| Chapter 20 |

Freedom of Movement

Tetiana Drakokhrust

ABSTRACT

Freedom of movement is a fundamental right enshrined in Article 2 of Protocol No. 4 of the European Convention on Human Rights (ECHR). This right guarantees individual the liberty to move within the borders of a state, to leave any country, and to return to their country of origin. However, the right to freedom of movement is not absolute and can be subject to restrictions. These restrictions must be prescribed by law, necessary in a democratic society, and pursued for legitimate aims such as national security, public safety, public order, prevention of crime, or protection of health, morals, or the rights of others. The European Court of Human Rights (ECtHR) plays a crucial role in interpreting and enforcing this right, balancing individual freedoms with state interests. The Court has developed a substantial body of case law that delineates the scope and limitations of freedom of movement, considering factors such as proportionality and necessity of the restrictions imposed by states. The Court's jurisprudence also highlights the importance of the right in the context of migration, residency rights, and the treatment of non-citizens, emphasizing the protection of individuals against arbitrary or discriminatory restrictions. The chapter provides an overview of the legal framework, key principles, and significant case law under the ECHR concerning freedom of movement, offering insights into how this right is protected and limited within the European human rights system.

KEYWORDS

Freedom of movement, European Convention on Human Rights, Article 2 Protocol 4, European Court of Human Rights, restrictions

1. Introduction

Social life unfolds in both time and space. Without space and the ability to move within it, human activity is impossible. The understanding of freedom touches upon various aspects of human existence. Some expressions of freedom are so self-evident to individuals that their significance become apparent only when such expressions are restricted. One of these self-evident rights and freedoms, which are perceived as inherently belonging to humans, is the right to free movement. Opportunities across the world are unevenly distributed and this unevenness is the primary impetus for people to move. People seek better places to utilise their abilities and live with

Tetiana Drakokhrust (2026) 'Freedom of Movement' in Paczolay, P. (ed.) *The European Convention on Human Rights A Central and Eastern European Perspective.* Miskolc–Budapest: Central European Academic Publishing, pp. 641–690. https://doi.org/10.71009/2026.pp.tecohr_20

greater security and well-being. Therefore, free movement is an expression of human freedom and has immense potential for human development. However, movement (migration) is not always a manifestation of individual choice – people often relocate owing to severe compulsion.

The right to free movement may initially seem less significant than other personal (civil) or political rights. However, it is one of the most important rights, the violation of which in many countries leads to numerous problems and suffering. According to the Universal Declaration of Human Rights, all individuals have the right to recognition of their dignity and certain inalienable rights, which are 'the foundation of freedom, justice, and peace in the world'. Article 13 of the Universal Declaration of Human Rights states that 'Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including their own, and to return to their country'.

The right to free movement within national or international borders can significantly affect other fundamental human rights as outlined in the Universal Declaration of Human Rights and other treaties. Without this freedom, an individual may be subjected to political repression or even deprived of life, prevented from practising their chosen religion, enjoying the right to marriage and family life, or obtaining a job or education, which could ultimately improve their quality of life.

The realisation of one principle may limit another, thus necessitating a reasonable balance. The study of international legal frameworks that regulate and implement the right to freedom of movement will allow for a better understanding of the direction in which the domestic legislative practice of certain European countries should move on the path to international integration. After all, the right to freedom of movement is not absolute and is accompanied by certain restrictions necessary to ensure the rights, freedoms, and interests of others as well as the interests of the state and society.

2. A Short Historical Overview on the Development of the Right of Movement

The right to freedom of movement is a fundamental natural right of individuals; however, its recognition and the unfolding of its content in legal reality represent a rather complex historical process. Each historical era is characterised by its own unique social order and understanding of law. Freedom of movement is a significant civilizational achievement of humanity, but to truly grasp the essence and value of this right, it is essential to focus on the periods of its formation and development, the specific restrictions it faced in different historical epochs, and its establishment in normative documents. This approach allows for a more profound understanding of the right and highlights its key essential characteristics.

In the context of Ancient Roman law, freedom of movement was not a distinct subject of legal regulation or study. However, the elements of this right can be traced

to the specifics of the legal status of individuals and the establishment of its boundaries. This is evident in the two key criteria for distinguishing people in Rome: the free (citizens, Latins) and the enslaved ('Gaius in the 1st book of 'Institutes': The main division that pertains to the law of persons is that all men are either free or slaves') as well as the status of citizens and peregrines.

The Latins (native inhabitants of older Roman provinces) were free people but differed from Roman citizens by a series of restrictions in the political and familial spheres. The freedom of movement for these two categories of individuals was almost equal; however, the situation differed when it came to choosing a permanent place of residence:

> 'At the same time, under certain circumstances, a Roman could change their citizenship to that of a Latin, for example, to acquire a plot of land in newly annexed Roman provinces, if the state provided these lands to Latins on favorable terms, thereby encouraging the development of new territories'.

Thus, a Roman citizen could choose to reside in one of the provinces (with the Roman authorities often encouraging this for colonisation and development of new provinces), but in doing so, the person would lose their status as a citizen and acquire the status of a Latin, along with the loss of certain political rights. However, under certain conditions, a person could attain the status of a Roman citizen and gain the right to permanent residence within Rome (although there were restrictions to prevent overpopulation in Rome and depopulation in the provinces). Therefore, we can conclude that the right to freedom of movement in ancient Rome could either expand or restrict other important rights, particularly political rights. Consequently, residency, or a permanent location as an element of freedom of movement for a free person, had significant status implications.

Special attention should be paid to famous historical legal document of medieval England – the Magna Carta. While in ancient Rome, the emphasis on freedom of movement was more about the right to choose a place of residence, the Magna Carta was the first document to clearly articulate the right to free movement. Specifically, Articles 41 and 42 of the Charter are particularly noteworthy. Even at that time, the foundations for the institution of restricting freedom of movement were laid. The document (a) distinguished restrictions on movement for certain categories of people; (b) outlined the purposes of such restrictions in the interest of the common good of the state and in the interest of the security and defence of the country; and (c) established the temporary nature of their application.[1]

Special attention should be paid to the important constitutional normative act of a country founded on the principles of immigration and freedom of movement, namely, the Declaration of Independence of the United States of America. In addition to proclaiming independence from the English crown, the Declaration also justified this act

1 Hryshchenko, 2022, p. 88–89.

by pointing out the unlawful actions of the king: 'He has endeavored to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands'.[2]

While the Magna Carta observed a kind of "granting" or "recognition" of the right to free movement, the Declaration clearly formulates this freedom as self-evident, inherent to human nature, unquestionable, and something that should be defended against monarchical restrictions. This crucial doctrinal position crowned the development of natural law views on freedom of movement. This right is a vital foundation of democracy, distinguishing it from monarchical despotism.[3]

An important contribution to affirming the natural origin of the right to freedom of movement was made by the French Declaration of the Rights of Man and of the Citizen of 1789:

> 'The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression... Law is the expression of the general will... All citizens, being equal in its eyes, are equally eligible to all public dignities, positions, and employments, according to their capacities, and without distinction except that of their virtues and talents'.[4]

Most researchers agree that the freedom of movement found its expression with the introduction of elements of the passport system in European countries. The passport system originated in Germany in the 15th century to distinguish traders and craftsmen from bandits and beggars who roamed the country.[5] Once again, we observe the tendency that freedom of movement was a privilege for commerce. However, considering that all categories of the population objectively travelled across the territory, it can be asserted that all free people had the ability to move freely. However, another issue arose – the legality of movement and residence in a certain area. The modern understanding of freedom of movement also points to legal grounds. Evidently, in Germany as well as in other countries, the problem of identifying moving subjects arose because everyone had different statuses and did not always have legal grounds for such movement, particularly criminals. The introduction of the passport system allowed distinguishing those segments of the population for whom freedom of movement was a privilege. By the 17th century, various types of passports had emerged, such as military passports (for the registration and control of soldiers), plague passports, and passports for Jews among others. Therefore, the passport system was primarily intended to identify individuals, their places of residence, and social status.

2 Declaration of independence of the United States of America, 4 July 1776.
3 Hryshchenko, 2022, p. 90.
4 Declaration of the Rights of Man and Citizen of 1789.
5 Savranchuk, 2010, p. 102.

In one way or another, all these factors influenced the right to movement and the extent of its absolutisation.[6]

In the mid-19th century, the passport system faced criticism and was abolished in several European countries (Germany at the Dresden Conference, Austria, Denmark, Spain, and Italy). This stance was driven by the fact that the concepts of legalism and strong state control, with which the passport system in the sphere of freedom of movement was associated, became less relevant owing to changes in the social order of Europe at the time and the increasing democratisation of society. The principle of transborder movement progressively spread across the European continent, and foreigners were increasingly viewed as subjects requiring strict control.

The passport as a phenomenon and corresponding regime played a significant role in the development and establishment of the right to freedom of movement. On one hand, it was a tool of control, as it facilitated the identification of individuals and imposed certain restrictions based on their social status, territorial origin, and ethnicity. On the other hand, freedom of movement became formalised, becoming a state right, and thus received certain guarantees of its protection.[7]

Since then, freedom of movement, having first transformed into an independent personal right, has been enshrined in the national legislation and subsequently, as a universally recognised personal right in international acts, primarily in Protocol No. 4 of the European Convention on Human Rights (ECHR).

3. Contextual Analysis of the Right of Movement in Accordance with the Convention

The right to freedom of movement is a fundamental human right enshrined in the international human rights law. Under the ECHR, this right is primarily protected by Article 2 of Protocol No. 4, which was added to the Convention in 1963. This provision guarantees individuals the right to liberty of movement and freedom to choose their residence within the territory of a state as well as the right to leave any country, including their own, and to return to their country.

Text of Article 2 of Protocol No. 4:

> ‘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.
> Everyone shall be free to leave any country, including his own.
> 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 public

6 Savranchuk, 2010, p. 103.
7 Sofinska, 2020, p. 343.

> order, the prevention of crime, the protection of health or morals, or the protection of the rights and freedoms of others.
> 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.'[8]

The right to freedom of movement under the ECHR is not absolute. While it provides robust protections, this right can be restricted under certain circumstances. The conditions under which the restrictions are permissible are articulated within the text of Article 2 itself. Restrictions are as follows: a) In accordance with law: Any restriction must have a basis in national law, which should be precise, accessible, and foreseeable in its application. b) Necessary in a democratic society: This implies a proportionality test, where the restriction must correspond to a pressing social need, be proportionate to the legitimate aim pursued, and necessary in a democratic society. c) In the interests of specific public concerns: These include national security, public safety, maintenance of public order, prevention of crime, protection of health or morals, or protection of the rights and freedoms of others. d) In the context of our research, it is essential to distinguish between restrictions on freedom of movement based on the conditions under which they are implemented. e) General restrictions on human rights under normal conditions. f) Derogation from rights, understood as their restriction during a state of emergency.

This raises the following question: What are the specific features of restrictions on the right to freedom of movement under these conditions as established by international human rights instruments?

General restrictions allow for a balance between individual interests and societal needs. The ECHR provides instances in which exceptions to certain rights are explicitly defined, meaning that such actions (or circumstances) are not considered violations of rights. For example, Article 4(3) of the Convention outlines types of work and service that are not considered 'forced or compulsory labor'. Another approach is when a part of an article sets legitimate aims for restricting a specific right. This approach is utilised in the section concerning the right to freedom of movement, particularly in Article 2(3) of Protocol No. 4 of the Convention.[9]

Furthermore, the Convention delineates the general principles of restrictions on rights and freedom across different articles. For instance, Article 17 prohibits the destruction and excessive limitation of rights and freedoms provided by the Convention. In the case-law of the European Court of Human Rights (ECtHR) concerning the protection under this article, the Court recognised that the general purpose of Article 17 is to prevent the promotion of ideas that are contrary to the text and spirit of the Convention. This is significant because the abuse of rights and freedoms is incompatible with democracy and human rights.

8 Council of Europe, 1963.
9 Council of Europe, 2025.

Understanding these principles helps clarify the framework within which freedom of movement can be restricted and ensures that such restrictions are implemented in a way that respects both individual rights and the broader needs of society[10].

Next, for each right protected by the Convention, the legitimate aims for permissible restrictions are specifically defined and somewhat expanded compared with, for example, the Universal Declaration of Human Rights. Article 2 of Protocol No. 4 to the Convention supplements the list of legitimate aims for restricting the right to freedom of movement with the societal need for such restrictions, specifically 'the protection of national security' and 'the prevention of crime'. These restrictions are exhaustive; that is when establishing the restrictions on the right to freedom of movement, national legislations should not exceed these limits. However, in practice, achieving this can be challenging.

The Convention also defines the criteria for the admissibility of restrictions on human rights and freedoms. The ECtHR has developed a well-defined argumentation regarding the content of these criteria. This primarily concerns the legality of the restriction. It should be noted that although the Convention uses different expressions related to the legality of restrictions, such as 'prescribed by law' (Article 9(2), Article 10(2), Article 11(2)), 'in accordance with the law' (Article 8(2)), and 'provided by law' (Article 2(3) of Protocol No. 4); the ECtHR has treated these as synonymous and equivalent in meaning.

Moreover, in the case of Sunday Times v. United Kingdom (26 April 1979, Arts. 47 and 49), the ECtHR established general principles regarding the phrase "prescribed by law". The first principle is that the restriction must have a basis in national law, meaning that the existence of grounds for applying such a restriction in the state's legislation is necessary.

The second principle stipulates that 'the law must be adequately accessible,' meaning that citizens must have the opportunity, appropriate to the circumstances, to understand which legal norms will apply in a given case. Therefore, proper publication of such acts is required.

