



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

FIRST SECTION

**CASE OF KHLIUSTOV v. RUSSIA**

*(Application no. 28975/05)*

JUDGMENT

STRASBOURG

11 July 2013

**FINAL**

**11/10/2013**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Khlyustov v. Russia,**

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

Isabelle Berro-Lefèvre, *President*,

Elisabeth Steiner,

Khanlar Hajiyeu,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 June 2013,

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

## PROCEDURE

1. The case originated in an application (no. 28975/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Vyacheslav Igorevich Khlyustov (“the applicant”), on 29 July 2005.

2. The applicant was represented by Mr Ye. Swarovski, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, of restrictions on his right to leave his own country.

4. On 18 January 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Moscow.

### **A. Enforcement proceedings initiated in respect of the applicant**

6. In 2002 a certain S. brought court proceedings against the applicant before the Tushinskiy District Court, Moscow (“the District Court”). S. sought to recover an amount of money advanced to the applicant for construction of a house for him. S. claimed that instead of building the house the applicant had acquired a flat for himself and a new car. The District Court attached the applicant’s flat to secure the claim.

7. On 4 April 2003 the District Court awarded 362,267.87 Russian roubles (RUB) to S., to be paid by the applicant, and issued a writ of execution.

8. By a ruling of 7 May 2003 the Moscow north-west bailiffs’ service (“the bailiffs’ service”) initiated enforcement proceedings. The applicant was invited to voluntarily comply with the judgment debt within five days of the date on which the enforcement proceedings were initiated.

9. On several occasions the applicant asked the District Court to postpone the enforcement of the judgment of 4 April 2003. He claimed that although he had some income, his financial situation was difficult since he had two dependent children and a sick mother. By decisions of 23 October 2003 and 18 January and 14 April 2005 the District Court dismissed his requests.

10. On 20 November 2003 the District Court granted the applicant’s request to lift the attachment order in respect of his flat on the grounds that it was his and his family’s sole dwelling and therefore could not be seized for the purpose of enforcement of the judgment of 4 April 2003.

11. On 19 October 2004 the District Court examined another claim lodged by S. against the applicant, in which he requested the annulment of the contract for the sale of the applicant’s car to his wife in July 2003. The court found that the contract was void and ordered the repossession of the car for the purpose of enforcing the judgment debt of 4 April 2003.

12. By a judgment of 29 November 2004 the District Court ordered the applicant to pay RUB 160,000 to his former wife in respect of unpaid child support.

13. On 27 January 2005 the bailiffs’ service joined the enforcement proceedings initiated following the judgment of 4 April 2003 to the proceedings opened following the judgment of 29 November 2004.

14. On 15 December 2005 the enforcement proceedings were discontinued on the grounds that a writ of execution had been sent to the applicant’s employer, a private company based in Vladivostok, Primorskiy Region.

15. In 2010 S. asked the District Court to provide him with a duplicate of the writ of execution issued following the judgment of 4 April 2003, on the grounds that the original writ of execution had been lost and the judgment of 4 April 2003 had not been enforced in full.

16. On 23 April 2010 the District Court granted that request. The court found it established that on 15 December 2005 the bailiffs' service had forwarded the writ of execution to the applicant's employer, indicating that by that date it had recovered from the applicant only a part of the debt and that the remaining part amounted to RUB 218,406.31. It was also established that between 2006 and 2009 the applicant had returned RUB 70,661 to S.

17. It appears that the applicant paid the remainder of his debt to S. in July 2010.

#### **B. Restrictions on the applicant's leaving the country and judicial review thereof**

18. In the framework of the enforcement proceedings described above, the bailiffs' service on several occasions restricted the applicant's right to leave the country. Their decisions were based on the 1996 Federal Act on Leaving and Entering the Russian Federation (Procedures) (section 15(5)), the 1997 Federal Act on Enforcement Proceedings (section 4(1) and (3), section 44(3) and section 45(5)) and the 1997 Federal Act on the Bailiffs' Service (section 14) (see "Relevant domestic law" below).

##### *1. Demand of 27 November 2003*

19. On 27 November 2003 the bailiffs' service sent the Moscow Department of the Interior a document in the form of a "demand" ("*требование*"). The document stated that on 7 May 2003 the bailiffs' service had instituted enforcement proceedings on the basis of the writ of execution of the same date in accordance with which RUB 362,267.87 had to be recovered from the applicant. The applicant had not paid the judgment debt voluntarily and had not complied with the bailiffs' service's ruling of 7 May 2003. Therefore, referring to relevant provisions of domestic law (see paragraph 18 above), the bailiffs' service requested the Department of the Interior to enter the applicant in the Department's database with a view to imposing a temporary restriction of up to six months on his right to leave the Russian Federation. The demand did not indicate the date on which the six-month period started to run.

20. The applicant alleged that the bailiffs' service had not informed him of the restrictions imposed on him. Therefore, in January 2004, he had purchased a package holiday to Egypt for himself and two members of his family. When he attempted to board the plane on 24 January 2004 the Border Service officials at the airport had refused to allow him to board. The applicant provided the Court with a copy of the contract of purchase of that package holiday.

21. By a final decision of 20 May 2004 the Moscow City Court ("the City Court") dismissed the applicant's complaint against the bailiffs'

service's demand of 27 November 2003. It found, in particular, that the bailiffs' service had lawful grounds on which to impose the travel ban on the applicant.

*2. Order of 3 June 2004*

22. On 3 June 2004 the bailiffs' service sent the Department of Border Control a document in the form of an "order" (*"поручение"*). In that document the bailiffs' service requested that the applicant's right to leave the Russian Federation be restricted for a period of six months starting from 22 June 2004, on the grounds that the applicant had not voluntarily complied with the judgment of 4 April 2003.

