

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

Guide on Article 2 of Protocol No. 4 to the European Convention on Human Rights

Freedom of movement

Updated on 31 August 2026

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on Article 2 of Protocol No. 4 to the European Convention on Human Rights (hereafter "the Convention" or "the European Convention") until 31 August 2021. Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A No. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a List of keywords, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The HUDOC database of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the HUDOC user manual.

* The case-law cited may be in either or both of the official languages (English or French) of the Court and the European Commission of Human Rights Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.
Chamber judgments that were not final when this update was finalised are marked with an asterisk (*).

Introduction

1. Article 2 of Protocol No. 4 guarantees three distinct rights: freedom of movement and freedom to choose one's own residence within a State's territory (set out in the first paragraph), as well as freedom to leave any country, including one's own (set out in the second paragraph).

2. These rights are not absolute; they can be subject to restrictions in accordance with paragraphs 3 and 4 of this provision.

3. These rights are derogable. Article 15 of the Convention authorises States to derogate from their obligations under Article 2 of Protocol No. 4 "to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with [their] other obligations under international law", with the further proviso that the procedural formalities set out in Article 15 § 3 are complied with (see only Case-Law Guide on Article 15). Only measures with a sufficiently strong link to the aim pursued by the derogation can be covered by it (*Domenjoud v. France*, 2024, § 154).

4. Equivalent provisions are also found in the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the American Convention on Human Rights (1969), the Charter of Fundamental Rights of the European Union (2000), the African Charter on Human and Peoples' Rights (1981) and the International Convention on the Elimination of All Forms of Racial Discrimination (1965).

5. Article 2 of Protocol No. 4 can be invoked only in relation to States which have ratified Protocol No. 4. Four States have not ratified Protocol No. 4: Greece, Switzerland, Turkey and the United Kingdom.

6. The Court's jurisdiction *ratione temporis* in respect of complaints submitted under Article 2 of Protocol No. 4 begins on the date on which Protocol No. 4 came into force in respect of the respondent State. The Court may nevertheless have regard to facts and decisions prior to that date, in so far as they remain relevant thereafter (*Riener v. Bulgaria,* 2006, § 95; *Ignatov v. Bulgaria*, 2009, § 28; see also the Practical Guide on Admissibility Criteria).

Article 2 of Protocol No. 4 to the Convention

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

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

HUDOC keywords

Paragraph 1
Freedom of movement – Freedom to choose residence – Lawfully within the territory

Paragraph 2
Freedom to leave a country

Paragraph 3
Interference – Prescribed by law – Accessibility – Foreseeability – Safeguards against abuse – Necessary in a democratic society – National security – Public safety – Protection of health – Protection of morals – Protection of rights and freedoms of others – Protection of public order – Prevention of crime

Paragraph 4
Restrictions in particular areas – Public interest

I. The structure of Article 2 of Protocol No. 4

7. Paragraphs 1 and 2 of Article 2 of Protocol No. 4 set out the rights guaranteed. Paragraphs 3 and 4 define the criteria which a restriction on these rights must fulfil in order to be deemed compatible with this provision. Paragraph 4 is specifically concerned with restrictions that are imposed on the rights stipulated in paragraph 1 (freedom of movement and freedom to choose residence) and are applicable only to particular areas within a State's territory.

8. The structure of Article 2 of Protocol No. 4 is similar to that of Articles 8 to 11 of the Convention (*Timishev v. Russia*, 2005, § 45). This similarity is reflected in the Court's step-by-step examination of the cases brought under Article 2 of Protocol No. 4.

9. In the first place, the Court determines whether the applicant's complaint falls within the personal, material and territorial scope of application of this provision.

10. Secondly, the Court examines whether the measure complained of amounts to an interference with the exercise of any of the three distinct rights guaranteed by Article 2 of Protocol No. 4 (outlined in paragraph 1 above). So far, the Court has assessed a complaint under this provision from the standpoint of a positive obligation only in very few cases (*Dobrovitskaya and Others v. the Republic of Moldova and Russia* [Committee], 2019, § 98; *Golub v. the Republic of Moldova and Russia* [Committee], 2021).

11. Thirdly, the Court scrutinises whether the impugned measure was imposed "in accordance with law" within the meaning of paragraphs 3 or 4 of Article 2 of Protocol No. 4.

12. Lastly, the Court applies either the "necessity in a democratic society" test under paragraph 3, or the "public interest" test under paragraph 4 of Article 2 of Protocol No. 4.

13. The Court's choice of the applicable test depends on the following two factors:

- *first*, which right is affected by the impugned measure, and,
- *second*, whether a given measure applies generally, not being subject to any territorial limitation, or only to certain particular areas.

14. The Court will opt for the "necessity in a democratic society" test under paragraph 3 of Article 2 of Protocol No. 4 in two types of situations:

- *any* measure restricting the right to leave any country (*Gochev v. Bulgaria,* 2009, § 44; *Shioshvili and Others v. Russia,* 2016, § 58), be it a measure depriving the applicant entirely of that right or limiting his or her choice of destination countries to a certain geographic area (*L.B. v. Lithuania*, 2022, § 81; *Soltysyak v. Russia,* 2011, § 37; *Peltonen v. Finland,* Commission decision, 1995; *K.S. v. Finland*, Commission decision, 1995);
- a restriction on the exercise of the rights to freedom of movement or freedom to choose residence, which is not limited in geographical scope and applies to the entire territory of a given State (*Garib v. the Netherlands* [GC], 2017, § 110; *Pagerie v. France*, 2023, § 171; *Fanouni v. France*, 2023, § 44).