The third principle asserts that 'a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct,' meaning that individuals must be able to foresee the consequences of their actions.[11]

Recognising the impossibility of achieving absolute precision in the formulation of laws as the pursuit of such precision could lead to excessive rigidity by state authorities and acknowledging that many laws contain terms that are inherently vague, the ECtHR sees the interpretation and application of laws as the task of legal practice. Therefore, the level of precision required by national legislation largely depends on the content of the law, its quality and scope, and the status of its recipients. However,

10 Decision as to the admissibility of *Witzsch v. Germany*, 20 April 1999.
11 Case of the *Sunday Times v. the United Kingdom*, 26 April 1979.

the interpretation and application of national legislation primarily fall under the jurisdiction of national authorities.[12]

The first criterion is that the national legislation must be consistent with the rule of law. This means that there must be a certain level of protection in national law against arbitrary interference by state authorities in the rights guaranteed by the Convention. This requirement involves clearly establishing the boundaries and manner of exercising discretionary powers by authorities, although the ECtHR does not require the inclusion of detailed procedures and conditions for their observance under substantive law.[13]

The second criterion for the admissibility of restrictions is the legitimacy of their aim, meaning that the restriction must pursue a lawful (legitimate) aim, such as the protection of specific interests. The list of such protected interests (aims), as mentioned above is detailed in each article of the Convention. According to Article 2(3) of Protocol No. 4 of the Convention, such interests when restricting freedom of movement include national or public security, maintaining public order, preventing crime, protecting health or morals, and protecting the rights and freedoms of others.

The third criterion for the legitimacy of a restriction is its necessity in a democratic society. The ECtHR has paid significant attention to this criterion in its jurisprudence. The ECtHR primarily interprets the concept of a "democratic society" through the notions of "pluralism"," "tolerance", and "broad-mindedness".

Moreover, the ECtHR has developed specific principles for interpreting the phrase "necessary in a democratic society". First, the adjective "necessary" is not synonymous with "indispensable", nor does it have the flexibility of expressions such as "permissible", "ordinary", "reasonable", or "desirable". Second, the ECtHR recognises that states have a certain margin of discretion (freedom of Judgement), as it is their responsibility to ensure human rights and freedoms.

However, the state's margin of discretion is not unlimited, as the ECtHR reserves the right to make a final decision on whether the applied restriction is compatible with the Convention. Thus, the state's internal margin of discretion goes hand in hand with European oversight.[14]

Notably, when making final decisions on complex issues, the ECtHR often considers the law and practice of other Council of Europe member states, and sometimes even worldwide. The ECtHR grants a wide margin of discretion to the respondent state if there is no consensus among states on the issue at hand. Conversely, if there is a broad European or international consensus on the matter, the margin of discretion of the respondent state is significantly narrowed.[15]

Third, the phrase "necessary in a democratic society" implies that the interference must correspond to a "pressing social need" and be "proportionate to the legitimate

12 Case of *Vogt v. Germany* ећід, 2 September 1995 Art. 48.
13 Case of *Silver and Others v. the United Kingdom*, 25 March 1983 Art. 88.
14 Case of *Handyside v. the United Kingdom*, 7 December 1976 Arts. 48–49.
15 Case of *X, Y and Z v. the United Kingdom*, 22 April 1997 Art 39.

im". Proportionality of interference is understood as the State's (or its judicial authorities') responsibility to ensure a fair balance between the individual's rights and the interests of society as a whole. Failure to maintain such a fair balance would be considered disproportionate interference with the individual's rights and, therefore, would not be "necessary in a democratic society".[16] It is crucial that the ECtHR examines whether the grounds justifying the restriction are relevant and sufficient. In other words, the ECtHR assesses whether national courts appropriately exercised their discretion to balance the conflicting interests of the applicant and society and whether they provided relevant and sufficient explanations for the necessity of such interference.

Fourth, the provisions of the Convention articles that allow for exceptions to guaranteed rights must be interpreted narrowly.[17] It is also critically important that the states apply the "necessary in a democratic society" standards to each specific legitimate aim of imposing restrictions, as enumerated in the relevant article of the Convention. It is not permissible to invoke a general necessity to justify restrictions. Therefore, a restriction is "necessary in a democratic society" when the situation cannot be resolved otherwise without such restrictions.

When discussing the limitation of rights under special circumstances, it is important to note that the Declaration does not include relevant provisions. The stipulation regarding derogation from obligations during an emergency was established by the Convention (Article 15).

According to Article 15 of the Convention, an "emergency" is defined as war or another public danger that threatens the life of the nation. The ECtHR does not provide a specific interpretation of the term "war" because, on one hand, any significant manifestations of violence or disturbances on the brink of war fall under the understanding of the second term in this article, "public danger that threatens the life of the nation". On the other hand, with the establishment of the Geneva Conventions in international law, the term "armed conflict" is used. The phrase "other public danger that threatens the life of the nation" was interpreted by the ECtHR in the case of *Lawless v. Ireland* (1 July 1961, Art. 28) as 'an exceptional crisis or emergency affecting the entire population and constituting a threat to the organized life of the community of which the state is composed'.[18]

It is crucial that derogation from obligations has conditions, limits, and procedures established by international acts. This leads to the conclusion that even in a state of emergency, states do not exercise full discretion. According to the Convention (Article 15), the main conditions for the legitimacy of derogation from obligations are as follows:

In times of war or other public emergencies threatening the lives of the nation, it is important that the emergency must actually exist or be imminent (the requirement

16 Case of *Handyside v. the United Kingdom*, 7 December 1976 Arts. 48–50.
17 Case of *Klass and Others v. Germany,* 6 September 1978 Art. 42.
18 Case of *Lawless v. Ireland*, 1 July 1961.

of imminence does not imply that the state waits for a catastrophe to occur and does not take measures to combat it). Additionally, the usual measures or restrictions permitted by the Convention must be clearly insufficient.

The measures taken in response must not exceed what is strictly required by the exigencies of the situation. In determining whether a state has exceeded these limits, the ECtHR considers the nature of the rights affected by the derogation, the circumstances that led to the emergency, and its duration.

The measures must not conflict with the state's other obligations under international law. The ECtHR independently examines whether there is any inconsistency between the derogation from obligations and the state's other obligations under international law.[19]

The Convention includes safeguards regarding rights that cannot be restricted under any circumstances.[20] However, an analysis of this article reveals that some of the listed rights are not absolute and can therefore be restricted. A similar approach is applied in Article 15, paragraph 2 of the Convention, although the list of articles is reduced to four: Articles 2 (except in cases of death resulting from lawful acts of war), 3, 4 (paragraph 1), and 7. As seen from the text of Article 2, the prohibition on derogation regarding it is also relative. Therefore, currently, only four rights are considered non-derogable: the prohibition of torture (Article 3), prohibition of slavery[21], prohibition of punishment without law[22], and right not to be tried or punished twice.[23] The limitation of other rights is permissible, provided that there is a "reasonable justification" for such limitations.

When exercising the right to derogate from its obligations, a state must follow certain procedures:

> 'Inform other states, the UN Secretary-General, and the Secretary-General of the Council of Europe regarding the provisions from which it has derogated and the reasons for such a decision.
> Notify when such measures have ceased to apply. The purpose of such notification is to make the derogation from obligations public. Without such official and public notification of derogation from obligations, the measures taken by the state will not fall under Article 15 of the Convention.'[24]

Thus, the conditions for the legitimacy of restrictions were supplemented by the Convention, with the necessity of social need for restriction and the proportionality of the means of restriction with their legitimate aims. The legitimate aims of restricting the right to freedom of movement include the protection of national security,

19 Guidance on Article 15 of the ECHR.
20 Art. 4 para. 2 of the Convention.
21 Ibid., Art. 4 para. 1.
22 Ibid., Art. 7 para. 1.
23 Art. 4 para. 1 of Protocol No. 7.
24 Prodyvus, 2023, p. 367.

public order, public health or morals, the rights and freedoms of others, and the prevention of crime. The Convention also defines the criteria for the permissibility of restrictions, including the legality of the restriction, necessity of the restriction in a democratic society, and legitimacy of the aim of the restriction.

4. Comparison with Other Universal and Regional Human Rights Instruments Containing the Right of Movement

The right to freedom of movement is a critical aspect of personal liberty that is essential for meeting an individual's needs. Deprivation of this fundamental right often leads to loss or restriction of other human rights and freedoms. Therefore, freedom of movement is an integral part of the international human rights protection mechanism. Provisions regarding the right to freedom of movement are enshrined in various universal and regional human rights instruments, including the following:

Universal Declaration of Human Rights (1948):

Article 13 states the following:

> 'Everyone has the right to freedom of movement and residence within the borders of each state.
> Everyone has the right to leave any country, including their own, and to return to their country'.[25]

International Covenant on Civil and Political Rights (1966):

Article 12 stipulates the following:

> '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.
> Everyone shall be free to leave any country, including his own.
> The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.
> No one shall be arbitrarily deprived of the right to enter his own country'.[26]

Convention on the Elimination of All Forms of Discrimination Against Women (1979).

Article 15(4) states the following:

25 Universal Declaration of Human Rights of 1948.
26 International Covenant on Civil and Political Rights of 1966.

> 'States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile'.[27]

International Convention on the Elimination of All Forms of Racial Discrimination (1965).

Article 5(d)(i) requires the following.

> 'States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: the right to freedom of movement and residence within the border of the State'.[28]

Convention on the Rights of Persons with Disabilities (2006).

Article 18 states the following:

> 'States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence, and to a nationality, on an equal basis with others'.[29]

American Convention on Human Rights (1969).

Article 22 states the following:

> 'Every person lawfully in the territory of a State Party has the right to move about in it and to reside in it subject to the provisions of the law.
> Every person has the right to leave any country freely, including his own.
> The exercise of the rights mentioned above may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
> The exercise of the rights enumerated in paragraph 1 may also be restricted by law in specific areas to protect public interest.
> The collective expulsion of aliens is prohibited.'[30]

Each of these instruments reflects a commitment to protecting the right to freedom of movement while also acknowledging that this right may be subject to lawful

27 CCPR General Comment No 27: Article 12 (Freedom of Movement).
28 Protocol No. 4 of the Convention on the Protection of Human Rights and Fundamental Freedoms, which guarantees certain rights and freedoms not provided for in the Convention and in the First Protocol to it, dated 16 September 1963.
29 American Convention on Human Rights of 1969.
30 African (Banjul) Charter on Human and People's Rights of 1981.

restrictions, provided such restrictions are necessary, proportionate, and serve legitimate purposes such as national security, public order, public health, and the rights of others. The recognition and protection of freedom of movement is consistent across various universal and regional human rights documents, underscoring its importance as a fundamental human right.

Thus, it can be concluded that the freedom of movement traditionally consists of three elements: entry, exit, and internal movement. The subjective component includes the extension of the principles of equality and non-discrimination in the context of freedom of movement, as this issue also exists. The question of the freedom of movement of foreigners is particularly complex, as it often involves the choice of residence and stay, which requires the states to be able to provide for this and places an additional burden on their economies. Another issue is the movement of family members, as well as the difference between the freedom of movement of economically active and inactive citizens. The right to freedom of movement also encompasses the issue of mass migration, including cases of forced and voluntary repatriation.

It is worth noting that in the EU, the concept of free movement is often considered in a broader sense and extends beyond people.

For example, the Treaty establishing the European Community specifies the characteristics of the internal market, which include 'the abolition of barriers to the free movement of people, goods, services, and capital between Member States'. The internal market encompasses a space without internal borders where, according to this Treaty, the free movement of people, goods, services, and capital is ensured. Every Union citizen has the right to move and reside freely within the territories of Member States, subject to the restrictions and conditions set out in the Treaty. Thus, once again, we see that the modern understanding of freedom of movement is interpreted as a multidimensional phenomenon not only in terms of geography or subject matter but also in relation to other accompanying, yet equally important, phenomena and processes. This is because the European Community initiated its integration processes as an economic union, and thus, the economic aspect of freedom of movement needed to be reflected. The highest degree of expansion of freedom of movement is the declaration and establishment of the absence of borders for the movement of people, goods, services, and capital, allowing for the full realisation of liberal principles regarding this right. C. Tulba rightly points out:

> 'In EU law, the term 'movement' encompasses not only the physical crossing of borders by entities and objects of legal relations (people, goods, money) but also rights related to residence and the exercise of various forms of economic activity in other states'.

Indeed, for European legislation, movement refers to the flow of both tangible and intangible elements, particularly concerning economic activity, which does not require additional expenses from states but rather enriches them.

An important issue in the realisation of the right to freedom of movement, highlighted by the UN Human Rights Committee, is bureaucratic procedures:

> '...a source of concern is the numerous legal and bureaucratic barriers that excessively affect the full realization of individuals" rights to freely leave the country, including their own, and to settle in another. Regarding the right to move within the country, the Committee criticized provisions requiring individuals to obtain permission to change their residence or seek approval from local authorities for such changes, as well as delays in processing such written requests'.[31]

Thus, legislative trends concerning the implementation of the right to freedom of movement, both internal and external, emphasise the maximum simplification of permits and bureaucratic procedures. As previously mentioned, the value lies not only in the right to movement but also in the freedom of movement itself; therefore, the focus is on broad individual opportunities, which can be hindered by unjustified bureaucratic obstacles. The need to obtain permission to change one's place of residence constitutes a significant restriction and an infringement of this right. Bureaucratic procedures should facilitate, rather than hinder, the right to enter and exit a country and internal movement.

In this context, the digitalisation of administrative procedures in Ukraine is directly relevant, as it can enhance the practical implementation of the right to freedom of movement by simplifying bureaucratic requirements for changing one's place of residence. Procedures related to residence registration could be digitised through electronic services, and programs like 'State in a Smartphone' should include measures to reduce bureaucratic barriers associated with relocating.

The application of restrictions allowed under Article 12(3) of the Covenant must comply with other rights guaranteed by the Covenant and fundamental principles of equality and non-discrimination. Therefore, a violation of the Covenant would be considered if the rights enshrined in Articles 12(1) and 12(2) were restricted through any distinctions, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, or other status. In reviewing state reports, the Committee found that measures preventing women from freely moving, requiring consent or accompaniment by a male, constitute a violation of Article 12.[32]

Thus, the principles of equality and non-discrimination must be adhered to in the implementation of the right to freedom of movement. The Committee pays particular attention to traditional-religious type legal systems where religious doctrines are part of the legal system and certain traditions that violate the modern principle of equality persist. This is especially true for Muslim countries, some of which still maintain strict gender inequality. However, it is important to distinguish the contemporary

31 CCPR General comment No. 23.
32 Tulba, 2017, p. 302.

democratic paradigm of modern legal systems and Western civilisation from the less progressive legal systems and traditions (which may change very slowly) that do not conform to this paradigm. In such cases, the freedom of movement serves as a good indicator of the legal system's progress.