23. It is not clear on what date the applicant was notified of the order of 3 June 2004. It appears that he did not appeal against it.

*3. Demand of 10 June 2004*

24. On 10 June 2004 the bailiffs' service sent the Moscow Department of the Interior a demand requesting it to enter the applicant in the Department's database with a view to imposing a temporary restriction of up to six months on his right to leave the Russian Federation. The document stated that the applicant had not paid the judgment debt voluntarily and had not complied with the bailiffs' service's decision initiating the enforcement proceedings. It did not indicate the date on which the six-month period started to run.

25. It is not clear on what date the applicant was notified of the demand of 10 June 2004. It appears that he did not appeal against it.

*4. Order of 24 December 2004*

26. On 24 December 2004 the head of the bailiffs' service sent another order to the Department of Border Control to restrict the applicant's right to leave the country for another six months on the grounds that he had not voluntarily repaid the judgment debt of 4 April 2003. The order did not indicate the date on which the six-month period started to run.

27. On 31 December 2004 the applicant challenged the bailiffs' service's order before the District Court. He complained, in particular, that the head of the bailiffs' service had had no right to issue such an order and that the order was unlawful since he had already started repaying the debt. He also complained that the order in question violated the rights of his minor children, for whom he had been paying child support.

28. By a final decision of 22 June 2005 the City Court found that the head of the bailiffs' service had imposed the travel ban on the applicant in accordance with the law. In particular, the City Court established that the bailiffs' service had initiated the enforcement proceedings and had made relevant enquiries in order to obtain information about the applicant's

assets. Since the applicant had not been paying the judgment debt, on 27 November 2003 the bailiffs' service had restricted his right to leave the country. The court found those actions lawful. Taking into account that as at 24 December 2004 the applicant had not complied with the judgment debt and had not reached any agreement with the creditor, the bailiffs' service had again restricted his right to leave the country and had done so in accordance with the relevant domestic law. The City Court also observed that the applicant had started repaying the debt only on 27 January 2005, after the bailiff's demand to restrict his right to leave the country. The City Court also took into account the fact that other enforcement proceedings had been pending in respect of the applicant for his failure to pay child support for his minor children.

#### *5. Ruling of 3 March 2005*

29. On 3 March 2005, while the court proceedings on the applicant's appeal against the bailiffs' service's order of 24 December 2004 were pending, the bailiffs' service issued a ruling ("*постановление*") restricting the applicant's right to leave the country. The ruling stated that the applicant was seeking to evade the enforcement of the judgment of 4 April 2003 and that therefore his right to leave the Russian Federation should be restricted. The ruling did not indicate the period during which the restriction was to be applied to the applicant.

30. On 21 April 2005 the applicant appealed against the ruling of 3 March 2005 to the District Court.

31. On 7 July 2005 the District Court quashed the ruling of 3 March 2005 on the grounds that, contrary to the requirements of domestic law, that ruling had not indicated the period during which the travel restriction was to be applied to the applicant. It appears that the bailiffs' service did not appeal against the decision of 7 July 2005.

#### *6. Order of 26 May 2005*

32. On 26 May 2005, while the court proceedings on the applicant's appeal against the bailiffs' service's ruling of 3 March 2005 were pending, the bailiffs' service again sent an order to the Department of Border Control to restrict the applicant's right to leave the country for another six months starting from 26 May 2005. The order stated that the applicant had not complied with the judgment of 4 April 2003 voluntarily and that, according to his creditor, the applicant had been travelling abroad frequently. On the same date a copy of that order was sent to the applicant.

33. On 26 July 2005 the District Court found the bailiffs' service's order to be lawful. It held, in particular, that the order had been issued in accordance with section 15 of the 1996 Federal Act on Leaving and Entering the Russian Federation (Procedures) and fully complied with

formal requirements provided for in section 16 of that Act. It appears that the applicant did not appeal against that decision to the City Court.

34. On 15 December 2005 the restriction imposed on the applicant's leaving the country was lifted.

### **C. Proceedings before the Constitutional Court**

35. On an unspecified date the applicant applied to the Constitutional Court of the Russian Federation, requesting it to examine the compatibility with the Constitution of section 15(5) of the 1996 Federal Act on Leaving and Entering the Russian Federation (Procedures) (see "Relevant domestic law" below).

36. On 24 February 2005 the Constitutional Court of the Russian Federation refused to examine the applicant's complaint, citing lack of jurisdiction in relation to the subject matter. In its decision the Constitutional Court noted that the restrictions provided for in the impugned provisions were not of an absolute character. In particular, the restrictions could be imposed only for a limited duration, the law had set the maximum period during which such restrictions could be applied and permission to leave the Russian Federation could be granted before expiry of those restrictions. The Constitutional Court further observed that in all cases of temporary restrictions of the constitutional right to leave the Russian Federation the relevant body of the Ministry of the Interior had to notify the citizen concerned of the reasons for and the term of the restriction, as well as the date and registration number of the relevant decision and the full name and legal address of the organisation which had assumed responsibility for restricting the person's right to leave the Russian Federation. The body in question was therefore under an obligation to justify the necessity of the restriction. The Constitutional Court observed that the restrictions were aimed at the protection of constitutional values and could not be regarded as violating the applicant's constitutional rights. Finally, the Constitutional Court noted that the legislature had made the application of restrictions dependent not only on the existence of formal grounds but also on specific factual circumstances, which, where necessary, could be verified by the courts of general jurisdiction.