15. The Court will proceed to the "public interest" test under paragraph 4 of Article 2 of Protocol No. 4 where a restriction concerns the rights to freedom of movement and freedom to choose one's residence and is limited in geographical scope, covering only particular areas of the territory of a given State (*Garib v. the Netherlands* [GC], 2017, § 110).

16. The "public interest" test is not applicable to any restriction of the right to leave any country, which is assessed only on the basis of the "necessity in a democratic society" test under paragraph 3 of this provision.

17. The third and fourth paragraph of Article 2 of Protocol No. 4 are of equal rank in that both provide for free-standing restrictions on the exercise of the rights set out in the first paragraph (freedom of movement and freedom to choose residence). They are, however, different in scope: paragraph 3 providing for restrictions for specified purposes but without limiting their geographical scope and paragraph 4 providing broadly for restrictions "justified by the public interest" but limited in their geographical scope (*Garib v. the Netherlands* [GC], 2017, § 110).

18. The right to freedom of movement as guaranteed by paragraphs 1 and 2 of Article 2 of Protocol No. 4 prohibits any measure liable to infringe that right or to restrict the exercise thereof which does not satisfy the requirement of a measure which can be considered as "necessary in a democratic society" in the pursuit of the legitimate aims referred to in the third paragraph of this provision (*Baumann v. France*, 2001, § 61; *Sissanis v. Romania*, 2007, § 62).

19. Under the terms of paragraph 3 of Article 2 of Protocol No. 4, the legitimate aims which can justify an interference with the exercise of the three rights guaranteed by this provision are national security or public safety, the maintenance of *ordre public*, the prevention of crime, the protection of health or morals and the protection of the rights and freedoms of others.

20. Paragraph 3 of Article 2 of Protocol No. 4 is closely aligned with paragraph 2 of Article 8 of the Convention (*A.-M.V. v. Finland*, 2017, § 94). However, in contrast to Article 8 § 2, "*the economic well-being of the country*" is not included among its legitimate aims.

21. It is reflected in the drafting history that the fourth paragraph was added to Article 2 of Protocol No. 4 to provide for restrictions of the right to liberty of movement and freedom to choose one's residence for reasons of "economic welfare", whereas economic reasons could never justify

restrictions on the right to leave one's country (*Garib v. the Netherlands* [GC], 2017, §§ 85 and 109; Explanatory Report to Protocol No. 4, § 15).

22. The test of "necessity in a democratic society" under paragraph 3 of Article 2 of Protocol No. 4 requires the Court to determine whether the interference complained of answers a "pressing social need" and, in particular, whether it is proportionate to the legitimate aim pursued and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (*Khlyustov v. Russia,* 2013, § 84).

23. The relevant test under paragraph 4 of Article 2 of Protocol No. 4 requires the Court to determine, in the first place, whether the restriction served the "public interest" and, secondly, whether it was "justified in a democratic society" (*Garib v. the Netherlands* [GC], 2017, §§ 115-116 and 136-141).

II. Scope of application

A. Personal scope of application

1. "*Everyone*"

24. The guarantees of Article 2 of Protocol No. 4 extend only to natural persons (*O.I.J. v. Czech Republic* (dec.), 1999; *F.S.M. v. Czech Republic* (dec.), 1999).

25. This provision has been found to apply to:

- aliens (*Shioshvili and Others v. Russia,* 2016; *L.B. v. Lithuania*, 2022; *S.E. v. Serbia*, 2023; *Baumann v. France*, 2001, *Bolat v. Russia*, 2006; *Miażdżyk v. Poland,* 2012; *Roldan Texeira and Others v. Italy* (dec.), 2000),
- stateless persons (*Mogoş and Others v. Romania* (dec.), 2004; *Härginen v. Finland*, Commission decision, 1998) and
- persons with a specific status ("citizen of the former USSR": *Tatishvili v. Russia,* 2007).

26. The rights guaranteed by Article 2 of Protocol No. 4 apply also to minor children (*Diamante and Pelliccioni v. San Marino*, 2011, § 204).

27. Mental illness or disability does not remove the individuals concerned from the protection of this provision (*A.-M.V. v. Finland*, 2017; *Nordblad v. Sweden,* Commission decision, 1993; *I.H. v. Austria*, Commission decision, 1989).

28. Persons who are detained on one of the grounds listed in Article 5 § 1 are entitled to raise complaints under Article 2 of Protocol No. 4. The Convention organs have examined the substance of such complaints in the past and did not reject them as incompatible *ratione personae* with this provision (*C. v. Germany*, Commission decision, 1985; *X. v. Germany*, Commission decision, 1977; *X. v. Germany*, Commission decision, 1970; *X. v. Germany,* Commission decision, 1970; *Nordblad v. Sweden,* Commission decision, 1993; *I.H. v. Austria*, Commission decision, 1989).

29. Unlike some other Articles of the Convention – such as Article 4 § 3 (d) or Article 11 § 2 – Article 2 of Protocol No. 4 does not make a distinction between civilians and members of the armed forces or military servicemen (*Soltysyak v. Russia,* 2011, § 54; *Berkovich and Others v. Russia*, 2018, § 97; *Golub v. the Republic of Moldova and Russia* [Committee], 2021, § 56).

2. "*Lawfully within the territory of a State*"

30. While freedom to leave any country, including one's own, is guaranteed to "*everyone*" (*L.B. v. Lithuania*, 2022, § 59; *S.E. v. Serbia*, 2023, § 47), the rights to liberty of movement and freedom to

choose one's residence are granted only to those persons who are "*lawfully within the territory of a State*".