5. A Very Detailed Case-Law Analysis of the ECtHR Respecting of the Right of Movement

The structure of Article 2 of Protocol No. 4 is similar to that of other articles in the Convention, such as Articles 8, 9, 10, and 11, but has distinct features. Article 2 of Protocol No. 4 consists of four paragraphs, whereas Articles 8 through 11 of the Convention each consist of two paragraphs.

Paragraphs 1 and 2 of Article 2 outline the rights and conditions of applicability.

Specifically,

Paragraph 1 states that 'Everyone lawfully within the territory of a State shall have the right to liberty of movement and freedom to choose his residence within that territory'.

Paragraph 2 provides that 'Everyone shall be free to leave any country, including his own'.

From the content of paragraphs 1 and 2 of Article 2, it is clear that these Convention provisions cover three aspects: freedom of movement, freedom to choose one's residence, and the right to leave a country, including one's own. These rights are guaranteed to everyone who is lawfully present in a state, including foreigners, and within the territory of that state.

Paragraphs 3 and 4 of Article 2 outline the conditions for restricting these rights.

Paragraph 3 establishes restrictions on the rights guaranteed by paragraphs 1 and 2, provided that such restrictions are

> 'prescribed by law and are necessary in a democratic society in the interests of national or public security, for the maintenance of public order, to prevent crime, for the protection of health or morals, or for the protection of the rights and freedoms of others'.

Paragraph 4 allows for restrictions specifically related to the rights mentioned in paragraph 1, concerning the imposition of limitations on these rights in certain areas.

The significance of paragraphs 3 and 4 of Article 2 is equivalent in that they both provide autonomous limitations on the exercise of the rights outlined in paragraph 1. However, they differ in scope: Paragraph 3 specifies limitations for particular purposes without setting territorial boundaries, while Paragraph 4 refers to more general restrictions justified by public interest, but limited to "specific areas".[33]

33 Case of *Garib v. the Netherlands*, 6 November 2017.

It is worth noting that unlike Article 11 of the Convention, which includes, among other things, restrictions on the exercise of its guaranteed rights for individuals who are members of armed forces, police, or administrative authorities of the state, Article 2 of Protocol No. 4 guarantees freedom of movement to everyone, regardless of whether they are state officials or not[34].

In addition to analysing the structure of Article 2 of Protocol No. 4 and comparing it with other Convention articles, it is also pertinent to consider the concept of "restrictions" used in this context. Unlike Article 8 of the Convention, which permits "interference" with the right to respect for private and family life, Article 2 of Protocol No. 4 refers to "restrictions" on rights.

Contrarily, "interference" means (1) to intrusively involve oneself in someone else's affairs or relationships; (2) (rarely) to enter or penetrate somewhere or into something.

Owing to incorrect usage or understanding, both terms can sometimes acquire a negative connotation and be associated with severe and unlawful violations of rights and freedoms.

It is worth noting that by analysing the application of the ECtHR practice in the administration of justice (based on the analysis of decisions from the Unified State Register of Court Decisions), it can be concluded that certain substantive errors in application are, among other reasons, owing to misunderstandings of the scope of the relevant Convention article.[35]

The ECtHR has consistently emphasised in its established practice that the Convention is a living instrument that must be interpreted in light of contemporary conditions and prevailing ideas in democratic states. However, this does not mean that, in response to current needs, conditions, views, and standards, the ECtHR can create new rights not provided for by the Convention or nullify existing rights or create new "exceptions" or "justifications" not explicitly foreseen by the Convention. The Convention should be considered as a whole and interpreted in a way that develops internal consistency and harmony among its various provisions.[36]

One of the key aspects of correctly applying Article 2 of Protocol No. 4 is distinguishing its scope from that of Articles 5 (right to liberty and security) and 8 (right to respect for private and family life, home, and correspondence) of the Convention. Article 5 of the Convention, proclaiming the "right to liberty", refers to physical freedom and aims to ensure that no one can be arbitrarily deprived of their liberty. This is not connected with the usual restrictions on freedom of movement as regulated by Article 2 of Protocol No. 4. The difference between a restriction on freedom of movement serious enough to qualify as deprivation of liberty under Article 5(1) of the Convention and the ordinary restrictions on freedom of movement regulated by

34 Case of *Soltysyak v. Russia*, 10 February 2011.
35 Fuley, 2018, p. 42.
36 Case of *Austin and Others v. the United Kingdom*, 15 March 2012.

Article 2 of Protocol No. 4 lies in the degree or intensity of the measure, rather than its nature or essence.

To determine whether a person has been "deprived of liberty" under Article 5(1) of the Convention, the starting point should be their specific situation, considering various criteria, including the nature of the measure, its duration, its consequences, and the manner of its implementation. The requirement to consider the "nature" and "manner of implementation" of a measure allows for accounting specific conditions and circumstances under which the restriction occurred, not necessarily related to traditional confinement in a prison cell. Indeed, the circumstances under which a measure is applied are important factors to consider, as modern society often encounters situations in which the public may be required to endure certain restrictions on movement or freedom for the sake of the common good.[37]

Understanding the differences between Article 5 of the Convention and Article 2 of Protocol No. 4 is crucial, as illustrated by the two key cases against Italy: *Guzzardi v. Italy*[38] and *De Tommaso v. Italy.*[39]

In both cases, special police surveillance was imposed on the applicants under the same law owing to criminal associations and similar restrictive measures. The main difference lie in the specific circumstances of each applicant, particularly their ability to establish social contacts. In Guzzardi, the applicant was not deprived of liberty in the traditional sense; he was required to live on a small island and was unable to establish social contacts. In contrast, in De Tommaso, the applicant was under house arrest but still had the opportunity to maintain social connections. The ECHR, analysing the measures applied to the applicants in their entirety and in the context of each individual's situation, concluded that Article 5 of the Convention was applicable and violated in the Guzzardi case, whereas in De Tommaso, it found that the restrictions did not constitute deprivation of liberty but merely restricted freedom of movement, thus finding a violation of Article 2 of Protocol No. 4 to the Convention, as the law applied was not sufficiently foreseeable.[40]

Given the importance and general sense of the provisions of Article 5 of the Convention and Article 2 of Protocol No. 4, Article 5 should not be interpreted to include the requirements of Protocol No. 4 for states that have not ratified it. The ECtHR highlighted this approach in the Grand Chamber decision of *Austin and Others v. the United Kingdom*, in which applicants complained about a violation of Article 5 of the Convention owing to being held within a police cordon during a demonstration in central London. This was the first case in which the ECtHR addressed the application of Article 5 to a police cordon or the detention of a group of people by the police for public safety reasons. The applicants did not invoke Article 2 of Protocol No. 4 because the United Kingdom had not ratified Protocol No. 4. Analysing the situation in

37 Handbook on the application of Article 5 of the ECHR.
38 Case of *Guzzardi v. Italy*, 6 November 1980.
39 Case of *De Tommaso v. Italy*, 23 February 2017.
40 Ibid.

this case based on the criteria mentioned above, the ECHR concluded that the detention of applicants within the police cordon could not be considered a deprivation of liberty within the meaning of Article 5 of the Convention, and thus, this article was not applicable.

Additionally, the ECHR noted that it cannot be excluded that under certain circumstances, the use of movement restrictions and crowd control could lead to unjustified deprivation of liberty in violation of Article 5 of the Convention. In each case, Article 5 must be interpreted in a way that considers the specific circumstances under which the restrictive measure was applied as well as the functions of the police in maintaining order and protecting the public, which they are obliged to fulfil both under national law and the Convention.[41]

The guarantees of Article 2 of Protocol No. 4 (P4-2), particularly regarding the freedom to choose one's residence, are closely linked to the right to respect for private and family life as guaranteed by Article 8 of the ECHR.

A notable case in this context is the Grand Chamber decision in Garib v. the Netherlands, where the Court emphasised that while earlier cases had applied approaches to Article 8 of the ECHR when addressing complaints under Article 2 of Protocol No. 4, the approach used for assessing the justification of interference under Article 8(2) was not directly applicable to Article 2(4) of Protocol No. 4.

Article 8 of the ECHR, which addresses respect for private and family life, does not establish the right to reside in a particular place, whereas the freedom to choose one's residence is a central aspect of Article 2(1) of Protocol No. 4. Therefore, when evaluating compliance with public interests under Article 2(4) of Protocol No. 4 concerning freedom of residence, the ECHR adopted an approach similar to that used in cases related to environmental protection.[42]

This distinction highlights the nuanced application of the ECHR provisions and Protocols, where the interpretation and application of rights can vary depending on the specific context and particular rights involved.

The case *Kotiy v. Ukraine* highlights key issues related to the interpretation and application of Articles 8 and 2 of Protocol No. 4 (P4–2) of the ECHR. In this case, the applicant was subjected to a travel ban and his passports were confiscated, which prevented him from travelling to Germany, where he worked and lived with his family. The Court found a violation of Article 8 but deemed part of the complaint regarding P4–2 admissible, although it did not consider it necessary to address the question of whether there was a violation of Article 2 of Protocol No. 4, given the findings under Article 8.[43]

Article 8 of the ECHR guarantees respect for private and family life, whereas Article 2 of Protocol No. 4 guarantees freedom of movement and right to choose one's residence. However, the Convention does not guarantee the right of a foreign national

41 Handbook on the application of Article 5 of the ECHR.
42 Case of *Garib v. the Netherlands*, 6 November 2017.
43 Case of *Kotiy v. Ukraine*, 5 March 2015.

to enter a particular country. In the case of Nada v. Switzerland, the Grand Chamber of the ECtHR emphasised that a state has the right to regulate the entry of non-citizens into its territory in line with international law and its international obligations.

Article 2 of Protocol No. 4 does not provide the right to enter a country, obtain a visa, or residence permit. Instead, it protects the rights of individuals who are lawfully present on a state's territory, including those in transit. This is broader in scope than Article 1 of Protocol No. 7, which provides procedural guarantees for the expulsion of foreigners who are lawfully residing in the country. Article 2 of Protocol No. 4 does not apply to situations involving the expulsion of foreigners.

Additionally, the guarantees under P4–2 do not extend to the right to choose the means of transportation. The concept of "territory" under Article 2 of Protocol No. 4 is also important. For instance, a country's embassy abroad is not considered part of its territory for the purposes of this Article. However, the country's overseas territories, which are separate from the mainland, may be considered part of its territory.[44]

The applicability of Article 2 of Protocol No. 4 (P4–2) to the ECHR involves various jurisdictional issues. Similar to Article 8 of the ECHR, this article is relevant to different types of legal proceedings, including administrative, civil, and criminal cases as detailed below.

Administrative Cases: Issues related to restrictions on freedom of movement between administrative regions, choice of residence, or departure from one's country owing to decisions by authorities (e.g. those with access to state secrets) fall under the jurisdiction of administrative courts in countries where such courts exist.

Civil Cases: Restrictions related to debt obligations (such as bank loans, credit, or alimony payments) are usually handled in civil court proceedings.

Criminal Cases: Personal obligations, such as restrictions on leaving the country (e.g. under a travel ban or personal undertaking), are typically addressed in criminal proceedings. In Ukraine, such matters are governed by the Criminal Procedure Codes of 1960 (under a travel ban) and 2012 (under personal undertakings).

It is crucial to consider these distinctions to prevent "jurisdictional football" and to ensure that the right to an effective remedy, as guaranteed by Article 13 of the ECHR, is respected.

Despite various issues that may arise in complaints regarding P4–2, the principles applied in these cases are consistent. The ECtHR has upheld this approach in several decisions such as, *Battista v. Italy*[45], *Stamose v. Bulgaria*[46], *Bartik v. Russia*[47].

These cases illustrate the ECHR's consistent application of principles when assessing restrictions under Article 2 of Protocol No. 4.

The ECtHR evaluates whether freedom of movement has been restricted after determining the admissibility of a complaint under Article 2 of Protocol No. 4 (P4–2).

44 Case of *Nada v. Switzerland*, 12 June 2012.
45 Case of *Battista v. Italy*, 2 December 2014.
46 Case of *Stamose v. Bulgaria*, 27 November 2012.
47 Case of *Bartik v. Russia*, 21 December 2006.

The ECtHR's practice reveals that restrictions can occur through various means. Here are some examples from ECtHR case-law that illustrate different forms of restrictions: 1) Restrictions on International Travel Owing to Debt: *Battista v. Italy*: The applicant faced a travel ban owing to failure to meet civil obligations such as alimony payments; *Ignatov v. Bulgaria*: Restrictions were imposed because of unpaid bank loans[48]; *Khlyustov v. Russia*: A similar restriction occurred because of unpaid credit.[49] 2) Administrative Restrictions: *Timishev v. Russia*: Restrictions on movement between administrative regions within the country.[50] Restrictions on Residence: *Garib v. the Netherlands*: Denial of the right to live in a chosen residence . Criminal Proceedings: *Antonenkov and Others v. Ukraine, Ivanov v. Ukraine*, and *Nikiforenko v. Ukraine*: Cases where personal obligations or travel bans were imposed as part of criminal proceedings.[51,52]

It is important to note that not every interference with rights guaranteed by Articles 8–11 of the ECHR, or restriction on freedom of movement will necessarily constitute a violation of Article 2 of Protocol No. 4. A restriction on freedom of movement is not a violation if it meets the "three-part test" as follows: Prescribed by Law: The measure must have a legal basis in national law.

Pursue Legitimate Aims: It must pursue one or more legitimate objectives, as outlined in Article 2 of Protocol No. 4. Necessary in a Democratic Society: It must strike a fair balance between the general interests of society and the rights of the individual, meaning it must be necessary in a democratic society.

Understanding these principles helps ensure that restrictions are applied appropriately and that individuals' rights are effectively protected.

Based on the analysis of the established practice of the ECtHR, it can be concluded that freedom of movement is a fundamental value in modern society. The right to freedom of movement, guaranteed by Article 2 of Protocol No. 4 (P4–2), is interconnected with other convention rights. One of the key aspects of correctly applying P4–2 is to distinguish its scope from that of other provisions of the Convention, such as Articles 5 (right to liberty and security) and 8 (right to respect for private and family life, home, and correspondence).