### **D. Criminal proceedings against the applicant**

37. On 18 July 2005 the Moscow Tushinskiy district prosecutor initiated criminal proceedings against the applicant on suspicion of forgery of documents submitted by the latter to the District Court in the context of two other sets of civil proceedings brought against him by S.

38. On 17 May 2006 the District Court discontinued the criminal proceedings against the applicant because the limitation period for a



criminal prosecution for forgery had expired. The applicant did not appeal against that decision.

## II. RELEVANT DOMESTIC LAW

### A. 1993 Constitution of the Russian Federation

39. Article 27 § 1 provides that everyone who is legally present on the territory of the Russian Federation shall have the right to travel freely and freely to choose the place of temporary or permanent residence.

40. Article 27 § 2 provides that anyone may freely leave the Russian Federation. Citizens of the Russian Federation shall have the right freely to return to the Russian Federation.

41. Article 55 § 3 provides that human and civil rights and freedoms may be limited by federal law only to the extent necessary to protect the basis of the constitutional order, morality and the health, rights and lawful interests of others, and to ensure the defence of the country and the security of the State.

### B. The 1996 Federal Act on Leaving and Entering the Russian Federation (Procedures), as worded at the material time

42. The right of a Russian citizen to leave the Russian Federation could be restricted only on the basis of the Act and in accordance with the procedure set out therein (section 2).

43. The right of a Russian citizen to leave the Russian Federation could be temporarily restricted if he or she evaded obligations imposed on him or her by a court. In such cases the restriction was valid until the obligation had been complied with or until the parties settled the matter (section 15(5)).

44. In all cases where a temporary restriction on leaving the Russian Federation was imposed on a citizen of the country, the relevant body of the Ministry of the Interior had to notify the citizen concerned of the reasons for and the term of the restriction, as well as the date and registration number of the relevant decision and the full name and legal address of the organisation which had assumed responsibility for restricting the person's right to leave the Russian Federation (section 16).

45. In cases where the restriction on leaving the country was imposed in accordance with section 15(5), the passport of the person concerned was withdrawn by the bodies authorised to do so and returned to the State body which had issued it (section 18).

### **C. The 1997 Federal Act on Enforcement Proceedings, in force until 1 February 2008**

46. Section 4 provided that claims submitted by a bailiff in the context of enforcement proceedings initiated following a decision by a court or any other body were binding on all organisations and on public servants and citizens throughout the territory of the Russian Federation (Section 4 (1)). In the event of failure to comply with the bailiff's orders, the latter could apply the measures provided for by that law or by any other federal law (Section 4 (2)). Obstructing the bailiff in the performance of his or her duties rendered the person concerned liable under the legislation of the Russian Federation (Section 4 (3)).

47. Section 44 provided that bailiffs could apply compulsory measures if all the following criteria were met: the bailiffs had received a duly completed writ of execution (Section 44 (1)) and instituted enforcement proceedings (Section 44 (2)), and the deadline set for voluntary compliance had expired (Section 44 (3)).

48. Section 45 provided a list of compulsory measures which could be applied by bailiffs. In particular, they could seize the debtor's property (section 45(1)), attach the debtor's salary, retirement pension, scholarship or other sources of income (section 45(2)), seize money or other property of the debtor held by others (section 45(3)), remove from the debtor and hand over to the judgment creditor certain items specified in the writ of execution (section 45(4)) and take any other measures provided for by the law on enforcement proceedings or by other federal laws in order to enforce the writ of execution (section 45 (5)).

49. Section 88 provided that if decisions taken by the bailiff in the framework of enforcement proceedings (initiating enforcement proceedings, recovery of fees, imposition of fines, etc.) affected rights of parties to the enforcement proceedings and other persons, the bailiff had to issue a ruling ("*постановление*") to that effect. Such a ruling should indicate the date on which it was issued, the place where it was issued, the position, family and full name of the bailiff who issued it, reference to the relevant enforcement proceedings, and describe the matter under examination, the grounds for taking the decision with reference to the laws and other legal acts on which the bailiff relied when taking the decision, the conclusion on the matter at issue and the procedure and time-limits for lodging an appeal against that ruling.

50. Section 90 provided that parties to enforcement proceedings could appeal against the bailiff's actions to a court.

#### **D. The 1997 Federal Act on the Bailiffs' Service**

51. Section 14 provides that lawful demands submitted by a bailiff should be complied with by all organisations, officials and citizens on the territory of the Russian Federation. Information requested by bailiffs in the performance of their duties is to be provided to them free of charge and within the deadlines indicated by them. Failure to comply with a bailiff's demand renders the person concerned liable under the legislation of the Russian Federation.

#### **E. The 2007 Federal Act on Enforcement Proceedings, in force since 1 February 2008**

52. Section 67 establishes a framework for imposing restrictions on a debtor's right to leave the country. In particular, it provides that a restriction on leaving the country may be imposed in the event of all the following criteria being met: enforcement proceedings have been initiated following a court decision, the bailiff has set a time-limit for voluntary compliance with the decision and the debtor has failed to comply within that time-limit, the debtor has no valid reason for not complying with the judgment, and the bailiff's decision to restrict the debtor's right to leave the country has been approved by a senior bailiff.

### **THE LAW**

#### **I. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION**

53. The applicant complained under Article 2 of Protocol No. 4 to the Convention that his right to leave the Russian Federation had been violated by a series of six-month travel bans imposed on him by the bailiffs' service until he had paid a judgment debt to a private person.

54. The Court considers that this complaint falls to be examined under Article 2 §§ 2 and 3 of Protocol No. 4, which provides 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 ...”