31. The requirement of being "*lawfully within the territory of a State*" is broader in scope than the requirement under Article 1 of Protocol No. 7 of being "*lawfully resident*" in that territory (see Case-Law Guide on Article 1 of Protocol No. 7). Unlike the latter provision, Article 2 of Protocol No. 4 does not exclude from its application aliens or stateless persons who are admitted to the territory of a State for the purpose only of transit or for a limited period for a non-residential purpose (Explanatory Report to Protocol No. 4*,* § 8).

32. The requirement of being "*lawfully within the territory of a State*" refers to the domestic law of the State concerned (*Omwenyeke v. Germany* (dec.), 2007). It is for the domestic law and State organs to lay down the conditions which must be fulfilled for a person's presence in the territory to be considered "lawful" (see *Ben Salah* v. *Italy*, 2009, § 53; *Sisojeva and Others v. Latvia* (dec.), 2000; *Makuc and Others v. Slovenia* (dec.), 2007).

33. In determining whether an applicant is "*lawfully within the territory of a State*", the Court has regard to the relevant findings of the domestic courts (*M.S. v. Belgium*, 2012, § 196; *Piermont v. France*, 1995, § 49). It is, however, not bound by them and, if needed, will assess whether domestic decisions have sufficient legal and factual basis (*Tatishvili v. Russia,* 2007, § 43) and whether they disclose any appearance of arbitrariness (*Omwenyeke v. Germany* (dec.), 2007). For instance, in *Tatishvili v. Russia,* 2007, the Court found, contrary to the domestic authorities' claim and the respondent Government's submissions, that the applicant was neither a foreign citizen nor a stateless person and did not therefore require a visa or a residence permit. It established, on the basis of the relevant legislation, that, at the material time, she had had a special legal status, that of a "citizen of the former USSR", and was therefore lawfully present in Russia (§§ 39-43).

34. The mere fact of passing through immigration control is not in itself sufficient for an applicant's presence in the territory to be considered "lawful". In *Piermont v. France*, 1995, an exclusion order (an entry ban) was served on the applicant just after her passport had been stamped by the border police and before she had left the airport. The Court found that the applicant had never been "*lawfully within the territory*" within the meaning of paragraph 1 of Article 2 of Protocol No. 4 (§ 49).

35. From the moment that an applicant's presence on the territory of a State ceases to be lawful, he or she can no longer lay claim to the rights to liberty of movement and freedom to choose one's residence within that territory. The Convention bodies confirmed this principle in the context of:

- expulsion and/or exclusion orders (*Piermont v. France*, 1995, § 44; *M.S. v. Belgium*, 2012, § 196; *Yildirim v. Romania* (dec.), 2007; *N. v. France*, Commission decision, 1992; *Polley v. Belgium*, Commission decision, 1991);
- the revocation of a residence permit issued to a foreigner (*Ben Salah* v. *Italy*, 2009, § 54; *A. v. San Marino*, Commission decision, 1993);
- the loss of permanent resident status and a residence permit – for example, following legislative changes in the context of the dissolution/succession of States (*Makuc and Others v. Slovenia* (dec.), 2007, § 211) or due to other circumstances, such as the acquisition of foreign citizenship (*Dremlyuga v. Latvia* (dec.), 2003);
- the breach by an alien of the conditions of his provisional admission to the territory (*Omwenyeke v. Germany* (dec.), 2007).

36. In *Piermont v. France*, 1995 the Court examined separately the period before an expulsion order coupled with a re-entry ban that had been served on the applicant and the period subsequent to that event. Regarding the former period, the Court found that the applicant had been able to move freely in French Polynesia. Regarding the latter period, the Court held that, once the expulsion order had been served, the applicant was no longer lawfully on Polynesian territory (§ 44).

37. Another illustration concerns the specific situation of foreigners provisionally admitted to the territory of a State, pending proceedings to determine whether or not they were entitled to a residence permit under the relevant provisions of domestic law. They could only be regarded as "lawfully" in the territory as long as they complied with the conditions to which their admission and stay were subject (*Omwenyeke v. Germany* (dec.), 2007; see also Commission decisions in *U. and S. v. Germany*, 1986; *P. v. Germany*, 1986; and *Aygün v. Sweden*, 1989). For example, where an alien was provisionally admitted on the condition that he remained in a certain district, he was not "lawfully within the territory" of the State concerned during each journey outside that district without the requisite permission and therefore could not rely on the right to liberty of movement under Article 2 of Protocol No. 4 (*Omwenyeke v. Germany* (dec.), 2007). Such conditions of provisional admission can concern issues other than residence or movement (Explanatory Report to Protocol No. 4, § 8).

B. Specific issues of territorial application

38. Under paragraph 1 of Article 2 of Protocol No. 4, the exercise of the rights to freedom of movement and freedom to choose one's residence is guaranteed "within the territory of a State".

39. The territory, where a State exercises its territorial jurisdiction, begins at the line forming the border (*N.D. and N.T. v. Spain* [GC], § 109; see also Case-Law Guide on Article 1).

1. Overseas territories

40. When applying Article 3 of Protocol No. 4, regard must be had to Article 5 of this Protocol.

41. Paragraph 1 of Article 5 allows the State to indicate the extent to which Protocol No. 4 shall apply to "such of the territories for the international relations of which it is responsible".[1]

42. Paragraph 4 of Article 5 reads as follows:

> "The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State."

43. In *Piermont v. France*, 1995, by virtue of Article 5 § 4, French Polynesia was regarded as a separate territory, distinct from metropolitan France, for the purpose of the references to the territory of a State in Article 2 of Protocol No. 4 (*Piermont v. France*, 1995, §§ 43-44).