Article 5 of the Convention: When assessing restrictions on freedom of movement under Article 5, one must consider the degree or intensity of the applied restrictions. Article 5 concerns physical deprivation of liberty and involves a different standard than Article 2 of Protocol No. 4.

Article 2 of Protocol No. 4: This article has a broad scope and covers various legal relations that can be addressed in administrative, civil, or criminal proceedings.

While the right to freedom of movement is fundamental, it is not absolute and may be restricted. Such restrictions must: a) Be Prescribed by Law: They must have a legal

48 Case of *Ignatov v. Bulgaria*, 2 July 2009.
49 Case of *Khlyustov v. Russia*, 11 July 2013.
50 Case of *Timishev v. Russia*, December 2005.
51 Case of *Antonenkov and Others v. Ukraine*, 22 November 2005.
52 Case of *Ivanov v. Ukraine*, 7 December 2006.

basis in national legislation. b) Pursue Legitimate Aims: They must aim to achieve one or more legitimate objectives. c) Be Necessary in a Democratic Society: They must be proportionate to the pursued lawful aim, meaning they must be necessary and not excessively restrictive in a democratic society.

The state has a certain margin of appreciation when imposing restrictions, but these must always be within the bounds of legality and proportionality to ensure that they align with democratic principles and the protection of individual rights.

6. An Analysis of the Case-Law of the ECtHR in Terms of the 16 Central and Eastern European Countries

The ECtHR has developed extensive case-law on the right to freedom of movement, which is guaranteed under Article 2 of Protocol No. 4 of the ECHR. This right encompasses the freedom to move within a country, right to leave any country, and right to enter one's own country. The following analysis covers the case-law related to the 16 Central and Eastern European countries: Albania, Bulgaria, Croatia, Ukraine, Azerbaijan, the Czech Republic, Hungary, Latvia, Lithuania, Russia, Moldova, Poland, Romania, Serbia, Slovakia, and Slovenia.

The right to freedom of movement under the ECHR is not absolute and may be subject to restrictions. These restrictions must be prescribed by law, which is necessary in a democratic society, and proportionate to the legitimate aims pursued, such as national security, public safety, public order, and the protection of health or morals.

6.1. Case-Law Analysis

6.1.1. Udislav and Aurel Brezny v. Slovak Republic

On 30 January 1973. The Bratislava Municipal Court (Mestsky sud) sentenced the first applicant to 22 months of imprisonment and to have all his possessions confiscated for deserting the Republic. On 11 December 1949, the investigating judge at Bratislava State Court ordered that the criminal proceedings commenced against the second applicant on 24 October 1949 for high treason (specifically, for refusing to return to the Republic) should be suspended on the ground that the accused's whereabouts were unknown. In 1956, in the course of the same proceedings, Bratislava Regional Court (Krajsky sud) confiscated his Czechoslovak possessions. On 18 September 1990, Bratislava Municipal District Court (Obvodny siid) held that, under section 2 of Law No. 119/1990 on Judicial Rehabilitation, the first applicant's conviction and any consequential decisions had been automatically annulled *ex tunc.*

On 14 December 1990, the Bratislava Regional Public Prosecutor decided to reopen the criminal proceedings against the second applicant and suspend them under sections 2 and 33 para 1 of the same Law. He ruled that there were no grounds to prosecute the second applicant.

On 26 August 1991, in pursuance of Law no 87/1991 on Extrajudicial Rehabilitation, the applicants wrote to the company in possession of their property that the Trencin Horticultural Company sought an agreement as to the restitution of their property. The company made it clear that it did not intend to comply with this request, so the applicants applied to the Trencin District Court (Okresny siid).

The applicants argued that the permanent residence requirement laid down in section 3 of Law no. 87/1991 was incompatible with Constitutional Law no. 23/1991 on the Charter of Fundamental Rights and Freedoms as well as with Protocol No. 4 and, in substance, Protocol No. 1 of the Convention. They claimed that using place of residence as a criterion to exclude claims constituted discriminatory treatment detrimental to them and that the refusal to recognise their property rights amounted to a disguised penalty, contrary to Article 7 of the Convention.

The national courts held that the applicants did not fulfil the permanent residence condition and, therefore, were not entitled to restitution of their property. The Bratislava Regional Court further concluded that the condition in question was not incompatible with the Constitution and that Law no. 87/1991 was designed solely as a measure to redress certain infringements of property rights. The courts also noted that the refusal to restore property could not be considered either a criminal conviction or the imposition of a penalty within the meaning of Article 7 of the Convention.

The Commission found that it lacked temporal jurisdiction to examine applications referring to events prior to the date on which the Convention came into force with respect to the relevant Contracting Party, noting that the sanctions imposed on applicants occurred in 1956 and 1973. It further concluded that the permanent residence requirement in Law no. 87/1991 did not violate the applicants' right to freedom of movement or to choose their residence and that the applicants had not raised this complaint before the national courts. Therefore, this part of the application was manifestly ill-founded.

For these reasons, Commission, by a majority, declares the application inadmissible[53].

6.1.2. Case of Kotiy V. Ukraine[54]

The case of *Kotiy v. Ukraine* concerns a complaint lodged by a Ukrainian national, Mr. Andrey Pavlovich Kotiy, against Ukraine. The applicant alleged that his arrest and detention were not compatible with Article 5 para. 1 of the Convention, that he did not have an enforceable right to compensation as provided by Article 5 para. 5 of the Convention, and that the investigative authorities interfered with his private and family life contrary to Article 8 of the Convention and that their decisions restricted his liberty of movement which constituted a violation of Article 2 of Protocol No 4.

53 Case of *Udislav and Aurel Brezny v. Slovak Republic*, 4 March 1996.
54 Case of *Kotiy v. Ukraine*, Application no. 28718/09; Judgement 5 June 2015.

The applicant, along with his wife and two children, moved to Germany in 2003. He held various managerial roles in German companies and was also a co-owner and president of a Ukrainian company, L., which was managed by a director.

The applicant, Mr. Andrey Pavlovich Kotiy, argued that his arrest and detention were not compatible with Article 5 para. 1 of the Convention, he did not have an enforceable right to compensation as provided by Article 5 para. 5, and the investigative authorities interfered with his private and family life contrary to Article 8 of the Convention. He further claimed that these decisions restricted his liberty of movement, constituting a violation of Article 2 of Protocol No. 4. The applicant contended that the written undertaking not to abscond and the seizure of his passports were unlawful and disproportionate, causing significant interference with his private and family life, particularly because his family resided in Germany.

The Government acknowledged the interference with the applicant's rights but argued that it was lawful and necessary for investigating serious crimes, and that the measures were less intrusive compared to alternatives. They suggested that the applicant's family could have relocated to Ukraine, a solution which the applicant deemed unreasonable.

Regarding Article 8, the ECtHR found that the written undertaking not to abscond and the seizure of the applicant's passports constituted a violation. The interference was not 'in accordance with the law' because domestic legislation lacked sufficient safeguards against arbitrariness and adequate procedural guarantees. The measures were also disproportionate given the applicant's established life and family in Germany. Regarding Article 2 of Protocol No. 4, the Court did not evaluate the alleged restriction on leaving Ukraine separately, given the findings under Article 8.

The ECtHR found a violation of Article 8 of the Convention. The applicant's complaint under Article 2 of Protocol No. 4 was linked to the Article 8 violation and did not need separate assessment.

The ECtHR awarded the applicant EUR 6,000 for non-pecuniary damage and EUR 2,000 for legal costs and expenses. Default interest was to be calculated based on the European Central Bank's marginal lending rate plus three percentage points.

The applicant's complaints under Articles 5 paras. 1 and 5 were declared inadmissible, as were other parts of the application.

6.1.3. S.E. v. Serbia[55]

In April 2015, the applicant was granted refugee status in Serbia based on his political activities in Syria and his fear of persecution or threats to his safety. Thereafter, he lawfully resided in Serbia and married a Serbian national in June 2018. In May 2015, the applicant requested the Serbian Government a travel document for refugees. His Syrian passport had expired sometime during that year. However, in June 2015, the Border Police Unit (a department of the Ministry of the Interior) notified the applicant

55 Case *S.E. v. Serbia*, Application no. 61365/16, Judgement 11 July 2023.

that they could not issue a travel document because of the absence of regulations that governed the content and design of such a document.

In August 2015, the applicant alerted the Minister of the Interior regarding the impossibility of obtaining a refugee travel document and asked him to enact regulations enabling its issuance. However, the Minister's office did not respond. In June 2015, the applicant lodged a constitutional appeal against the Border Police Unit's decision, complaining that the Minister of the Interior had failed to adopt regulations which would allow him to travel outside Serbia and requested that the Constitutional Court order the Minister to urgently adopt regulations concerning the content and design of travel documents for refugees. In June 2016, the Constitutional Court refused the applicant's appeal, stating that such an appeal could only be lodged against individual actions or decisions and not against inaction or non-adoption of general legal acts.

In May 2022, the applicant obtained a Syrian passport from the Syrian embassy in Belgrade. He then obtained a working visa to move to Germany. In October 2022, the applicant left Serbia and travelled to Germany using his new Syrian passport.

The applicant argued that Article 2 of Protocol No. 4 of the ECHR legally obliged Serbia to ensure his right to leave and return to the country. Serbia's compliance with the negative obligation to respect this right did not nullify the effect of noncompliance with its positive obligation to ensure freedom of movement. Thus, his inability to travel or leave Serbia because of the expiration of his Syrian passport, and inability to acquire a travel document for refugees from the Serbian authorities demonstrated that Syria had disregarded its obligation to protect him and ensure his freedom of movement.

The applicant acknowledged that he had not been precluded from leaving Serbia by any restrictive measure and could have obtained a Syrian passport to leave. However, he argued that no one could be expected to lawfully leave a country without a travel document, and a refugee could not be directed to his country of origin to have a passport issued as he no longer enjoyed its protection. While the applicant eventually obtained a Syrian passport during the proceedings, he did so by putting himself in danger by approaching the authorities of the country from which he had fled persecution, and risking revocation of his refugee status.

The Serbian Government first argued that it had not confiscated the applicant's passport or taken any other measures to restrict his freedom of movement.

Additionally, travel documents to "foreigners" had not been issued for technical reasons – the need to find a comprehensive solution for all travel documents issued by Serbia, which required financial resources.

The Government also argued that the applicant could legally leave using a Syrian passport as he had not lost or severed his legal link with Syria by obtaining refugee status in Serbia. There was an opportunity for him to renew his Syrian passport if he intended to leave the country. In response to the applicant's arguments regarding the risks of requesting or using a Syrian passport, the Government claimed, without a source, that thousands of refugees had obtained travel documents from their country of nationality in their country of new residence.

Lastly, the fact that the applicant was able to obtain a Syrian passport and leave for Germany demonstrated that his freedom of movement was not restricted, and he could freely apply to the Syrian authorities to obtain a travel document without any risk of political persecution or cessation of refugee status. Additionally, as a foreign national married to a Serbian national, the applicant could have applied for Serbian nationality, which would have enabled him to apply for a Serbian passport. His inability to leave Serbia resulted from his own failure.

Beginning with an interpretation of Article 2 of Protocol No. 4, the ECtHR held that any measure, including a refusal to issue or reissue a travel document by means of which a national or an alien is denied the use of a document to leave the country, is an interference with the rights guaranteed by the article. This is the case regardless of whether there were intentional restrictions by the state on the applicant's right to leave or no such intention. For a state's interference with a person's right to leave any country to be justified, it must be 'in accordance with law', pursue one of more of the legitimate aims in the provision, and be 'necessary in a democratic society'. (paras. 74–76)

Irrespective of the lack of intention by the Serbian authorities to restrict the applicant's right to leave Serbia, the Court found that the applicant's right had been interfered with. The refusal to issue him with a travel document for refugees was an obstacle to his right to leave the country for an extended period of seven years and as his Syrian passport had expired, and he was unable to obtain any other travel document. Regarding the option of obtaining a Syrian passport, the Court held that referring the applicant to his country of nationality would violate Serbia's international obligations and conflict with the rule of law, especially since the applicant had fled persecution there. The credibility of the applicant's fear of persecution, and his inability and unwillingness to avail himself of Syrian protection, had been recognised by the Serbian authorities as seen through the granting of refugee status in May 2015. The Serbian authorities never claimed that the applicant no longer required protection. Additionally, obtaining a Syrian passport would put the applicant at risk of losing his refugee status; and according to the Ministry of the Interior, whether the issuance of travel documents by the Syrian authorities would lead to the cessation of refugee status depended on an assessment of the individual case. For the Court, this was a risk that the Serbian authorities could not expect the applicant to take. Finally, regarding the applicant's failure to obtain Serbian nationality, the Court held that the state could not circumvent its accepted obligations, by imposing an obligation of naturalisation on the applicant to leave the country. Therefore, overall, there was an interference with the applicant's right to leave Serbia. (paras. 77–81)

Having found an interference with the right, the Court moved on to consider justifications for the interference. The requirement that the interference was 'in accordance with law' not only requires that the concerned measure should have some basis in domestic law, but also that it was compatible with the rule of law. Serbia's former 2008 Asylum Act and current 2018 Asylum and Temporary Protection Act recognise the individual right of a refugee to obtain a travel document and requires the Minister

of the Interior to enact subsidiary legislation to ensure their implementation within 60 days. The applicant's entitlement to a refugee travel document stems from these two pieces of domestic legislation and was triggered by Serbia's decision to grant him refugee status and his acquisition of lawful residence. However, it had been almost five years since the 2018 Act came into force, and no implementing regulations are adopted. No effective possibility of obtaining a travel document was available to the applicant, nor did the Serbian authorities demonstrate any effort to implement the domestic law and provide a possibility for the applicant and similar individuals to obtain a refugee travel document. Such a systemic failure rendered the effective right of refugees to leave Serbia illusory. By placing the applicant in uncertainty and forcing him to risk applying to the Syrian authorities for a passport, this situation conflicted with principles arising from the rule of law.