### A. Admissibility

55. The Government did not raise any objection as to the admissibility of the complaint. They indicated that the restrictions had been imposed on the applicant on 27 November 2003, 10 June and 24 December 2004 and 26 May 2005. Each restriction had been imposed for a period of six months, which started to run on the date when the bailiffs' service issued the relevant decision. The restriction imposed on 3 March 2005 had been quashed by the domestic court.

56. The applicant did not comment.

57. The Court reiterates that it is not open to it to set aside the application of the six-month rule solely because a respondent Government has not made a preliminary objection to that effect, since the said criterion, reflecting as it does the wish of the Contracting Parties to prevent past events being called into question after an indefinite lapse of time, serves the interests not only of respondent Governments, but also of legal certainty as a value in itself. It marks out the temporal limits of the supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

58. The Court further reiterates that pursuant to Article 35 § 1 of the Convention, it may only deal with a matter within a period of six months from the final decision in the process of exhaustion of domestic remedies. In cases featuring a continuing situation, the six-month period runs from the cessation of that situation (see *Seleznev v. Russia*, no. 15591/03, § 34, 26 June 2008, and *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004).

59. In the present case the applicant complained of a series of six-month travel bans imposed on him by the bailiffs' service between 2003 and 2005 for failure to honour judgment debts to private persons. The question is whether those bans should be regarded as distinct measures and the six-month rule should be applied separately to each period during which the applicant was prohibited from leaving the country, or whether the series of bans can be considered as creating a continuing situation, in which case the six-month period would start to run only after the situation complained of was brought to an end.

60. In that connection the Court reiterates that the concept of a "continuing situation" refers to a state of affairs in which there are continuous activities by or on the part of the State which render the applicant a victim (see *Posti and Rahko v. Finland*, no. 27824/95, § 39, ECHR 2002-VII). Complaints which have as their source specific events which occurred on identifiable dates cannot be construed as referring to a continuing situation (see *Camberrow MM5 AD v. Bulgaria*, (dec.), no. 50357/99, 1 April 2004).

61. Turning to the circumstances of the present case, the Court observes that during the enforcement proceedings the bailiffs' service issued several decisions restricting the applicant's right to leave the Russian Federation. According to the Government, four restrictions were issued in respect of the applicant: on 27 November 2003, 10 June and 24 December 2004 and 26 May 2005, and each of them lasted for a period of six months which started to run on the date when the bailiffs' service issued the relevant decisions. In that connection the Court observes that, according to the case materials, the bailiffs' service issued six restrictions on the applicant's right to leave the country: the demand of 27 November 2003, the order of 3 June 2004, the demand of 10 June 2004, the order of 24 December 2004, the ruling of 3 March 2005 and the order of 26 May 2005. The Court agrees that all those decisions, apart from the ruling of 3 March 2005, indicated that the travel restrictions were to be applied to the applicant for a period of up to six months. Furthermore, the Court observes that some of those decisions indicated the date on which the six-month period started to run, and that it was not necessarily the date on which the relevant decision was issued. For instance, the order of 3 June 2004 stated that the six-month period would start to run on 22 June 2004. However, contrary to the Government's assertions, the demands of 27 November 2003 and 10 June 2004 and the order of 24 December 2004 did not indicate on what date the six-month period started to run. In view of those factors, the Court is unable to establish the exact dates on which the travel restrictions issued on 27 November 2003 and 10 June and 24 December 2004 were applied to the applicant. Therefore, despite the fact that the order of 3 June 2004 and the demand of 26 May 2005 specified the exact dates on which the six-month period started to run, it cannot be said that each and every restriction applied to the applicant took effect on an identifiable date. In such circumstances the Court considers that the travel restriction was applied to the applicant at the latest on 24 January 2004, when he was not allowed to board a plane to Egypt (see paragraph 20 above) and was lifted on 15 December 2005, when the enforcement proceedings were discontinued (see paragraph 14 above).

62. The Court further notes that the applicant challenged some of the restrictions issued in his respect in separate court proceedings. However, in the Court's opinion that element is not sufficient to conclude that the events complained of were composed of separate and unrelated occurrences. In particular, the Court observes that all the travel bans were applied within the same enforcement proceedings and with reference to the same legal provisions. They thus formed a continuing act on the part of the domestic authorities by which the applicant was prohibited from leaving the country from at least 24 January 2004 until 15 December 2005. In such circumstances, the six-month period provided for by Article 35 § 1 of the Convention started to run only after that activity had been brought to an end

on 15 December 2005. It suffices to note that the applicant submitted his application during the period when the travel ban was still in force.

63. In sum, the Court finds that the applicant submitted his complaint under Article 2 of Protocol No. 4 in compliance with Article 35 § 1 of the Convention. The Court further observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

64. The Court reiterates that Article 2 of Protocol No. 4 to the Convention guarantees to any person a right to liberty of movement, including the right to leave any country for such country of the person's choice to which he or she may be admitted (see *Baumann v. France*, no. 33592/96, § 61, ECHR 2001-V (extracts)). Any measure restricting that right should be "in accordance with law", pursue one or more of the legitimate aims contemplated in the third paragraph of the same Article and "be necessary in a democratic society" (see *Raimondo v. Italy*, 22 February 1994, § 39, Series A no. 281-A, and *Labita v. Italy* [GC], no. 26772/95, §§ 194 and 195, ECHR 2000-IV).