2. Territorial entities not recognised by the international community

44. The Court does not treat such entities as a separate territory, distinct from or outside the territory of the State concerned, for the purposes of the application of Article 2 of Protocol No. 4.

45. In *Denizci and Others v. Cyprus*, 2001, the Court examined the restrictions on freedom of movement between such an entity and the government-controlled area imposed by the government concerned. The applicants, Cypriot nationals of Turkish origin, were expelled by the Cypriot police to the northern part of Cyprus, the "Turkish Republic of Northern Cyprus" under the effective control of Turkey. Upon their return to the territory under the control of the Republic of Cyprus, the Cypriot authorities closely monitored their movements between the northern part of the island and the south, and within the south. The applicants were not allowed to move freely in the south and had to report to the police every time they wanted to go to the north to visit their families or friends or upon their entry into the south. As those measures neither had any legal basis under Cypriot law nor had been necessary in a democratic society, the Court found a violation of Article 2 of Protocol No. 4. While they

1. Full list of reservations and declarations submitted to the Secretary General of the Council of Europe in respect of Protocol No. 4.

also complained that their expulsion to the part of the island where the Republic of Cyprus could not exercise authority and control was in breach of Article 3 of Protocol No. 4 (prohibition of expulsion of nationals), the Court considered it unnecessary to determine whether Article 3 of this Protocol applied, having regard to its finding of a violation of Article 2 of Protocol No. 4. The Court observed that the applicants had not claimed that they had been expelled to the territory of another State. The Court further noted that the government of the Republic of Cyprus was the sole legitimate government of Cyprus – itself, bound to respect international standards in the field of the protection of human and minority rights (§§ 323, 403-406, 410-411).

46. In *Ukraine and the Netherlands v. Russia* (dec.) [GC], 2022, the Court examined the Ukrainian Government's complaints concerning three instances of abduction of children (mainly orphans) and accompanying adults, which occurred in Eastern Ukraine, on the territory of the entities over which the Russian Federation exercised effective control. In the Court's view, the applicant Government had presented *prima facie* evidence that the children had been forcibly transferred to Russia with the intervention of armed separatists. The Court declared admissible the complaint concerning the existence of an administrative practice in this regard in breach of Article 2 of Protocol No. 4 and other Convention provisions (§§ 895-898).

47. In the following cases, the Court examined the restrictions on freedom of movement between the government-controlled area and a territorial entity, emanating from the latter.

48. In *Dobrovitskaya and Others v. the Republic of Moldova and Russia* [Committee], 2019, one of the applicants was restricted in her free movement within the territory of the Republic of Moldova by the authorities of the "Moldovan Republic of Transdniestria" ("MRT"), an entity set up in Moldovan territory and over which the Russian Federation exercised effective control. In particular, the "MRT" authorities prohibited the applicant from leaving a city situated in the "MRT". The case of *Golub v. the Republic of Moldova and Russia* [Committee], 2021, concerns the applicant's compulsory military service in the "MRT". The applicant had his passport taken away and his movement outside the premises of the "MRT" military institution was strictly monitored; he was not allowed to leave the territory of the military institution without authorisation of the "MRT" military commander. In both cases, the Court found a violation of Article 2 of Protocol No. 4, as no "MRT" authority could lawfully order the restriction of the freedom of movement of individuals. The Court further held that Russia was responsible for that breach and that Moldova had not failed in fulfilling its positive obligations to take appropriate and sufficient measures to secure the applicants' rights (*Dobrovitskaya and Others v. the Republic of Moldova and Russia* [Committee], 2019, §§ 94-99; *Golub v. the Republic of Moldova and Russia* [Committee], 2021, §§ 65-70; see also Case-Law Guide on Article 1).

49. In *Georgia v. Russia (II)* [GC], 2021, the Court examined the question of the rights of the internally displaced persons – ethnic Georgians who had fled armed conflict and had been prevented from returning to their homes in South Ossetia or Abkhazia by the *de facto* authorities of those regions. The Court concluded that this situation amounted to an administrative practice contrary to Article 2 of Protocol No. 4 and that the Russian Federation, which exercised "effective control" over those areas, was responsible for the violation found (§§ 292-301). In *Georgia v. Russia (IV)* (dec.), 2023, the Court declared admissible the applicant Government's complaint of an administrative practice by Russia contrary to Article 2 of Protocol No. 4 and stemming from the "borderisation" process between the above breakaway entities and the territory controlled by the Georgian government.

3. Purported "annexation" of territory from one Contracting State to another

50. In the case of a purported "annexation" of territory from one State to another, it is necessary to establish, for the purposes of applicability of Article 2 of Protocol No. 4, which of the two States exercises territorial jurisdiction over the territory in question.