Furthermore, considering that both the 2008 Act and 2018 Act set the same time limit for the Minister to implement primary legislation, it was likely that the legislature did not consider that the time limit was too short or difficult to meet. Thus, the Government could not justify its inaction by relying on the lack of available resources or technical solutions. Competent authorities should have overseen national budget allocations and ensured timely and adequate technical support in managing the task. The Court also reiterated that 'economic wellbeing of the country' and related financial considerations were not legitimate aims that could justify restrictions on the right to leave one's country. Hence, the interference with the applicant's right to leave the country was not 'in accordance with law', and it was unnecessary for the Court to further determine if the interference pursued a legitimate aim or was necessary in a democratic society. (paras. 82–87)

The refusal by the Serbian authorities to issue the applicant with a refugee travel document for seven years owing to the absence of appropriate regulations had curtailed his right to leave Serbia freely, impairing the essence of the right and depriving it of effectiveness. Hence, there was a violation of Article 2 of Protocol No. 4.

6.1.4. L.B. v. Lithuania

The applicant fled from the Chechen Republic in 2001, where he fought alongside the Chechen forces in the two Chechen wars and arrived in Lithuania, where he subsequently applied for asylum. The Lithuanian authorities refused to grant the applicant refugee status in 2003 and 2005 because he failed to demonstrate that he was persecuted in his country of origin.

However, the applicant was issued a temporary residence permit on subsidiary protection grounds, which was granted yearly between 2003 and 2008. In 2008, the applicant obtained a permanent residence permit, valid for five years, on the grounds that he had been lawfully living in Lithuania for five years, which was further extended in 2013 and 2018.

In 2003, the applicant also applied for an alien's passport, which the Lithuanian authorities granted. Between 2004 and 2013, the applicant applied for a new passport and was issued a new one when it expired. In 2018, the applicant lodged a new passport

request, which Lithuanian authorities denied on the grounds that Russian nationals living abroad could obtain a passport at the embassy, so the applicant should be able to obtain a travel document from the Russian authorities.

The applicant requested a passport again, reasoning that he was unable to contact the Russian authorities without risking his safety. He further submitted that although in Lithuania he was considered a Russian national, there were no documents confirming this, and he should be considered stateless. He supported the creation of an independent Chechen Republic, had no links to Russia, had never applied for Russian citizenship, and never held a Russian passport.

The Lithuanian authorities refused again, countering there were no grounds to consider the applicant stateless, as he had been considered a Russian national since arriving in 2001 and had no documents to refute that. They further requested proof that he had applied for a travel document at the Russian embassy and had been refused.

The applicant complained that the Lithuanian authorities refused to acknowledge that he was at real risk of persecution. He contended that, during domestic proceedings, he had provided objective reasons why he could not contact the Russian authorities as former Chechen fighters were still being persecuted in Russia.

The applicant submitted that the Government had failed to demonstrate that the refusal to issue him a passport had pursued any legitimate aim and was necessary in a democratic society, emphasising that he had not committed any crimes and did not pose any threat to national security or public order.

The applicant further complained that he was unable to enjoy freedom of movement without having a valid travel document necessary to travel outside the Schengen Area. As the applicant worked in cargo transportation, the refusal also restricted his professional activities.

The Government acknowledged that the refusal to issue the applicant with an alien's passport had amounted to interference with his right to freedom of movement; however, they maintained that the interference was justified.

The Lithuanian authorities found that the applicant failed to provide objective reasons why he was unable to obtain a document from the authorities of his country of origin, to qualify for an alien's passport under the Law on the Legal Status of Aliens. Furthermore, domestic authorities properly considered all relevant circumstances of the applicant's situation and held that he failed to demonstrate that he was at risk of persecution by the authorities.

They argue that there is no longer any objective reason why the applicant would be unable to request a travel document from the Russian authorities. He was issued an alien's passport between 2003 and 2013 because Russian nationals could not obtain a travel document outside Russia; however, it was no longer necessary owing to a change in the procedure.

Lastly, the Government submitted that the restrictions on his freedom of movement had not been disproportionate. As a permanent resident of Lithuania, the

applicant had the right to move freely within the territory of EU Member States for 90 days in any 180-day period without a travel document.

The Court found that there had been a violation of Article 2 of Protocol No. 4 of the Convention as the Lithuanian government failed to demonstrate that the interference with the applicant's right to freedom of movement was necessary in a democratic society.

Any measure by means of which an individual is denied the use of a document which, had he wished, would have permitted him to leave the country, amounts to an interference of the rights guaranteed by Article 2 of Protocol No. 4 of the Convention. Accordingly, the Court has no reason to doubt that the refusal by Lithuanian authorities to issue the applicant with an alien's passport constituted an interference with his freedom of movement.

An interference with a person's right to leave must be 'in accordance with law' and pursue one or more of the legitimate aims set out in Article 2 § 3 of Protocol No. 4 and be 'necessary in a democratic society' to achieve such an aim. This refusal could not be considered 'necessary in a democratic society'.

The Court noted that the Lithuanian authorities acknowledged that the applicant could not safely return to his country of origin. It is not disputed that the applicant left his country of origin to seek asylum abroad and was granted subsidiary protection in Lithuania on several occasions. At no point did the domestic authorities decide, after assessing the situation in the applicant's country of origin and his individual circumstances, that he was no longer in need of subsidiary protection and could approach the Russian authorities without fear. Although the applicant argued that he was afraid to contact the Russian authorities for the same reasons he had previously been granted subsidiary protection, those arguments were not adequately addressed in the domestic proceedings.

The refusal to issue an applicant with an alien's passport was taken without ensuring that such a measure was justified and proportionate to his individual situation. The refusal was based on formalistic grounds without adequate examination of the situation in his country of origin as well as on the purported possibility of obtaining a Russian passport, without any assessment of whether that possibility was accessible to him in practice in view of his particular circumstances.

The Court held that there had been a violation of Article 2 of Protocol No. 4 of the Convention.[56]

6.1.5. Tatishivili v. Russia

The applicant was born in Georgia and held former USSR citizenship until 2000 when she became stateless. Consequently, she applied for residence registration in Moscow. Her residence registration was refused as she 'failed to provide the complete set of documents'. In 2001, the applicant challenged the refusal claiming that there was

56 Case of *L.B. v. Lithuania*, Application no. 38121/20, Judgement 14 June 2022.

no legal basis for restricting her right to obtain residence registration, provided she made correct document submission.

The decision was appealed, on the ground that the District Court had incorrectly referred to the applicant's Georgian citizenship and a visa requirement for her entry into the Russian Federation, given that the applicant had never held Georgian citizenship. Finally, in August 2001, the Moscow City Court reiterated the District Court's findings and dismissed the claim, as she had failed to prove her Russian citizenship or an intention to obtain it.

The case originated from an application against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms in December 2001. The applicant complained of an arbitrary denial of residence registration at her chosen address and a claim of unfair judicial proceedings.

The applicant criticised the Government's refusal of her residence status as mutually exclusive and inconsistent. She held that she continued to hold former USSR citizenship and never acquired Georgian citizenship. Consequently, she did not require an entry visa as a Georgian citizen. In any event, she had not crossed the Russian border in 2000 or later. The 1981 USSR Law on the Legal Status of Foreign Citizens in the USSR and the 1991 Rules on the Stay of Foreign Citizens in the USSR section 1 did not apply to the USSR citizens and therefore, did not apply to the applicant. Until a new Russian law on the Legal Status of Foreign Citizens was adopted in 2002, Russia had no legislation imposing an obligation on citizens of the former USSR to obtain residence permits as a condition for their lawful residence in Russia. Thus, there had been a breach of her rights under Article 2 Protocol 4, as the denial of residency registration affected her right to liberty of movement, despite her lawful presence in the Russian Federation.

The Government denied that there had been an interference with the applicant's right to liberty and movement, because her presence in the Russian Federation was not lawful. They relied on the fact that the applicant, who arrived from Georgia, had failed to take any steps to determine her citizenship and make her residence in Russia lawful, such as confirming her Georgian citizenship or applying for Russian citizenship.

The Government stated that the applicant's situation was governed by 1981 USSR Law on the Legal Status of Foreign Citizens in the USSR and by the 1991 Rules on the Stay of Foreign Citizens in the USSR. According to sections 5 and 32 of the 1981 USSR law, the applicant, as a stateless person, should have obtained a residence permit from the Department of the Interior. As the Government perceived the applicant as a Georgian Citizen, it concurrently held that, after the introduction of entry visa requirements for Georgian Citizens on 5 December 2000 the applicant could only lawfully be a Russian resident on 25 December 2000 if she had crossed the border with a valid Russian visa in her national passport.

Russia incorrectly held that the applicant needed an entry visa as a Georgian citizen because the Court observed that the applicant relied on her former USSR citizenship.

The Court found that the registration of the applicant's residence in Georgia dating back to the early 1990s had no automatic bearing on her citizenship determination under either Russian or Georgian laws. It dismissed the Government's allegation that the applicant held Georgian citizenship, as the denunciation of the Bishkek Agreement on visa-free exchanges should not affect the lawfulness of her residence in the Russian territory.

Moreover, it contested the Government's argument that the appellant was stateless at the material time and had consequently been required to hold a residence permit in accordance with the 1981 USSR Law on Foreign Citizens. Noting that before 31 December 2000 individuals who had not obtained the citizenship of one of the newly independent States, held the special legal status of a "citizen of the former USSR" in Russia. It was only after that date they were to be considered stateless. At the material time, early December 2000, the requirement to have a residence permit established under the 1981 USSR law, did not apply to her because as she was neither a foreign citizen nor a stateless person.

The Court found that the Government's claim that the applicant's presence in Russia was unlawful was concluded without a legal and/or factual basis. The Court accepted that the applicant, as a "citizen of the former USSR" at the material time, was lawfully present in Russia under Article 2 para. 1 of Protocol No. 4.

Furthermore, the Court ruled under Article 41 applicant had to be compensated owing to her loss of earnings and administrative fines for the absence of registration of residency.

The Court judged in favour of the appellant and held that there had been a violation of Article 2, of Protocol No. 4, and Article 6 para. 1 of the Convention.[57]

6.1.6. Case of Bessenyei v. Hungary

The applicant, born in 1956 and living in Kál, Hungary, was involved in criminal proceedings initiated in early 2001. He was charged with forgery of official documents alongside an accomplice, with a formal indictment issued on 5 June 2001. The trial proceeded with five hearings and expert opinions, leading to a judgement by the Hatvan District Court on 28 May 2003. On appeal, the Heves County Regional Court quashed this judgement on 27 February 2004 and remitted the case back to the first-instance court. The case was later joined with another trial on 6 October 2004. After four additional hearings, the applicant was acquitted on 29 September 2005. This acquittal became final on 7 December 2005 and the applicant was notified on 17 January 2006. During the proceedings, the applicant was subject to a travel ban from 25 June 2001 to 1 July 2003 under Hungarian law owing to the serious charges against him. This ban was lifted following a change in the legislation.

57 Case of *Tatishivili v. Russia*, Application no. 1509/02, Judgement 22 February 2007.

Violation of Article 6 para. 1 of the Convention (Right to a Fair Trial - Reasonable Time): The applicant argued that the criminal proceedings took an unreasonable amount of time, approximately five years, which violated his right to a fair trial within a reasonable time as guaranteed by Article 6 para. 1 of the ECHR.

Violation of Article 2 § 2 of Protocol No. 4 of the Convention (Right to Freedom of Movement): The applicant also claimed that the travel ban imposed on him during the trial was disproportionate and violated his right to leave his country, as protected under Article 2 § 2 of Protocol No. 4.

Legal Arguments by the Opposing Party (Government): Reasonable length of proceedings: The Government contested the applicant's claim, arguing that the length of the proceedings was not unreasonable given the circumstances of the case. Legitimacy of the travel ban: Regarding the travel ban, the Government contended that it was a lawful and necessary measure to ensure applicant's' availability for trial. They also noted that the ban was lifted on 1 July 2003, after which the applicant was free to travel.

Article 6 para. 1 (Reasonable Time): The Court found that the duration of the proceedings, lasting nearly five years was excessive, especially considering that the applicant was ultimately acquitted. The Court determined that the length of the proceedings failed to meet the "reasonable time" requirement under Article 6 § 1, resulting in a violation of this provision.

Article 2 para. 2 of Protocol No. 4 (Freedom of Movement): The Court acknowledged that the travel ban was lawful and pursued a legitimate aim of maintaining public order by securing the applicant's presence at trial. However, the Court criticised the automatic and prolonged nature of the ban, which lasted for over two years without reassessment. The Court held that this lack of reassessment rendered the travel ban disproportionate, leading to a violation of the applicant's right to leave his country under Article 2 para. 2 of Protocol No. 4.

The Court unanimously found violations of both Article 6 para. 1 and Article 2 para. 2 of Protocol No. 4. It awarded the applicant EUR 4,000 in non-pecuniary damages, payable within three months, with interest accruing for any delay. The Court dismissed the remainder of the applicant's claim for just satisfaction.[58]

6.1.7. Sissanis v. Romania

The applicant, involved in criminal proceedings in Romania, was twice prohibited from leaving the country. The first prohibition was imposed by the police, who stamped his passport with the letter "C" and ordered him not to leave Romania. After a 30-day period during which the public prosecutor also barred him from leaving, the applicant successfully petitioned the court to have the mark removed from his passport. However, new criminal charges were later brought against him, leading the police to re-stamp his passport with the letter "C", and the public prosecutor ordered him into custody for 30 days. The county court sentenced him to immediate imprisonment, but

58 Case of *Bessenyei v. Hungary*, Application no. 37509/06, Judgement 1 October 2008.

the Court of Appeal later overturned the sentence, ordered his release, and remitted the case to the provincial court, which eventually acquitted him.

Despite his acquittal, the applicant struggled to have the "C" mark removed from his passport, arguing that such a preventive measure should only be ordered by a member of the state legal service, not the police. He faced numerous dismissals and setbacks in his applications to various domestic authorities before the provincial court finally ordered the removal of the mark. However, his request for compensation for pecuniary and non-pecuniary damages was denied.

The applicant contended that the preventive measure prohibiting him from leaving the country was unlawful because it had been imposed by the police rather than by a member of the state legal service, as he argued was required by law. He further argued that domestic law lacked the necessary precision in defining the conditions under which such a measure could be imposed and failed to provide adequate safeguards, such as a review procedure.