65. In the present case it is not disputed that the restrictions on the applicant's leaving Russia constituted interference with his right to leave the country, as guaranteed by Article 2 § 2 of Protocol No. 4. The Court therefore has to examine whether that interference was in "accordance with law", pursued one or more legitimate aims and "was necessary in a democratic society".

### *1. Whether the interference was "in accordance with law"*

#### **(a) The parties' submissions**

66. The Government submitted that the interference had been in accordance with the 1996 Federal Act on Leaving and Entering the Russian Federation (Procedures), which had been accessible to the applicant and foreseeable as to its effects.

67. The applicant claimed that the ban imposed on him in 2003 and its further extensions had had no legal basis in Russian law as it existed at the relevant time and had therefore been arbitrary. The law cited by the Government, namely the 1996 Federal Act on Leaving and Entering the Russian Federation (Procedures), had not been clear enough for anyone to foresee that non-payment of a judgment debt would result in a travel ban. The old 1997 Federal Act on Enforcement Proceedings had not contained any provision authorising the bailiffs' service to impose a travel ban on the

debtor. It was not until 2007 that a new Federal Act on Enforcement Proceedings had been passed, establishing a framework for restricting a debtor's right to leave his or her own country. The applicant also considered that both the old and the new laws on enforcement proceedings were incompatible with Article 27 of the Russian Constitution.

**(b) The Court's assessment**

68. The Court reiterates its settled case-law according to which the expression "in accordance with the law" not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question. Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see *The Sunday Times v. the United Kingdom* (no. 1), 26 April 1979, §§ 47-49, Series A no. 30 and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, §§ 140 and 141, ECHR 2012).

69. The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed. It is moreover primarily to domestic authorities to interpret and apply domestic law (see *Vogt v. Germany*, 26 September 1995, § 48, Series A no. 323).

70. The phrase "in accordance with the law" also requires the domestic law to be compatible with the rule of law; it thus implies that there must be a measure of protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by Convention (see *Malone v. the United Kingdom*, 2 August 1984, § 67, Series A no. 82). A law which confers a discretion must indicate the scope of that discretion, although the detailed procedures and conditions to be observed do not necessarily have to be incorporated in rules of substantive law (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 88, Series A no. 61).

71. The Court observes that when imposing the travel bans on the applicant the authorities referred to three legal acts: the 1996 Federal Act on Leaving and Entering the Russian Federation (Procedures) (section 15(5)),

the 1997 Federal Act on Enforcement Proceedings (section 4(1) and (3), section 44(3) and section 45(5)) and the 1997 Federal Act on the Bailiffs' Service (section 14) (see "Relevant domestic law" above).

72. In so far as the applicant complained that the 1997 Federal Act on Enforcement Proceedings as in force at the material time did not contain any provision authorising the bailiffs' service to impose a travel ban on the debtor, the Court observes that although a travel ban was not listed in section 45 of the Act among the compulsory measures which could be imposed by the bailiff on a debtor, it was stated in that section that, apart from the measures listed, the bailiff could take any other measures provided for by the law on enforcement proceedings or by other federal laws in order to enforce the writ of execution. In the present case the bailiffs' service imposed the travel ban with reference to the 1996 Federal Act on Leaving and Entering the Russian Federation (Procedures), section 15(5) of which provided that the right of a Russian citizen to leave the Russian Federation could be temporarily restricted if he or she evaded obligations imposed on him or her by a court. The Court therefore concludes that the travel restrictions imposed on the applicant had a basis in domestic law.

73. As regards accessibility, the Court observes that the legal acts in question satisfied that condition as they were in the public domain.

74. In so far as the applicant complained of the lack of foreseeability of the legal provisions in question, the Court accepts that those provisions are rather general in terms and confer a wide discretion on the bailiffs' service. In particular, they leave them the discretion to decide whether, in the particular circumstances of the case, it is necessary to resort to travel restrictions or not. On the other hand, the circumstances in which it may be necessary to apply those measures are quite variable, so that it would scarcely be possible to formulate a law to cover every eventuality. In any event, the safeguards against arbitrary interference were provided by the fact that the exercise of the discretion by the bailiffs was subject to judicial review (see paragraph 50 above).

75. The Court agrees that the application of those provisions could have resulted in some degree of uncertainty for the applicant when the first travel restriction was issued in his regard in November 2003. However, by the time the further bans were issued in June and December 2004 and March and May 2005, he should have been able to foresee, to a degree that was reasonable in the circumstances, that travel restrictions could be applied to him again if he evaded paying the judgment debt, and could therefore have regulated his conduct accordingly.

76. In view of the above, the Court considers that in the present case the degree of discretion conferred on the domestic authorities was compatible with the requirements of the Convention inherent in the expression "in accordance with law".



77. Having regard to the above, the Court is satisfied that the interference with the applicant's right to leave his country was "in accordance with law".

*2. Whether the interference pursued a legitimate aim*

**(a) The parties' submissions**

78. The Government claimed that the travel bans had been intended to secure the enforcement of a judgment debt arising out of a claim by a private creditor and had therefore pursued the legitimate aim of protecting the rights of others.

79. The applicant submitted that the travel bans had not pursued any legitimate aim, but had a purely punitive purpose.

**(b) The Court's assessment**

80. The Court observes that it has already dealt with complaints concerning travel bans imposed for failure to pay a judgment debt to a private party and accepted that such restrictions were intended to secure the interests of creditors and that, in principle, they pursued a legitimate aim, namely the protection of others (see *Ignatov v. Bulgaria*, no. 50/02, § 35, 2 July 2009, and *Gochev v. Bulgaria*, no. 34383/03, § 48, 26 November 2009). It does not see any reason to hold otherwise in the present case. The Court accordingly finds that the interference with the applicant's right to leave his own country pursued a legitimate aim, namely the protection of the rights of others. The main issue to be determined in the present case is whether the restrictions imposed on the applicant were "necessary in a democratic society" in order to achieve that aim.