51. In *Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, the Court examined a series of complaints by the Ukrainian Government about events in the course of which the region of Crimea (including the

city of Sevastopol) was purportedly integrated into the Russian Federation. The complaint under Article 2 of Protocol No. 4 concerned the alleged existence of an administrative practice of restricting freedom of movement between Crimea and mainland Ukraine, resulting from the *de facto* transformation (by the respondent State) of the administrative border line into a State border (between the Russian Federation and Ukraine). While the Court was not called upon to decide in the abstract on the legality *per se* under international law of a purported "annexation" of Crimea or of the consequent legal status of that territory, it could not entirely eschew the question. In particular and in so far as paragraph 1 of Article 2 of Protocol No. 4 guarantees freedom of movement "*within the territory of a State*", it was necessary to consider the nature or legal basis of the respondent State's jurisdiction over Crimea: notably, if the jurisdiction exercised by the Russian Federation over Crimea at the relevant time took the form of territorial jurisdiction rather than that of "effective control over an area", this provision would not be applicable. To this end, the Court examined separately two periods – respectively, before and after 18 March 2014, the date on which the Russian Federation, the "Republic of Crimea" and the City of Sevastopol signed a treaty whereby Crimea and the city of Sevastopol were, as a matter of Russian law, admitted as constituent entities of the Russian Federation. Regarding the first period, in view of the strength of the Russian military forces in Crimea, the degree of their active involvement in the impugned events, as well as the public statements of several Russian high-ranking officials, there was sufficient evidence that Russia had exercised effective control over Crimea. As to the second period, the Court relied on the fact that, in the first place, both Contracting States had ratified the Convention in respect of their respective territories within the internationally-recognised borders as at that time; secondly, no change to the sovereign territories of both countries had been accepted or notified by either State; and thirdly, a number of States and international bodies had refused to accept any change to the territorial integrity of Ukraine in respect of Crimea within the meaning of international law. Accordingly, for the purposes of the admissibility decision, the Court proceeded on the assumption that Ukraine's territorial jurisdiction continued to extend to the entirety of its territory, including Crimea, whereas the jurisdiction of Russia over that region was in the form or nature of "effective control over an area" (rather than in the form or nature of territorial jurisdiction) (see also Case-Law Guide on Article 1). It thus declared admissible the applicant government's complaint regarding the alleged existence of an administrative practice of restricting freedom of movement between Crimea and mainland Ukraine.

4. United Nations buffer zones

52. In *Stephens v. Cyprus, Turkey and the United Nations* (dec.), 2008, the applicant complained that she was denied access to her house located in the buffer zone under the control of the United Nations Peacekeeping Force in Cyprus (UNFICYP). In so far as the complaint was directed against Cyprus and Turkey, it was rejected as manifestly ill-founded: those States did not have effective control over the buffer zone and the applicant had not substantiated any breach by said States of their duty to take all appropriate measures within their power with regard to the applicant's rights. To the extent that the complaint was directed against the UN, the Court was not competent *ratione personae* to review its acts (see Case-Law Guide on Article 1 and Practical Guide on Admissibility Criteria).

5. Diplomatic premises

53. Diplomatic premises are not part of the territory of the sending State for the purposes of the application of Article 2 of Protocol No. 4. In *M. v. Denmark,* Commission decision, 1992, the applicant and several other Germans took refuge in the Danish Embassy in the former German Democratic Republic (GDR), seeking the possibility to move to the Federal Republic of Germany. He complained that he had been deprived of his right to move freely on Danish territory when he had been removed from the Embassy premises, together with the whole group, by the police of the GDR upon request of the Danish Ambassador. While the Commission found that the impugned act of the Ambassador had

brought the applicant within the jurisdiction of Denmark, it did not consider that the applicant was on the Danish territory, with the result that Article 2 of Protocol No. 4 did not apply to his case.

C. Links and overlaps between the safeguards of Article 2 of Protocol No. 4 and the other Convention provisions

54. By its very nature, the substantive content of Article 2 of Protocol No. 4 to the Convention may sometimes overlap with the content of other provisions of the Convention; in other words, the same complaint submitted to the Court can sometimes come under more than one article (*İletmiş v. Turkey*, 2005, § 50). In such cases the Court usually opts to assess the complaint under one Article only, whichever it considers more relevant in the light of the specific circumstances of the case. The Articles most likely to be involved alongside Article 2 of Protocol No. 4 for the same facts and the same complaints are as follows:

1. Article 5

a. General considerations regarding applicability (Article 5 § 1)

55. A restriction on movement can, in certain specific circumstances, be serious enough as to amount to a deprivation of liberty, which may take numerous forms other than the classic case of detention following arrest or conviction (*Guzzardi v. Italy*, 1980, § 95; see also Case-Law Guide on Article 5).

56. Indeed, the difference between deprivation of liberty under Article 5 § 1 and restriction upon liberty of movement within the scope of Article 2 of Protocol No. 4 is one of degree or intensity, and not of nature or substance (*De Tommaso v. Italy* [GC], 2017, § 80; *Austin and Others v. the United Kingdom* [GC], 2012, § 57; *Guzzardi v. Italy*, 1980, § 93).

57. In some borderline cases, the process of classification into one or another category may prove to be no easy task (*Guzzardi v. Italy*, 1980, § 93). At the same time, Article 5 should not, in principle, be interpreted in such a way as to incorporate the requirements of Protocol No. 4 in respect of States which have not ratified it (*Austin and Others v. the United Kingdom* [GC], 2012, § 55).

58. In cases where both of the above provisions are invoked and relevant, the Court has to determine which one is applicable. It does not consider itself bound by the legal conclusions of the domestic authorities in this respect and undertakes an autonomous assessment of the situation (*Khlaifia and Others v. Italy* [GC], 2016, § 71; *H.L. v. the United Kingdom*, 2004, § 90; *H.M. v. Switzerland*, 2002, §§ 30 and 48; *Creangă v. Romania* [GC], 2012, § 92).

59. Where a complaint regarding a given restriction is found to fall within the ambit of Article 5, the Court will not examine it under Article 2 of Protocol No. 4 (*Assanidze v. Georgia* [GC], 2004, § 194). Where Article 5 is found to be inapplicable, the relevant complaint will be examined under Article 2 of Protocol No. 4 (*De Tommaso v. Italy* [GC], 2017, § 91; *M.S. v. Belgium*, 2012, § 195), unless the applicant specifically seeks to demonstrate that a given measure amounts to a deprivation of liberty and not simply a restriction on the right to freedom of movement (*Terheş v. Romania* (dec.), 2021, § 38).