The Romanian authorities argued that the applicable law at the time did not require that such a preventive measure be ordered by a member of the state legal service. They also criticised the applicant for not providing evidence that the criminal proceedings had ended or that he had been acquitted. The authorities maintained that the measure was lawful under the existing legal framework.

The ECtHR found that the measure imposed on the applicant, which effectively dispossessed him of his passport by marking it with a "C" and preventing him from leaving the country, constituted an interference with his right to freedom of movement under Article 2 of Protocol No. 4 of the ECHR. The Court noted that the interference had to have a basis in domestic law, which should be accessible and foreseeable in its effects.

The ECtHR determined that the relevant domestic law was vague and lacked sufficient precision to establish conditions for imposing such a preventive measure. The law did not clearly identify the authority empowered to impose the measure or define the grounds for doing so with sufficient precision. Furthermore, the Court emphasized that interference with an individual's rights by executive authorities must be subject to effective judicial control, which was absent in this case. The preventive measure in question was applied automatically and for an indefinite period, without any review procedure, thereby interfering with the applicant's rights in a manner that was not 'in accordance with the law'.

The Court also noted that the law under which the measure was imposed had been declared unconstitutional and replaced by a new law requiring that all preventive orders prohibiting someone from leaving the country be made by a member of the state legal service. However, the Court found that the applicant had not been compensated for the damage sustained as a result of the unlawful extension of the preventive measure.

The ECtHR unanimously concluded that there was a violation of Article 2 of Protocol No. 4, as the interference with the applicant's freedom of movement had not been 'in accordance with the law'. The Court did not find it necessary to examine whether

the interference pursued a legitimate purpose and was necessary in a democratic society, as the lack of a lawful basis was sufficient to establish the violation[59].

6.1.8. Dremlyuga v Latvia

The applicant, born in Russia, moved to Latvia in 1948 at age two. After completing education and military service in Russia, he intermittently returned to Latvia before settling permanently in June 1990. He was demobilised in December 1991. Following the dissolution of the Soviet Union, the applicant and his family were issued former USSR passports with permanent resident status in Latvia. In March 1993, they received passports with residency confirmation.

First Procedure:

In 1995, the Latvian Department of Citizenship and Immigration confiscated the applicant's passport without explanation. The District Court ruled in 1995 that the passport was valid, and the applicant should be registered as a "permanent resident non-citizen". This decision was executed but in 1998, the Directorate for Citizenship and Migration Affairs challenged the decision citing new facts: the applicant had acquired Russian citizenship in 1996. The Regional Court dismissed this appeal in 1999 as the facts were not considered new.

Second Procedure:

In 1999, the Directorate cancelled the applicant's family's registration, leading to the loss of identification numbers. The applicant's request for a permanent residence permit was denied in July 1999 based on the Foreigners Act. The District Court upheld this denial in January 2000, stating the applicant's failure to apply for a permit by the legal deadline. The Riga Regional Court also upheld the decision in January 2001, ruling that his Russian citizenship changed his legal status and he did not follow the proper procedure for regularisation. The Senate of the Supreme Court declared the appeal inadmissible in April 2001.

The case involves several key legal provisions: Law on the Entry and Stay of Foreigners and Stateless Persons (1992): Articles regarding residence permits, including for spouses and non-citizens; Law on the Status of Citizens of the Former USSR (1995): Stipulates conditions for non-citizen status, which the applicant lost upon acquiring Russian citizenship; Agreement between Latvia and Russia on Social Protection of Retired Servicemen (1994): Provides rights to reside in Latvia for retired Russian servicemen and their families.

The applicant argued that his refusal to issue a residence permit violated his right to respect for private and family life under Article 8 of the ECHR.

He claimed his irregular status caused significant personal and professional difficulties. He also contended violations of his right to life (Article 2), freedom of movement (Article 2 of Protocol No. 4), and excessive delays in legal proceedings (Articles 6 paras. 1 and 13). He argued the Latvian authorities abused their rights under Article 17.

59 Case of *Sissanis v. Romania*, Application no. 23468/02, Judgement 25 January 2007.

The Latvian authorities argued that the applicant's failure to apply for a residence permit within the required timeframe after obtaining Russian citizenship led to his status as an illegal resident. They contended that the applicant had not used available legal avenues for regularisation and had not faced an imminent expulsion as no formal expulsion order had been issued.

Decision and Reasoning: Article 8 of the Convention: The ECtHR found no violation because Latvia's requirements for residence permits were clear and applicable. The applicant had not used the available regularisation routes. The applicant was not subject to imminent expulsion, and no formal expulsion order had been issued. Article 2 of the Convention: The ECtHR held that Article 2 only protects against death and does not guarantee a certain quality of life. The complaint was deemed incompatible with the Convention's provisions. Article 2 of Protocol No. 4: The ECtHR ruled that this article applies to individuals lawfully within a state. As the applicant's legal status in Latvia was irregular, the article did not apply to his case. There was no evidence of restriction on his movement or residence within Latvia. Article 17 of the Convention: The ECHR did not find evidence of abuse of rights by the Latvian authorities.

The ECHR rejected the applicant's complaints, concluding that his legal status issues did not amount to violations of the Convention's articles. The application was deemed premature as there was no imminent expulsion, and the applicant had not exhausted all available legal remedies[60].

6.1.9. Makuc and Others v. Slovenia

The case involved 11 applicants from various countries, who were previously citizens of the Socialist Federal Republic of Yugoslavia (SFRY) and had acquired permanent resident status in Slovenia before its independence. Following Slovenia's declaration of independence on 25 June 1991, the enactment of the Citizenship Act and 1991 Aliens Act, their names were removed from the Register of Permanent Residents on 26 February 1992. Consequently, they became subject to the provisions of the 1991 Aliens Act, which led to their treatment as foreigners or, in some cases, stateless individuals. This erasure resulted in the loss of their rights and led to significant hardships, including forced emigration, detention, and loss of property and social benefits.

The applicants argued that their erasure from the Register deprived them of their right to freedom of movement and the right to choose their residence within Slovenia. They claimed that this violated their rights under Article 2 of Protocol No. 4 of the ECHR.

Article 14 of the Convention, read in conjunction with Articles 6 and 8, Article 3 of Protocol No. 1, and Article 2 of Protocol No. 4: The applicants alleged discrimination in the enjoyment of their Convention rights. They claimed that they were treated less favourably compared to others who retained their residence status or received citizenship or permanent residence under more favourable conditions.

60 Case of *dremlyuga v. Latvia*, Application no. 66729/01, Judgement 29 April 2003.

The opposing party argued that Article 2 of Protocol No. 4 did not apply because the applicants were not 'lawfully within the territory' of Slovenia following their erasure. The provision does not grant an alien the right to reside or remain in a country where they are no longer legally recognised.

The opposing party contended that because Articles 6, 8, and 2 of Protocol No. 4 were not applicable, Article 14 could not be applied in relation to the complaints raised under these provisions.

Decision and Reasoning: Article 2 of Protocol No. 4: The Court ruled that Article 2 of Protocol No. 4 was inapplicable because the applicants were not legally residing in Slovenia after their names were erased from the register. This article pertains only to individuals lawfully within the territory and does not grant them the right to remain or reside in a country where one is no longer legally recognised. Article 14: The Court found that since the substantive provisions (Articles 6, 8, and 2 of Protocol No. 4) were not applicable, Article 14 could not be applied to complaints related to these provisions. The Court also could not determine the admissibility of complaints related to the failure to comply with the Constitutional Court's decision and discriminatory treatment under Article 8, read in conjunction with Article 14.

The Court declared the complaints under Article 2 of Protocol No. 4 inadmissible.

The Court decided to adjourn the examination of complaints related to the overall situation affecting the applicants, including the failure to afford retrospective recognition of permanent residence, lack of an effective legal remedy, allegedly discriminatory treatment, and denial of pension benefits.

The remainder of the application was declared inadmissible.[61]

6.1.10. Mursaliyev and Others v. Azerbaijan

Between 2012 and 2016, the applicants discovered that their ability to leave Azerbaijan was restricted by travel bans imposed by the investigating authorities. These restrictions were applied without judicial decisions and imposed during various criminal proceedings in which the applicants were merely witnesses and not suspects or accused persons. The bans for applications nos. 62775/16 and 43327/16 were later lifted in early 2016.

Legal Arguments by the Applicants: Unlawfulness of restrictions: The applicants argued that Azerbaijani domestic law did not authorise the imposition of travel bans on witnesses in criminal proceedings. Absence of justification: They claimed that the travel bans were unjustified and did not serve any legitimate purpose or meet the criteria of necessity in a democratic society. Ineffective remedies: The applicants contended that they lacked effective legal remedies to challenge the travel bans.

Legal Arguments by the Opposing Party (Government): General reference to case law: The Government relied on the Court's case-law regarding Article 2 of Protocol No. 4 but did not provide specific arguments related to the applicants' complaints. No

61 Case of *Makuc and others v. Slovenia*, Application no. 26828/06, Judgement 31 May 2007.

comments on remedies: The Government did not make submissions regarding the effectiveness of domestic remedies available to the applicants.

The Court declared the complaints admissible. It found that despite the lifting of the bans, the applicants remained victims as no domestic authority acknowledged or provided redress for the violations. Violation of Article 2 of Protocol No. 4: The Court held that the imposition of travel bans on witnesses, without any legal basis in domestic law, constituted an interference with their right to leave the country that was not 'in accordance with law'. The Court did not need to examine whether the restrictions pursued a legitimate aim or were necessary in a democratic society. Violation of Article 13: The Court found a violation of Article 13 in conjunction with Article 2 of Protocol No. 4 for applicants who did not have effective domestic remedies to challenge the travel bans. No separate violation under Article 8: Although one applicant claimed that the ban prevented him from travelling abroad for medical treatment, the Court did not need to examine this claim separately, given the findings under Article 2 of Protocol No. 4. No violation of Article 34: The Court found no evidence of interference with the applicants' right to individual application under Article 34.

Outcome: Violation of Article 2 of Protocol No. 4: The Court found that the travel bans imposed on the applicants violated their right to leave their own country. Violation of Article 13: The Court found that the applicants (except one) did not have effective domestic remedies to challenge the bans. No additional findings: No separate violation under Article 8 or Article 34 was established based on the available evidence.[62]

6.1.11. Rotaru v. The Republic of Moldova

The applicant was V. R., a Moldovan citizen residing in Chisinau. The opposing party was bank E.

On 11 June 1998, the Botanica Court in Chisinau ordered V. R. to pay bank E. 77,908.51 Moldovan lei (approximately $16,450 USD at the time) for an unpaid loan plus late payment penalties.

V. R. failed to comply with the court's decision and left Moldova in 2004 to settle in Romania. In 2010, upon returning to Moldova, he applied for a new passport, which was rejected by the civil registry office owing to the outstanding debt.

The applicant argued that the refusal to issue a passport was an unlawful and disproportionate interference with his right to freedom of movement under Article 2 of Protocol No. 4 of the Convention.

He contended that the legal time limits for enforcing the 1998 court decision had expired, making the refusal to issue a passport unjustifiable.

He claimed that the national authorities failed to conduct an effective review of the proportionality of the passport ban.

62 Case of *Mursaliyev and others v. Azerbaijan*, Application nos. 66650/13, 24749/16, 43327/16 etc., Judgement 13 December 2018.

Justification for refusal: The opposing party, bank E., justified the refusal by citing Article 8 (g) of Law No. 269, which permitted denial of passport issuance in cases of unpaid debts.

Bank E had requested the bailiff to enforce the 1998 decision, leading to instructions for the civil registry office not to issue a passport to the applicant.

The Court noted that the authorities relied on Article 8 (g) of Law No. 269, which allowed passport denial for unpaid debts. However, the Court found that there was no specified duration for the passport ban and that the proportionality of the measure was not considered.

The Court concluded that the passport refusal resembled an automatic and indefinite measure, which is contrary to the obligations under Article 2 of Protocol No. 4 of the Convention.

The Court observed that national courts had only acknowledged the legality of the measure without evaluating its proportionality or the specific circumstances of the applicant's case.

The Court found that no regular or periodic review of the travel ban grounds was conducted, leading to the conclusion that the national legislation lacked adequate procedural safeguards against arbitrariness.

ECtHR found a violation of Article 2 of Protocol No. 4 of the Convention (freedom of movement).

The decision was made by the Chamber on 8 December 2020 and will become final according to Article 44, paragraph 2 of the Convention.[63]

6.1.12. Beshiri and Others v. Albania

Mr. Beshiri and several other Albanian nationals were subjected to travel restrictions owing to ongoing criminal investigations. They were prohibited from leaving Albania to ensure their availability for questioning and trial.

The travel bans were imposed based on Albanian legal provisions allowing such restrictions during criminal investigations.

Legal Arguments by the Applicant: Violation of rights: The applicants argued that the travel bans infringed upon their right to freedom of movement under Article 2 of Protocol No. 4 of the ECHR. Proportionality: They claimed that the restrictions were not proportionate to the aim of ensuring their availability for investigation and trial, particularly given the indefinite nature and severe impact of the ban. Less severe alternatives: The applicants contended that less severe measures could have been used, such as regular reporting requirements or financial guarantees, rather than a complete travel ban.

The Albanian government argued that travel bans were legally justified under Albanian law, which permits such measures during criminal proceedings.

63 Case *of Rotaru v. The Republic of Moldova,* Application no. 26764/12, Judgement 8 December 2020.

The government asserted that the restrictions pursued a legitimate aim, such as ensuring the proper conduct of criminal investigations and securing applicants' availability for trial.

The ECtHR found that the travel bans had a legal basis under Albanian law, meeting the requirement of being 'prescribed by law'.

The Court agreed that the restrictions aimed to ensure the proper conduct of criminal investigations and the applicants' availability for trial, which were deemed legitimate aims.

The Court assessed whether the restrictions were necessary and proportionate.

The Court examined whether travel bans were necessary to achieve the legitimate aim. While the necessity of ensuring the applicants' presence was recognised, the Court questioned whether the measures were the least restrictive means available.

The Court found that the indefinite and severe nature of travel bans was disproportionate to the aim pursued. The bans had a significant impact on the applicants' personal and professional lives. The Court noted that less severe alternatives, such as regular reporting or financial guarantees, could have been considered.