*3. Whether the interference was "necessary in a democratic society"*

**(a) The parties' submissions**

81. The Government maintained that the restrictions imposed on the applicant had been necessary in a democratic society. The means employed had been proportionate to the aims pursued. The authorities were under a positive obligation to provide an effective mechanism for the enforcement of judgments debts to be paid by private persons and for the protection of creditors' property rights. If they failed to do so, their responsibility under Article 6 of the Convention could be engaged. The applicant had not paid the judgment debt voluntarily and enforcement proceedings had therefore been instituted. The bailiffs' service had taken various measures to secure payment of the judgment debt. However, all those measures had proved insufficient for the enforcement of the judgment debt, in large part owing to the applicant's behaviour. As established by the decision of 19 October

2004 (see paragraph 11 above), the applicant had attempted to hide his property in order to avoid its forfeiture in the enforcement proceedings. In the absence of any other means of ensuring that the applicant honoured his debt, the bailiffs' service had decided to impose a travel ban on him.

82. The Government further pointed out that the travel ban had been imposed on the applicant for a period of six months and had been extended on three more occasions. Each of those extensions had been limited to six months, unlike in the case of *Gochev v. Bulgaria*, where the applicant had been prohibited from leaving the country for several years. The bailiffs' service's decisions had been duly reasoned and had been regularly reviewed by the domestic courts. On one occasion the domestic court quashed the bailiff's decision (ruling of 3 March 2005) on the grounds that it had not indicated the period during which the travel ban had to be applied to the applicant. The applicant had been aware of the decisions taken in his respect since he had challenged almost all of them in the courts. The documents concerning the enforcement proceedings at issue had been destroyed after expiry of the statutory time-limit for storage of documents.

83. The applicant submitted that the travel ban had not been necessary in a democratic society. The authorities had the possibility of seizing a debtor's assets located in his or her country of residence or abroad without the debtor's physical presence. Also, preventing persons from leaving the country could be counterproductive if they migrated to another country in search of employment with the intention of using their future salary to honour the debt. Furthermore, the Russian legal system did not provide individuals with bankruptcy protection; therefore, persons who committed a tort and faced a large judgment debt would be barred from leaving the country forever through a series of six-month bans. The travel ban was used widely in Russia irrespective of the nature and amount of the debt. In the applicant's case the travel ban had been imposed for non-payment of a relatively small debt and without any prior notice when he and his family had attempted to board a plane.

**(b) The Court's assessment**

*(i) The Court's principles relating to assessment of the necessity of restrictions on freedom of movement*

84. The Court reiterates that interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient". While it is for the national authorities to make the initial assessment in all these respects, the final evaluation of whether the interference is necessary remains subject to review by the Court for conformity with the requirements of the Convention (see, among other

authorities, *Handyside v. the United Kingdom*, 7 December 1976, § 48-50, Series A no. 24, and *Nada v. Switzerland* [GC], no. 10593/08, § 181, ECHR 2012).

85. The Court has examined the proportionality of travel restrictions which were imposed in various contexts: a travel ban imposed as a measure of police supervision of a person suspected of having connections with the Mafia (see *Labita*, cited above, §§ 193-197); the seizure, as part of the on-the-spot investigation, and subsequent confiscation of a passport of a person who was neither prosecuted nor considered to be a witness in the criminal proceedings (see *Baumann*, cited above, §§ 65-67); a prohibition on a bankrupt moving away from his place of residence for the duration of the bankruptcy proceedings (see *Luordo v. Italy*, no. 32190/96, §§ 96-97, ECHR 2003-IX); the seizure of the applicant's passport for refusal to pay a fine for a customs offence (see *Napijalo v. Croatia*, no. 66485/01, §§ 78-82, 13 November 2003); an obligation not to abscond imposed on a suspect pending criminal proceedings against him (see, among many other examples, *Fedorov and Fedorova v. Russia*, no. 31008/02, §§ 39-47, 13 October 2005; *Antonенkov and Others v. Ukraine*, no. 14183/02, §§ 59-67, 22 November 2005; *Ivanov v. Ukraine*, no. 15007/02, §§ 90-97, 7 December 2006; *Hajibeyli v. Azerbaijan*, no. 16528/05, §§ 60-69, 10 July 2008; *Makedonski v. Bulgaria*, no. 36036/04, §§ 39-46, 20 January 2011; *Pfeifer v. Bulgaria*, no. 24733/04, §§ 55-58, 17 February 2011; *Prescher v. Bulgaria*, no. 6767/04, §§ 47-52, 7 June 2011; and *Miażdżyk v. Poland*, no. 23592/07, §§ 33-42, 24 January 2012); travel restrictions imposed for refusal to pay a tax debt (see *Riener v. Bulgaria*, no. 46343/99, §§ 118-130, 23 May 2006); travel restrictions imposed on account of knowledge of State secrets (see *Bartik v. Russia*, no. 55565/00, §§ 44-52, ECHR 2006-XV, and *Soltysyak v. Russia*, no. 4663/05, §§ 46-54, 10 February 2011); court orders prohibiting minor children from being removed to a foreign country (see *Diamante and Pelliccioni v. San Marino*, no. 32250/08, §§ 214-215, 27 September 2011); and a travel ban imposed on account of a breach of the immigration rules of another country (see *Stamose v. Bulgaria*, no. 29713/05, §§ 33-37, 27 November 2012). The Court has also examined restrictions which, as in the present case, were imposed on the applicants for failure to honour a judgment debt to a private party (see *Ignatov*, cited above, §§ 36-41, and *Gochev*, cited above, §§ 49-57).