60. The starting point in the Court's assessment is an applicant's concrete situation. Account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question. Furthermore, where several measures are in issue, they must be analysed "cumulatively and in combination" (*De Tommaso v. Italy* [GC], 2017, § 80; *Guzzardi v. Italy*, 1980, §§ 92 and 95; *Pagerie v. France*, 2023, § 153).

61. Relevant objective factors to be considered include the size and characteristics of a restricted area to which a person's movement is confined, the possibility to leave this area, the degree of supervision

and control over the person's movements, the extent of isolation and the availability of social contacts (*Guzzardi v. Italy*, 1980, § 95; *De Tommaso v. Italy* [GC], 2017, §§ 83-88; *Nada v. Switzerland* [GC], 2012, §§ 229-232).

62. In the context of confinement of foreigners in airport transit zones and reception centres for the identification and registration of migrants, additional factors come into play, notably: i) the voluntary nature of their arrival and stay; ii) existence of a direct and immediate danger to their life or health; iii) adequacy of the conditions and duration of their stay in light of the purpose of the applicable legal regime (for example, the processing of asylum claims); iv) availability of procedural safeguards against excessive waiting periods and domestic provisions fixing the maximum duration of foreigners' stay in such transit zones; and v) delays and inaction on the part of the authorities (*Z.A. and Others v. Russia* [GC], 2019, § 138 -156; *Ilias and Ahmed v. Hungary* [GC], 2019, § 217 -248; *R.R. and Others v. Hungary*, 2021, §§ 74-83).

63. The specific context and circumstances in which the impugned restriction was applied is an important factor, since situations commonly occur in modern society where the public may be called upon to endure restrictions on freedom of movement or liberty in the interests of the common good (*De Tommaso v. Italy* [GC], 2017, § 81; *Nada v. Switzerland* [GC], 2012, § 226; *Austin and Others v. the United Kingdom* [GC], 2012, §§ 58- 59; *Terheş v. Romania* (dec.), 2021, § 36).

64. Members of the public are often called upon to endure temporary restrictions on freedom of movement in certain contexts, such as travel by public transport or on the motorway, or attendance at a football match. Such commonly occurring restrictions could not properly be described as "deprivations of liberty" within the meaning of Article 5 § 1, so long as they are rendered unavoidable as a result of circumstances beyond the control of the authorities, are necessary to avert a real risk of serious injury or damage, and are kept to the minimum required for that purpose (*Austin and Others v. the United Kingdom* [GC], 2012, § 59).

65. Regarding the use of containment and crowd-control techniques, it cannot be excluded that, in particular circumstances, they could give rise to an unjustified deprivation of liberty in breach of Article 5 § 1. In each case, Article 5 § 1 must be interpreted in a manner which takes into account the specific context in which the techniques are deployed, as well as the responsibilities of the police to fulfil their duties of maintaining order and protecting the public, as they are required to do under both national and Convention law (*Austin and Others v. the United Kingdom* [GC], 2012, § 60).

b. Examples of qualification

66. The following examples provide an illustration of the manner in which the Court can distinguish between deprivation of liberty under Article 5 § 1 and restrictions on liberty of movement within the scope of Article 2 of Protocol No. 4:

- While house arrest amounts to deprivation of liberty (see *Buzadji v. the Republic of Moldova* [GC], 2016, § 104; *De Tommaso v. Italy* [GC], 2017, § 87), a milder version of this measure can be considered as a restriction of freedom of movement. This was the case in *Trijonis v. Lithuania* (dec.), 2005, where the applicant's initial house arrest was replaced by a more lenient regime, allowing him to be at his work place during week-days and obliging him to stay at home from 7 p.m. until 7 a.m. during week-days and the whole day during week-ends, as well as in *Dedu v. Romania* (dec.), 2024, §§ 77-81, where the applicant was obliged to spend part of his day at his workplace and the rest of the day and the night at home for a duration of nine days.
- A home-curfew for sixteen days requiring the applicants to stay within their local municipalities, not to leave their homes between 8 p.m. and 6 a.m. and to report three times a day to a police station, was found not to amount to a deprivation of liberty, but to a restriction of freedom of movement (*Domenjoud v. France*, 2024, § 72).