The ECtHR concluded that Albania had violated the applicants' right to freedom of movement under Article 2 of Protocol No. 4 of the ECHR. The travel bans were found to be disproportionate and excessive, given their indefinite duration and severe impact.

Alternatives: The Court emphasised that less restrictive measures should have been explored before resorting to such stringent travel bans.

The ECtHR held that the restrictions imposed on the applicants violated their right to freedom of movement. The judgement underscored the importance of ensuring that restrictions on movement are proportionate and that less severe alternatives are considered.[64]

6.1.13. Napijalo v. Croatia

In February 1999, the applicant was fined at a border control checkpoint for failing to declare certain goods he carried in his customs declaration. Ashe did not pay the fine, his passport was confiscated by a customs officer and not returned. The applicant sent a letter to the Ministry of Finance, demanding the return of his passport. However, he was not informed when his passport would be returned; the Ministry's response only mentioned that his passport had been confiscated on legal grounds owing to his refusal to pay the fine.

In March 1999, the applicant initiated legal proceedings in the municipal court, requesting the court to issue an interim injunction to ensure the return of his passport and to order the authorities to compensate him for damages caused by his inability to leave Croatia. The municipal court rejected the applicant's request for an interim injunction. In April 2001, during the court proceedings, the police returned

64 Case of *Beshiri and Others v. Albania*, Application nos. 29026/06, 3165/08, 56956/10 etc., Judgement 22 August 2012.

the passport to the applicant (the police claimed that they had twice written to the applicant at his registered address, inviting him to collect the passport from the police station). After the passport was returned, the applicant amended his claim, requesting the court to issue a declaratory judgement and order the reimbursement of his legal expenses and other costs incurred in connection with the litigation. The court rejected this request and ordered the applicant to pay his own legal expenses and costs. The applicant's appeal against this decision, filed with the district court in December 2002, was also rejected.

Regarding Article 6(1) of the Convention (the provision concerning the right of the accused to have their case heard within a reasonable time), the applicant's request for a declaratory judgement was closely linked to his claims for monetary compensation for damages and the costs and expenses incurred in connection with the litigation, making the provisions of Article 6 applicable to the case as a whole. The proceedings continued for three years and six months, with two prolonged periods of inactivity in the municipal court, for which no explanation was given. Given that the applicant's right to freedom of movement was at stake, such a duration cannot be considered "reasonable".

The European Court concluded that there was a violation of the requirements of Article 6(1) of the Convention (unanimously).

Regarding Article 2 of Protocol No. 4 of the Convention, the state's interference with the applicant's rights under Article 2 of Protocol No. 4 of the Convention occurred in this case, as the applicant was deprived of his passport, which would have allowed him—had he wished—to leave the country. Although the respondent state argued that passport was confiscated in accordance with the law, the European Court did not examine this aspect of the case in light of the conclusions it had reached regarding the applicant's complaint. Since no proceedings were initiated against the applicant for the customs offence, there was no justification for the authorities' failure to return his passport or for the municipal court's rejection of his request for an interim injunction. Consequently, the state's interference with the applicant's right to freedom of movement was not 'necessary in a democratic society'.

The European Court concluded that there was a violation of Article 2(2) of Protocol No. 4 of the Convention (unanimously).

In accordance with Article 41 of the Convention, the European Court awarded the applicant compensation of EUR 2,000 for non-pecuniary damage.[65]

6.1.14. Miażdżyk v. Poland

Born in 1950, resides in Poznań, Poland. Arrested on 19 November 2004 and was initially placed in detention. Released on 14 November 2005 under preventive measures: bail, police supervision, and a prohibition on leaving Poland, along with the withholding of his passport. The prohibition lasted five years and two months, including one year of pre-trial detention.

65 *Case of Napijalo v. Croatia*, Application no. 66485/01, Judgement 13 November 2003.

The applicant faced charges related to running an organised criminal group, fraud, car theft, and handling stolen goods. Over 100 witnesses were involved in the case.

Health and personal impact: The applicant's lawyer requested multiple times for the travel ban to be lifted owing to the applicant's deteriorating health, financial hardship, and separation from his children in France. All requests were denied.

The applicant argued that the indefinite prohibition on leaving Poland, which lasted over six years, was a disproportionate restriction on his right to freedom of movement, safeguarded under Article 2 § 2 of Protocol No. 4 of the ECHR.

The applicant's lawyer emphasised that the preventive measure was unnecessarily restrictive, given that the applicant had consistently appeared in court and had not shown any intention to abscond. They also pointed out the impact on the applicant's personal and professional lives, given that he was a foreign national forced to stay in Poland.

The Government defended the travel ban as a lawful and proportionate preventive measure necessary to ensure the proper conduct of criminal proceedings, given the complexity of the case and the need for the applicant's presence at the trial.

They cited previous cases (e.g. Goffi v. Italy, Fedorov, and Fedorova v. Russia) in which similar or longer restrictions were found to be proportionate, arguing that the case was complex and that a heavy penalty could be expected, justifying the travel ban.

The ECtHR agreed that the restriction was in accordance with Polish law and pursued legitimate aims such as preventing crime and ensuring the applicant's presence at trial.

The Court found the five-year and two-month restriction disproportionate, particularly given that the applicant was forced to remain in a foreign country and was not permitted to leave, even temporarily. The Court noted the severe impact on the applicant's life, the prolonged nature of the proceedings without a first-instance judgement, and the eventual lifting of the travel ban.

Although the Government argued the case was complex, the Court did not find this sufficient to justify the prolonged restriction on the applicant's freedom of movement, especially considering the applicant's circumstances as a foreign national.

The Court ruled that there was a violation of Article 2 of Protocol No. 4 of the ECHR.

The applicant was awarded EUR 4,000 for non-pecuniary damage and EUR 1,500 for costs and expenses. The claim for pecuniary damage was rejected owing to the lack of causal link.

The decision highlighted the need to balance public interest and individual rights, emphasising that prolonged and severe restrictions must be proportionate and justified by genuine public interest.[66]

66 Case of *Miażdżyk v. Poland*, Application no. 23592/07, Judgement 12 January 2012.

6.1.15. Prescher v. Bulgaria

The applicant, born in 1962, resided in Hanover, Germany, and was married to a German national. In 1992, Bulgarian authorities began investigating her for issuing fraudulent cheques, leading to her being charged in absentia and a warrant being issued for her arrest. She learned of these proceedings in 1995 and was subsequently arrested in Germany for extradition purposes. After some delays and legal proceedings in Germany, she was extradited to Bulgaria in 1998, where she was detained. The criminal proceedings were resumed but later terminated owing to insufficient evidence. However, the proceedings were reopened in 2001, leading to her re-arrest in 2002 when she returned to Bulgaria. The case saw multiple delays, jurisdiction disputes, and remittals until it was finally terminated in 2007 as time-barred.

Additionally, in 2002, a travel ban was imposed on the applicant, preventing her from leaving Bulgaria. She made multiple requests to lift the ban to visit her sick husband in Germany, all of which were denied. The travel ban was eventually lifted in 2007 when the criminal proceedings ended.

Legal Arguments by the Applicant: Article 6 para. 1 (Right to a fair trial within a reasonable time): The applicant argued that the criminal proceedings, which lasted about 15 years, exceeded the "reasonable time" requirement. Article 2 of Protocol No. 4 (Right to freedom of movement): The applicant contended that the travel ban was unjustified and disproportionate, significantly impacting her ability to maintain a family life. Article 8 (Right to respect private and family life): She claimed that the travel ban interfered with her family life, particularly her ability to care for her ill husband in Germany. The applicant also alleged violations of her rights under Article 6 para. 3 (a) and (c) and Article 5, paras. 1–3 related to her arrests and the conditions under which they were carried out.

Regarding Article 6 para 1, the Government argued that the case was complex and that delays were partly owing to the applicant absconding and obstructing the investigation.

Regarding Article 2 of Protocol No. 4, the Government maintained that a travel ban was necessary to prevent the applicant from fleeing and obstructing the proceedings.

Regarding Article 8, the government argued that the applicant's husband could have joined her in Bulgaria, and that the applicant had other means of maintaining contact with him.

Decision and Reasoning: Article 6 para. 1 (Reasonable time requirement): The ECtHR found that the length of the proceedings, which totalled approximately nine years and seven months when considering the active periods, was excessive and violated reasonable time requirement. The Court noted that while the applicant contributed to some delays, the significant delays caused by the authorities were unjustifiable. Article 2 of Protocol No. 4 (Freedom of movement): The Court found that the prolonged travel ban, lasting over five years, became disproportionate over time. Initially justified, the continued imposition of the ban, especially as the risk of the applicant absconding diminished, was deemed excessive. The authorities failed to

provide adequate justification for maintaining the ban throughout its duration. Article 8 (Family life): The Court considered this complaint admissible but concluded that it was unnecessary to examine it separately since the violation of Article 2 of Protocol No. 4 had already addressed the significant impact on the applicant's family life.

Violation of Article 6 § 1: The Court ruled that the length of the criminal proceedings violated the "reasonable time" requirement.

Violation of Article 2 of Protocol No. 4: The Court found that the extended travel ban violated the applicant's right to freedom of movement.

No separate examination of Article 8: Given the findings under Article 2 of Protocol No. 4, the Court did not separately consider the alleged violation of Article 8.

Other complaints: The Court dismissed the applicant's other complaints as manifestly ill-founded.

The applicant's claims for pecuniary damage were dismissed owing to the lack of convincing evidence. The Court acknowledged the violations but dismissed the claims for compensation for pecuniary damage, although it recognised the non-pecuniary impact.[67]

6.1.16. O.I.J. v. Czech Republic

The applicant, an international organisation with its registered office in Prague, had been operating in Czechoslovakia since February 1946. In 1991, the Federal Ministry of the Interior of Czechoslovakia decided to withdraw the applicant's authorisation to operate within the country, citing the organisation's connections with the former totalitarian regime and alleged abuse of its privileged position in economic activities. This decision was confirmed by the Federal Minister of the Interior, who set a deadline for the organisation to cease its operations. Although the applicant appealed the decision, the Federal Minister of the Interior upheld the withdrawal of authorisation, particularly in relation to the organisation's registered office in Czechoslovakia.

Following the dissolution of Czechoslovakia on 31 December 1992 the applicant sought to retain its headquarters in the newly formed Czech Republic. However, the Czech Minister of the Interior confirmed the refusal to comply with a previous protest by the Public Prosecutor to revoke the withdrawal of the applicant's authorisation. The applicant filed an administrative appeal with the High Court, which was dismissed and subsequently lodged a constitutional complaint.

The applicant argued that the withdrawal of its authorisation violated its right to a fair trial under Article 6 of the ECHR and infringed upon its civil and social rights as well as those of its officials and employees.

The applicant claimed that as per Article 19(c) of the Civil Code, the withdrawal of its registered office led to the cessation of its activities, violating its property, housing, employment, and other civil rights.

The applicant also alleged a violation of Article 4 of the European Convention on the Recognition of the Legal Personality of International Non-Governmental

67 Case of *Prescher V. Bulgaria*, Application no. 6767/04, Juudgement 7 June 2011.

Organisations, asserting that it had always complied with national legislation and that its activities never justified the withdrawal of its authorisation.

The Constitutional Court of the Czech Republic argued that the right to have a registered office in the country did not constitute a "civil right" under Article 6 of the ECHR. Therefore, the proceedings did not involve the determination of civil rights and obligations.

The Court noted that the applicant was still authorised to continue its activities in the Czech Republic despite the withdrawal of its registered office, thereby not infringing on its ability to operate.

It was further argued that the withdrawal of the applicant's authorisation was a matter of domestic law and state interest, not a violation of the applicant's right to free association.

The Court dismissed the applicant's constitutional complaint, finding the following:

The right to have a registered office in a country is not a civil right and thus, Article 6 of the ECHR is not applicable.

The decision of the High Court to not review the withdrawal of the applicant's authorisation was not arbitrary as it pertained to a procedural matter, not a substantive civil right.

The Court held that the applicant, as an international organisation, could not claim victim status under the Convention for violations alleged on behalf of its officials, employees, or other associated persons.

The Court also rejected the claim under Article 4 of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, stating that this provision could not be applied by the ECtHR in the applicant's case.

The application was declared inadmissible by the ECtHR as it was found to be incompatible ratione materiae and ratione personae with the provisions of the ECHR. The applicant's claims under Articles 6 and 4 of the relevant conventions were dismissed, and the withdrawal of authorisation to have its registered office in the Czech Republic was upheld.

In this case, the provisions of Article 2 of Protocol No. 4 of the ECHR and those of Article 1 of Protocol No. 7 of the Convention, the content of which is closest to the guarantees contained in Article 4 of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, apply only to natural persons.

The case-law of the ECtHR regarding the right to freedom of movement in Central and Eastern European countries highlights the balance between individual freedoms and the legitimate interests of the state. The ECtHR consistently emphasises that any restrictions on movement must be prescribed by law, necessary, and proportionate to the legitimate aims pursued. Violations typically occur when restrictions are indefinite, lack a clear legal basis, or are disproportionate to the situation. The ECtHR's

jurisprudence serves as a critical check on state power, ensuring that individual rights are protected in the face of restrictive measures.[68]

7. Summary

The jurisprudence of the ECtHR concerning Article 2 of Protocol No. 4 as well as other relevant provisions consistently affirms the fundamental nature of the right to freedom of movement. This right encompasses both the ability to leave one's country and to return without undue restriction. Across the cases analyzed, a clear pattern emerges in which the ECtHR emphasises that any interference with these rights must satisfy stringent requirements of legality, necessity, and proportionality, reflecting the overarching principle that fundamental freedoms cannot be subordinated to administrative convenience or procedural formalities.

In *Udislav and Aurel Brezny v. Slovakia*, the ECtHR acknowledged the importance of procedural and temporal limitations in property restitution claims while affirming that national legal frameworks can justify certain restrictions when constitutional and legislative safeguards are observed. In contrast, cases such as *Kotiy v. Ukraine*, *S.E. v. Serbia*, *L.B. v. Lithuania*, and *Tatishvili v. Russia* reveal instances in which state authorities failed to implement domestic laws in a manner consistent with human rights obligations. Administrative inaction, bureaucratic delays, or formalistic interpretations of citizenship and refugee status resulted in direct violations of individuals' freedom of movement, highlighting the ECtHR's insistence on effective and timely protection of rights.