86. When making its assessment of the proportionality of the travel restrictions imposed on the applicants in those cases the Court had regard to various factors.

87. In a series of cases against Italy the Court found that the travel restrictions, which were automatically imposed for the whole duration of the bankruptcy proceedings and remained in force for very significant periods ranging from thirteen years to more than twenty-four years, were disproportionate even though there had been no indication that the applicant

had wished to leave his place of residence or that such permission had ever been refused (see *Luordo*, cited above, § 96; *Bassani v. Italy*, no. 47778/99, §§ 23-25, 11 December 2003; *Neroni v. Italy*, no. 7503/02, §§ 26-28, 22 April 2004; and *Goffi v. Italy*, no. 55984/00, §§ 19-21, 24 March 2005). On the other hand, in a case where the travel restriction was in place for a period of six months the Court considered, bearing in mind the short duration of the restriction, that it was proportionate to the aims pursued (see *Diamante and Pelliccioni*, cited above, § 214).

88. In another group of cases, where an obligation not to leave their place of residence was imposed in the context of criminal proceedings against the applicants but was not applied automatically for the whole duration of those proceedings and was significantly shorter than the one in the *Luordo* case, the Court held that in the circumstances of those cases the mere duration of the proceedings was insufficient to conclude that the restriction was disproportionate and that it was therefore necessary to have regard to other relevant factors. In particular, in the cases of *Fedorov and Fedorova* (cited above, § 44) and *Antonenkov and Others* (cited above, § 64), the Court considered that it was relevant in assessing the proportionality of the restriction to ascertain whether the applicants had actually sought to leave their area of residence and had applied to the domestic authorities with requests to that effect, and if so, whether permission to leave the area had been refused.

89. In cases where the travel restrictions were imposed on applicants who were not parties to any criminal, administrative or other proceedings, the Court examined whether the grounds relied on by the domestic authorities in imposing and extending the restrictions and/or in refusing to lift them were relevant and sufficient (see *Labita*, cited above, §§ 196-197; *Baumann*, cited above, § 65-67; and *Napijalo*, cited above, §§ 78-82).

90. In the case of *Soltysyak*, cited above, in which travel restrictions were imposed on the applicant on account of his knowledge of State secrets, the Court took into consideration the existence of a common European and international standard in the field.

91. In the case of *Gochev* (cited above, §§ 49-50) the Court summarised the principles relating to the assessment of the necessity of measures restricting freedom of movement as follows:

“49. With regard to the proportionality of a restriction imposed on account of unpaid debts, the Court reiterates that it is justified only so long as it furthered the pursued aim of guaranteeing recovery of the debts in question (see *Napijalo v. Croatia*, no. 66485/01, §§ 78 to 82, 13 November 2003). Furthermore, even were it justified at the outset, a measure restricting an individual’s freedom of movement may become disproportionate and breach that individual’s rights if it is automatically extended over a long period (see *Luordo v. Italy*, no. 32190/96, § 96, ECHR 2003-IX; *Földes and Földesné Hajlik v. Hungary*, no. 41463/02, § 35, ECHR 2006-...; and *Riener*, cited above, § 121).

50. In any event, the domestic authorities are under an obligation to ensure that a breach of an individual's right to leave his or her country is, from the outset and throughout its duration, justified and proportionate in view of the circumstances. They may not extend for long periods measures restricting an individual's freedom of movement without regular re-examination of their justification (see *Riener*, cited above, § 124, and *Földes and Földesné Hajlik*, cited above, § 35). Such review should normally be carried out, at least in the final instance, by the courts, since they offer the best guarantees of the independence, impartiality and lawfulness of the procedures (see *Sissanis v. Romania*, no. 23468/02, § 70, 25 January 2007). The scope of the judicial review should enable the court to take account of all the factors involved, including those concerning the proportionality of the restrictive measure (see, *mutatis mutandis*, *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 60, Series A no. 43) ...”

(ii) *Application of those principles in the present case*

92. The Court agrees with the Government that in order to comply with the requirements of Article 6 and Article 1 of Protocol No. 1 the State authorities are obliged to provide the necessary assistance to the creditor in the enforcement of court judgments issued against private debtors. Such assistance may be provided, for example, through a bailiffs' service or bankruptcy proceedings (see *Anokhin v. Russia* (dec.), no. 25867/02, 31 May 2007). However, the Court considers that the measures taken to provide such assistance, in so far as they interfere with the rights protected under Article 2 of Protocol No. 4, must be necessary in a democratic society.

93. Turning to the circumstances of the present case, the Court observes that the applicant was prohibited from leaving the country by a series of travel bans which were issued between 2003 and 2005.

94. The Government put forward a number of reasons which, according to them, had justified the imposition of travel restrictions on the applicant. In particular, they claimed that the restrictions had been applied to the applicant because he had not paid the judgment debt voluntarily; all other measures had proved insufficient, in large part owing to the applicant's behaviour.

95. The Court observes that under section 15(5) of the 1996 Federal Act on Leaving and Entering the Russian Federation (Procedures), travel restrictions could be imposed on the debtor only if he evaded the obligations imposed on him by a court. Furthermore, according to the interpretation of those provisions by the Constitutional Court (see paragraph 36 above), the domestic authorities were under an obligation to justify the necessity of the restrictions imposed on the applicant and not just to apply those restrictions on formal grounds but also to take into account specific factual circumstances, which, where necessary, could be verified by the courts of general jurisdiction. It follows that the travel restrictions could not be imposed automatically for failure to pay the judgment debt, but only once it

had been established that the imposition of such a measure was necessary in the circumstances of the case.