- The prohibition on leaving home at night except in the case of necessity (between 10 p.m. and 6 a.m.) cannot be equated to house arrest and amounts to an interference with liberty of movement (*De Tommaso v. Italy* [GC], 2017, § 86-88; *Timofeyev and Postupkin v. Russia*, 2021, § 125).
- In *J.R. and Others v. Greece*, 2018, the Court considered that the applicants, asylum seekers, had been deprived of their liberty during the first month of their stay in a "hotspot" facility (a migrant reception, identification and registration centre), but that they had been subjected only to a restriction of movement once the facility had become semi-open and they had been allowed out during the day (§ 86).
- Special police supervision, together with a compulsory residence order and other associated restrictions, are examined under Article 2 of Protocol No. 4, particularly where an applicant is not forced to live within a restricted area, is able to leave home during the day and have a social life, and has never sought permission to travel away from his place of residence (*De Tommaso v. Italy* [GC], 2017, §§ 84-89; *Pagerie v. France*, 2023, §§ 154-158; *Raimondo v. Italy*, 1994, § 39; *Labita v. Italy* [GC], 2000, § 193). As an exception, in *Guzzardi v. Italy*, 1980, the Court held that measures of this nature amounted to a deprivation of liberty. It attached particular significance to the combination of the following factors: the duration of the special supervision (sixteen months), the extremely small size of the area where the applicant had been confined (an unfenced area of 2.5 sq. km on an island, nine-tenths of which was occupied by a prison), the almost permanent supervision to which he had been subjected and the fact that it had been almost completely impossible for him to make social contacts (other than with his near family, fellow "residents" subjected to the same measure and supervisory staff) (§ 95).
- In *Nada v. Switzerland* [GC], 2012, the Court examined the prohibition on travel through Switzerland, imposed on the applicant residing in an Italian enclave in the country, on the basis of legislation implementing UN Security Council Resolutions. As a result, the applicant was unable to leave the enclave and travel to any other part of Italy, the country of which he was a national. For the Court, the restrictions on the applicant's freedom of movement did not amount to a "deprivation of liberty", even though they had been maintained for a considerable length of time (six years) and the territory of the enclave was small (about 1.6 sq. km). In contrast to the case of *Guzzardi v. Italy*, 1980, the applicant had not been prevented from freely living and moving within the enclave and receiving visitors. Nor had he been subjected to any surveillance or obliged to report regularly to the police. Furthermore, he had been allowed to seek exemptions from the entry or transit ban and, in any event, Switzerland had the right, under international law, to prevent the entry of an alien (§§ 228-233). While Article 5 § 1 was inapplicable, the restrictions on the applicant's freedom of movement were found to be in breach of Article 8. No complaint was submitted under Article 2 of Protocol No. 4 (a Protocol not ratified by Switzerland).
- A general nation-wide lockdown imposed by the authorities to tackle the COVID-19 pandemic, including a prohibition on leaving home on pain of a fine, was not deemed to constitute a "deprivation of liberty" in view of the level of intensity of the restrictions on the applicant's freedom of movement (*Terheş v. Romania* (dec.), 2021, §§ 41-45). In particular, the applicant had been free to leave home for various reasons exhaustively set out in the legislation and could go to different places, at whatever time of day the situation required. He did not claim that his circumstances were not covered by any of those reasons and that he had thus been confined indoors for the entire duration of the lockdown (52 days). Moreover, unlike in the case of *Guzzardi v. Italy*, 1980, he had not been subject to individual surveillance and did not claim to have been forced to live in a cramped space, nor had he been deprived of all social contact. Hence the conditions of the lockdown could not be equated with house arrest. Article 5 § 1 was inapplicable. As the applicant had focused

specifically on Article 5 and had not asserted his rights under Article 2 of Protocol No. 4, the Court did not examine the case under the latter provision.

- In *Austin and Others v. the United Kingdom* [GC], 2012, the Court examined the "kettling" or containment of a crowd by a police cordon on public-order grounds. The coercive nature of the containment, its duration (seven hours), and its effect on the applicants, in terms of physical discomfort (no shelter, food, water or toilet facilities) and inability to leave the area, pointed towards a deprivation of liberty. However, in the particular circumstances, the containment had been the least intrusive and most effective means of preventing injury to people and property from violent demonstrators in dangerous and volatile conditions, which had persisted throughout its duration. The police had kept the situation constantly under close review and made frequent attempts at controlled release. Accordingly, on the specific and exceptional facts, the Court was unable to identify a moment when the containment could be considered to have changed from what had been, at most, a restriction on freedom of movement, to a deprivation of liberty. Had it not remained necessary to maintain the cordon in order to prevent serious injury or damage, the "type" of the measure would have been different, and its coercive and restrictive nature might have been sufficient to bring it within Article 5. Article 5 § 1 was inapplicable, and no complaint was submitted under Article 2 of Protocol No. 4 (a Protocol not ratified by the United Kingdom) (§§ 64-68). The Court reached a similar finding in respect of Article 5 § 1 in *Auray and Others v. France*, 2024, §§ 65-74, where it found Article 2 of Protocol No. 4 to be applicable (§ 84).
- In *Vadym Melnyk v. Ukraine*, 2022, the Court examined a situation where an applicant had been blocked in the courtroom for about two hours due to aggressive behaviour by the public which was dissatisfied with the court's decision to release him. In the Court's view, given the relatively short duration of the applicant's retention and to the extent that the police officers present in the courtroom had prevented the applicant from leaving immediately, the particular situation must be seen as a restriction on the applicant's freedom of movement rather than a deprivation of liberty. Article 5 did not apply, and the applicant did not raise a complaint under Article 2 of Protocol No. 4 (§§ 86-89).

c. Freedom to leave any country and lawful detention

67. Inability of a detainee to leave the country where he or she is lawfully detained pending expulsion, with a view to criminal proceedings or in order to serve a prison sentence, in conformity with the requirements of Article 5 § 1 (a), (c) or (f), constitutes a restriction which is justified under paragraph 3 of Article 2 of Protocol No. 4 (*C. v. Germany*, Commission decision, 1985; *X. v. Germany*, Commission decision, 1977; *X. v. Germany*, Commission decision, 1970; *X. v. Germany,* Commission decision, 1970).

68. Similarly, where the execution of a prison sentence is postponed on health grounds, the measures aimed at preventing the convicted person from leaving the country (for example, retention of his passport) do not run counter to Article 2 of Protocol No. 4. In so far as such measures are taken to ensure that the convicted person will serve his sentence once there is no longer an imminent danger to his life, they must be considered as necessary in a democratic society for the prevention of crime (*M. v. Germany*, Commission decision, 1984).