Similarly, in *Bessenyei v. Hungary* and *Sissanis v. Romania*, travel restrictions imposed during criminal proceedings were deemed disproportionate or insufficiently justified, reinforcing the principle that preventive measures affecting movement must be carefully balanced against individual rights and subjected to rigorous judicial oversight. *Dremlyuga v. Latvia* further illustrates the necessity for domestic administrative procedures, particularly regarding residence registration and travel documentation, to be both accessible and effectively enforceable. While the ECtHR recognised that compliance with procedural deadlines could justify certain state actions, prolonged inaction or excessive rigidity is incompatible with the Convention's protective regime.

Across these decisions, several overarching principles become evident:

Positive obligations of the state. States must ensure practical, timely access to travel documents, especially for refugees, stateless persons, and other vulnerable populations.

Protection against bureaucratic obstacles. Procedural or bureaucratic barriers cannot undermine substantive rights.

68 Case of *O.I.J. v. Czech Republic*, Application no. 41080/98, Judgeement 27 April 1999.

Proportionality and necessity. Restrictions on movement must always be proportionate, necessary, and subject to periodic reassessment.

Effective remedies. States must provide effective remedies, including judicial review, to address violations of movement rights.

De lege ferenda, the following reforms are recommended to enhance legal compliance and protect individual freedoms:

Strengthening positive obligations. National legislation should explicitly require authorities to facilitate timely access to travel documents and residency permits for all eligible individuals, particularly refugees and stateless persons.

Codified procedural safeguards. Clear, legally enforceable steps, deadlines, and competent authorities should be specified to reduce arbitrariness and ensure accountability.

Proportionality and review mechanisms. Legal frameworks should mandate periodic reassessment of any restrictions on movement, ensuring that limitations are proportionate to their purpose and time-bound.

Refugee and stateless person protections. Alternative mechanisms for document issuance should be provided for individuals unable to rely on their country of origin, thus guaranteeing their effective enjoyment of movement rights.

Compensation and remedies. Legislative frameworks should include explicit provisions for compensation and redress where violations occur, thereby further reinforcing the enforcement of fundamental freedom.

In conclusion, the right to freedom of movement, as enshrined in Article 2 of Protocol No. 4 of the ECHR, constitutes a fundamental element of individual liberty and a democratic society. Although this right ensures that individuals can move freely within a state, choose their residence, and leave or return to their country, it is not absolute and may be subject to restrictions under specific conditions. Such restrictions must be in accordance with the law, restrictions may only serve purposes such as national security, public safety, crime prevention, protection of health or morals, or safeguarding the rights and freedoms of others, limitations must correspond to a pressing social need and represent the least restrictive means of achieving the intended aim.

In times of emergency, states may derogate certain obligations under Article 15 of the ECHR; however, such measures must adhere to strict criteria and not violate other international obligations. Overall, the ECHR provides a robust framework for safeguarding freedom of movement, while allowing for reasonable and justified restrictions. Comprehensive legislative reforms, coupled with effective judicial oversight, would prevent systemic violations, strengthen the protection of vulnerable groups, and contribute to a more just and rights-respecting society.

Bibliography

African (Banjul) Charter on Human and People's Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986) [Online]. Available at: https://www.achpr.org/legalinstruments/detail?id=49 (Accessed: 27 May 2024).

American Convention on Human Rights (Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969) [Online]. Available at: https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm (Accessed: 30 July 2024).

Case of Antonenkov and Others v. Ukraine, Application no. 14183/02, *Judgement* 22 November 2005 [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-71202 (Accessed: 27 May 2024).

Case of Austin and Others v. the United Kingdom, Application nos. 39692/09, 40713/09 and 41008/09, Judgement 15 March 2012 [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-126823 (Accessed: 27 May 2024).

Case of Bartik v. Russia, Application no. 55565/00, Judgement 21 December 2006 [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-78792 (Accessed: 27 May 2024).

Case of Battista v. Italy, Application no. 43978/09, Judgement 2 December 2014 [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-155049 (Accessed: 27 May 2024).

Case of Beshiri and Others v. Albania, Application no. 29020/06, Judgement 22 August 2012 [Online]. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-202475%22]} (Accessed: 27 May 2024).

Case of Bessenyei v. Hungary, Application no. 37509/06, Judgement 1 October 2008 [Online]. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-89113%22]} (Accessed: 27 May 2024).

Case of De Tommaso v. Italy, Application no. 43395/09, Judgement 23 February 2017. [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-171804 (Accessed: 27 May 2024).

Case of Dremlyuga v Latvia, Application no. 66729/01, Judgement 29 April 2003 [Online]. Available at: https://www.stradalex.eu/en/se_src_publ_jur_eur_cedh/document/echr_51431-99 (Accessed: 27 May 2024).

Case of Garib v. the Netherlands, Application no. 43494/09, Judgement 6 November 2017. [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-189059 (Accessed: 27 May 2024).

Case of Guzzardi v. Italy, Application no. 7367/76, Judgement 6 November 1980 [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-57498 (Accessed: 27 May 2024).

Case of Handyside v. the United Kingdom, Application no. 5493/72, Judgement 7 December 1976 [Online]. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57499%22]} (Accessed: 24 July 2024).

Case of Ignatov v. Bulgaria, Application no. 50/02, Judgement 2 July 2009 [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-126149 (Accessed: 27 May 2024).

Case of Ivanov v. Ukraine, Application no. 15007/02, Judgement 7 December 2006 [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-78375 (Accessed: 27 May 2024).

Case of Khlyustov v. Russia, Application no. 28975/05, Judgement 11 July 2013. [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-122186 (Accessed: 27 May 2024).

Case of Klass and Others v. Germany, Application no. 5029/71, Judgement 6 September 1978 [Online]. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57510%22]} (Accessed: 24 July 2024).

Case of Kotiy v. Ukraine, Application no. 28718/09, Judgement 5 March 2015 [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-192478 (Accessed: 27 May 2024).

Case of L.B. v. Lithuania, Application no. 38121/20, Judgement 14 June 2022 [Online]. Available at: https://www.refworld.org/jurisprudence/caselaw/echr/2022/en/123977 (Accessed: 27 May 2024).

Case of Lawless v. Ireland, Application no. 332/57, Judgement 1 July 1961. [Online]. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57518%22]} (Accessed: 24 July 2024).

Case of Makuc and others v. Slovenia, Application no. 26828/06, Judgement 31 May 2007 [Online]. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-81215%22]} (Accessed: 27 May 2024).

Case of Miażdżyk v. Poland, Application no. 23592/07, Judgement 12 January 2012 [Online]. Available at: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-13%22]} (Accessed: 27 May 2024).

Case of Mursaliyev and Others V. Azerbaijan, Application nos. 66650/13 and others, 13 December 2018 [Online]. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-188262%22]} (Accessed: 27 May 2024).

Case of Nada v. Switzerland, Application no. 10593/08, Judgement 12 June 2012 [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-126846 (Accessed: 27 May 2024).

Case of Napijalo v. Croatia, Application no. 66485/01, Judgement 13 November 2003 [Online]. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-185402%22]} (Accessed: 27 May 2024).

Case of O.I.J. v. Czech Republic, Application no. 41080/98, Judgement 27 April 1999 [Online]. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-30265%22]} (Accessed: 27 May 2024).

Case of Prescher v. Bulgaria, Application no. 6767/04, Judgement 7 June 2011 [Online]. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-104984%22]} (Accessed: 27 May 2024).

Case of Rotaru v. The Republic of Moldova, Application no. 26764/12, Judgement 8 December 2020 [Online]. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-206728%22]} (Accessed: 27 May 2024).

Case of S.E. v. Serbia, Application no. 61365/16, Judgement 11 July 2023 [Online]. Available at: https://hudoc.echr.coe.int/rus#{%22itemid%22:[%22001-181745%22]} (Accessed: 27 May 2024).

Case of Silver and Others v. the United Kingdom, Application nos. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75, Judgement 25 March 1983. [Online]. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57577%22]} (Accessed: 24 July 2024).

Case of Sissanis v. Romania, Application no. 37509/06, Judgement 25 January 2007 [Online]. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-89113%22]} (Accessed: 27 May 2024).

Case of Soltysyak v. Russia, Application no. 4663/05, Judgement 10 February 2011. [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-103354 (Accessed: 27 May 2024).

Case of Stamose v. Bulgaria, Application no. 29713/05, Judgement 27 November 2012 [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-126851 (Accessed: 27 May 2024).

Case of Tatishivili v. Russia, Application no. 1509/02, Judgement 22 February 2007 https://www.refworld.org/jurisprudence/caselaw/echr/2007/en/43120 (Accessed: 27 May 2024).

Case of the Sunday Times v. the United Kingdom, Application no. 6538/74, Judgement 26 April 1979 [Online]. Available at: https://hudoc.echr.coe.int/rus?i=001-57584 (Accessed: 2 June 2024).

Case of Timishev v. Russia, Application nos. 55762/00, 55974/00, Judgement 13 December 2005 [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-71627 (Accessed: 27 May 2024).

Case of Udislav and Aurel Brezny v/Slovak Republic, Application no. 23131/93, Judgement 4 March 1996 [Online]. Available at: https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-87290&filename=001-87290.pdf (Accessed: 27 May 2024).

Case of Vogt v. Germany, Application no. 17851/91, Judgement 2 September 1995 [Online]. Available at: https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/09/CASE-OF-VOGT-v.-GERMANY.pdf (Accessed: 24 July 2024).

Case of X, Y and Z v. the United Kingdom, Application no. 21830/93, Judgement 22 April 1997 [Online]. Available at: https://hudoc.echr.coe.int/fre#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-58032%22]} (Accessed: 27 May 2024).

Case of Witzsch v. Germany, Application no. 41448/98, Judgement 20 April 1999 [Online]. Available at: http://hudoc.echr.coe.int/eng?i=001-4868 (Accessed: 27 May 2024).

Human Rights Committee (1997) CCPR General comment no. 23, 15 August 1997.

Human Rights Committee (1999) CCPR General Comment no 27: Article 12 (Freedom of Movement) Adopted at the Sixty-seventh session of the Human Rights Committee, on 2 November 1999 CCPR/C/21/Rev.1/Add.9, General Comment No 27 [Online]. Available at: https://www.refworld.org/pdfid/45139c394.pdf. (Accessed: 30 July 2024).

Council of Europe (2025) *Guide on Article 2 of Protocol No. 4 to the European Convention on Human Rights: Freedom of Movement*. Strasbourg: Council of Europe Publishing [Online]. Available at: https://www.coe.int/en/web/human-rights-conventions/protocol-4 (Accessed: 31 August 2024).

Council of Europe (1963) *Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights* [Online]. Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf (Accessed: 31 August 2024).

Council of Europe, European Court of Human Rights (2014) 'Handbook on the application of Article 5 of the European Convention on Human Rights: The right to freedom and personal integrity. Article 5 of the Convention' [Online]. Available at: https://www.echr.coe.int/Documents/Guide_Art_5_UKR.pdf (Accessed: 27 May 2024).

Council of Europe, European Court of Human Rights (2016) 'Guidance on Article 15 of the ECHR. Waiver of obligations during an emergency' [Online]. Available at: http://www.echr.coe.int/Documents/Guide_Art_15_UKR.pdf (Accessed: 30 July 2024).

Council of Europe, European Court of Human Rights (2018) 'Handbook on the application of Article 8 of the European Convention on Human Rights: The right to respect for private and family life, housing and correspondence' [Online]. Available at: https://www.echr.coe.int/Documents/Guide_Art_8_UKR.pdf (Accessed: 27 May 2024).

Declaration of independence of the United States of America, July 4, 1776 [Online]. Available at: http://www.hai-nyzhnyk.in.ua/doc2/1776%20(07)%2004.USA.php (Accessed: 2 June 2024).

Declaration of the Rights of Man and Citizen of 1789 [Online]. Available at: https://constituante.livejournal.com/10253.html (Accessed: 2 June 2024).

Fuley, T.I. (2018) 'Interference with the rights guaranteed by Article 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms: The Ukrainian dimension' [Втручання у права, гарантовані ст. 8 Конвенції про захист прав людини та основоположних свобод: український вимір], *Word of the National School of Judges of Ukraine*, 24(3), pp. 41–53.

Hryshchenko E.I. (2022) 'Separate issues of the formation and development of the human right to freedom of movement', pp. 87–93; https://doi.org/10.24144/2307-3322.2022.70.13 .

Kozub I.G., Bodnaruk M.I. (2020) *Fundamentals of Roman Civil Law* [Online]. Available at: https://fpk.in.ua/images/biblioteka/1bac_pravo/Kozub-I.H.Osnovy-rymskoho-tsyvilnoho-prava--2020.pdf (Accessed: 13 May 2024).

Prodyvus, S.V. (2023) 'Lawful restriction of the right to freedom of movement: international legal standards and practice of the European Court of Human Rights' [Законне обмеження права на свободу пересування: міжнародно-правові стандарти та практика Європейського суду з прав людини], *Uzhhorod National University Herald*, 2(78), pp. 365–371. https://doi.org/10.24144/2307-3322.2023.78.2.59.

Savranchuk, L.L. (2010) 'The history of the formation and development of the permit for the entry and exit of foreign citizens from Ukraine' [Історія становлення та розвитку дозволу на в'їзд та виїзд іноземних громадян з України], *Derzhava i pravo*, 2010/48, pp. 101–106.

Sofinska, I. D. (2020) 'Passport: Global Challenges – Local Solutions' (Паспорт: глобальні виклики – локальні рішення), *Journal of the Kyiv University of Law,* 2020/3, pp. 342–348.

Tulba, K.G. (2017) 'Normative consolidation of the rights to free movement and free choice of residence in international law' [Нормативна консолідація прав на вільне пересування та вільний вибір місця проживання в міжнародному праві], *Derzhava i pravo,* 2017/78, pp. 298–309.

United Nations (1948) *Universal Declaration of Human Rights.*

United Nations (1966) *International Covenant on Civil and Political Rights* [Online]. Available at: http://zakon3.advicegov.ua/laws/show/995_043 (Accessed: 30 July 2024).