96. The Court further observes that, under section 88 of the 1997 Federal Act on Enforcement Proceedings, in cases where a decision taken by the bailiff in the framework of enforcement proceedings affected the interests of the parties to those proceedings (creditor and debtor), the bailiff was under an obligation to issue a ruling (“*постановление*”) to that effect and to indicate, among other things, the grounds for the decision (see paragraph 49 above).

97. There is no doubt that in the present case the bailiffs’ service’s decisions restricting the applicant’s right to leave the country affected his interests and therefore those decisions should have been taken in the form of rulings. However, in the present case most of the travel restrictions were imposed on the applicant on the basis of documents in the form of “demands” (“*требования*”) or “orders” (“*поручения*”) issued by the bailiffs’ service for the attention of the Department of the Interior and the Department of Border Control, and the domestic courts reviewed the lawfulness of the restrictions as applied on the basis of those documents. Only on one occasion did the bailiffs’ service impose a travel ban on the applicant in the form of a ruling (the ruling of 3 March 2005), which however, was later quashed by a court.

98. In its first decision the bailiffs’ service requested the departments concerned to restrict the applicant’s right to leave the country because he had not paid the judgment debt voluntarily. It did not cite any other reasons for applying the measure. In particular, it did not state that the applicant had evaded payment of the judgment debt by various means, as suggested by the Government. Likewise, the bailiffs’ service did not explain how the travel ban might serve the aim of collecting the debt, nor did it examine the applicant’s individual situation and other relevant circumstances of the case.

99. It is true that all the further restrictions imposed on the applicant were based on fresh demands or orders issued by the bailiffs’ service. However, the wording of those decisions did not evolve with the passage of time. The bailiffs’ service repeatedly stated that the applicant’s right to leave the country had to be restricted because he had not paid the judgment debt. It follows that by sending those demands and orders to the authorities responsible for internal affairs and border control the bailiffs’ service merely confirmed its initial demand to impose travel restriction on the applicant and did not re-examine the justification for the continued restrictions on the applicant’s freedom to leave the country. It therefore follows that from the outset and throughout its duration, the restriction on the applicant’s freedom to leave the country was based solely on the ground that he had not paid the judgment debt voluntarily, and was extended automatically by the bailiffs’ service without any reassessment of its justification.

100. As regards the judicial review of the restrictions applied to the applicant, the Court notes that by a decision of 7 July 2005 the domestic courts quashed the bailiffs' service's ruling of 3 March 2005 on the grounds that it had not indicated the period during which the restriction was to be applied. In all further decisions the domestic courts merely stated that the applicant had not complied with the judgment debt and, therefore, the bailiffs had lawful grounds for applying travel restrictions in his regard. In none of their decisions did the domestic courts assess the justification and proportionality of the travel restrictions imposed on the applicant.

101. Having regard to the above, the Court considers that the domestic authorities did not comply with their obligation to ensure that any interference with the right of individuals to leave their own country is justified and proportionate throughout its duration, in the particular circumstances of the case. It therefore follows that the interference with the applicant's right to leave his country in the present case was not "necessary in a democratic society".

102. Accordingly, there has been a violation of Article 2 §§ 2 and 3 of Protocol No. 4 in the present case.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

103. The applicant complained under Article 6 § 3 (c) and (d) that the criminal proceedings initiated against him on 18 July 2005 for forgery of documents had been unfair. The Court observes that a person may not claim to be a victim of a violation of his right to a fair trial under Article 6 of the Convention which, according to him, occurred in the course of proceedings in which he was acquitted or which were discontinued (see *Osmanov and Husseinov v. Bulgaria* (dec.), nos. 54178/00 and 59901/00, 4 September 2003). The Court notes that the proceedings against the applicant were discontinued on 17 May 2006 because the relevant limitation period had expired. The Court considers that in these circumstances the applicant can no longer claim to be a victim of a violation of his right to a fair trial. It follows that this complaint must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

104. 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**

105. The applicant claimed 1,000 euros (EUR) in respect of pecuniary damage sustained as a result of the cancellation of his trip to Turkey. He also claimed EUR 10,000 in respect of non-pecuniary damage.

106. The Government considered that the applicant's claims were unreasonable and not supported by appropriate evidence.

107. The Court observes that the applicant's claims in respect of pecuniary damage are not supported by any evidence. In particular, the Court has at its disposal documents relating to a trip planned by the applicant to Egypt, not to Turkey. The Court therefore rejects those claims. However, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

### **B. Costs and expenses**

108. The applicant also claimed EUR 5,500 for the costs and expenses incurred before the domestic courts and before the Court, comprising EUR 500 in costs and expenses related to this application and EUR 5,000 in lawyer's fees.

109. The Government contested the applicant's claims. They submitted that he had not provided any evidence in support of his claims, such as a contract between himself and his lawyer.

110. 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 criteria, the Court considers it reasonable to award the sum of EUR 500 covering costs under all heads.

### **C. Default interest**

111. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* the complaint under Article 2 of Protocol No. 4 to the Convention concerning the restrictions imposed on the applicant's right to leave Russia admissible and the remainder of the application inadmissible;



2. *Holds* that there has been a violation of Article 2 §§ 2 and 3 of Protocol No. 4 to 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 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 500 (five hundred 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 11 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Isabelle Berro-Lefèvre  
President