adequate redress (see, *a contrario*, *Napijalo v. Croatia*, cited above, § 86, where the Court considered a mere finding of a breach insufficient because the proceedings for the return of the applicant's passport lasted for more than two years). Consequently, the applicant cannot be regarded as having a continuing legal interest warranting a determination by the Court that his rights under Article 2 § 2 of Protocol No. 4 have been breached.

The Court is therefore of the opinion that, as regards the applicant's complaint under Article 2 § 2 of Protocol No. 4, the applicant cannot claim to be a victim within the meaning of Article 34 of the Convention.

It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention, within the meaning of Article 35 § 3, and must be rejected, in accordance with Article 35 § 4.

(b) As to the applicant's complaint under Article 6 § 1 of the Convention, and assuming that this provision is applicable to the proceedings in question (cf. *Napijalo v. Croatia*, cited above, §§ 44-50), the Court recalls that it is not called upon to examine the alleged errors of facts and law committed by the domestic judicial authorities, insofar as no unfairness of the proceedings can be detected and the decisions reached cannot be considered arbitrary. On the basis of the materials submitted by the applicant, the Court notes that within the framework of the civil proceedings the applicant was able to introduce all necessary arguments in defence of his interests, and the judicial authorities gave them due consideration. The applicant's submissions do not disclose any appearance of procedural unfairness.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to strike out of the application the complaint concerning the applicant's access to child benefits;

Declares admissible, without prejudging the merits, the applicant's complaints about alleged violations of his right to liberty of movement and of his children's right to education;

Declares inadmissible the remainder of the application.

S. DOLLÉ
Registrar

J.-P. COSTA
President