69. Similar considerations apply in the case of a mentally ill person who is lawfully detained in conformity with the requirements of Article 5 § 1 (e). In *Nordblad v. Sweden,* Commission decision, 1993, the applicant's provisional discharge from a psychiatric hospital was revoked on the grounds of her intended trip abroad for an unspecified period of time and without any arrangements for adequate care or supervision in the destination country. The Commission found that her re-internment had been necessary in a democratic society for the purpose of protecting her health and thus had been justified under paragraph 3 of Article 2 of Protocol No. 4.

d. Link with Article 5 § 3

70. Paragraph 3 of Article 2 of Protocol No. 4 must be read in conjunction with the final sentence of paragraph 3 of Article 5, which lays down that "release may be conditioned by guarantees to appear for trial". Where an applicant is released pending trial and restrictions are imposed on his or her freedom of movement as part of the bail conditions, such restrictions can be seen as "guarantees to appear for trial" and thus are covered under paragraph 3 of Article 2 of Protocol No. 4 (*Schmid v. Austria*, Commission decision, 1985).

2. Article 8

71. There is a close link between Article 2 of Protocol No. 4 and Article 8 (*İletmiş v. Turkey*, 2005, § 50; *Paşaoğlu v. Turkey*, 2008, § 42; *Sissanis v. Romania*, 2007, § 70; see also Case-Law Guide on Article 8). This link is reflected in the following aspects:

a. Freedom of movement and respect for home, private and family life

72. While freedom of movement is guaranteed as such under Article 2 of Protocol No. 4, the Court considered it also as an aspect of an applicant's right to respect for his or her private life guaranteed by Article 8 (*İletmiş v. Turkey*, 2005, § 47). In this connection, the fact that the respondent State has not ratified Protocol No. 4 was deemed irrelevant (*İletmiş v. Turkey*, 2005, § 50; *Parmak and Bakır v. Turkey*, 2019, § 84; see also *Nada v. Switzerland* [GC], 2012).

73. Freedom of movement, particularly across borders, is considered essential to the full development of a person's private life within the meaning of Article 8 § 1, especially when the person has family, professional and economic ties in several countries (*İletmiş v. Turkey*, 2005, § 50; *Paşaoğlu v. Turkey*, 2008, § 47; *Parmak and Bakır v. Turkey*, 2019, § 84).

74. Thus, a travel ban preventing a person from returning to his country of residence for a prolonged period of time without sufficient justification was found to amount to a disproportionate interference with the person's right to respect for his private and/or family life, in breach of Article 8 (*İletmiş v. Turkey*, 2005, § 50; *Paşaoğlu v. Turkey*, 2008, § 43; *Parmak and Bakır v. Turkey*, 2019, §§ 93-94; *Kotiy v. Ukraine*, 2015, § 75). Similarly, a long-lasting transit ban imposed by Switzerland on an Italian national, who resided in an Italian enclave within the Swiss territory, was found to have infringed his right to respect for his private and family life under Article 8: unable to leave the enclave, not even in order to reach any other part of Italy, he had had difficulties in maintaining contact with friends and family and in receiving appropriate medical care (*Nada v. Switzerland* [GC], 2012, § 198).

75. While restrictions on, and extensive police monitoring of, movements between a territorial entity not recognised by the international community and a government-controlled area fall foul of Article 2 of Protocol No. 4 (*Denizci and Others v. Cyprus*, 2001, §§ 403-406), such measures can also infringe an applicant's rights to respect for his or her home and private and family life under Article 8 (*Cyprus v. Turkey* [GC], 2001, §§ 294-296).

76. Likewise, the inability of internally displaced persons to return to their homes was found to have infringed Article 8 (*Cyprus v. Turkey* [GC], 2001, § 175; *Doğan and Others v. Turkey*, 2004, § 160; *Chiragov and Others v. Armenia* [GC], §§ 206-208) and Article 2 of Protocol No. 4 (*Georgia v. Russia (II)* [GC], 2021, § 299).

77. Restrictions on minors' travel abroad can also raise issues under both Article 8 and Article 2 of Protocol No. 4 (*Penchevi v. Bulgaria*, 2015; *Diamante and Pelliccioni v. San Marino*, 2011).

78. In some cases, complaints relating to interferences with freedom of movement are submitted with reference to both Article 8 and Article 2 of Protocol No. 4. Where the Court examines the case under Article 8, it may find it unnecessary to consider it also under Article 2 of Protocol No. 4 (*Kotiy v. Ukraine*, 2015, § 79; *Penchevi v. Bulgaria*, 2015, § 77). Likewise, where the Court decides to examine

the case under Article 2 of Protocol No. 4, it may find no need to consider the same facts separately under Article 8 (*Pfeifer v. Bulgaria*, 2011, § 62; *Prescher v. Bulgaria*, 2011, § 56; *A.E.* v. *Poland*, 2009, § 54; *Olivieira v. the Netherlands*, 2002, § 69; *Landvreugd v. the Netherlands*, 2002, § 78; *Stamose v. Bulgaria,* 2012, § 43).

79. In *Riener v. Bulgaria,* 2006, the relevant complaint, in so far as it concerned the period pre-dating the entry into force of Protocol No. 4 in respect of Bulgaria, was examined by the Commission under Article 8; as regards the period thereafter, the Court considered it under Article 2 of Protocol No. 4, finding that no separate examination was warranted under Article 8 (*Riener v. Bulgaria,* 2006, §§ 25 and 134).

80. When assessing the compatibility of travel bans and other similar measures with Article 2 of Protocol No. 4, the Court may take into account their impact on the applicant's private and/or family life (*Riener v. Bulgaria,* 2006, § 126; *Pfeifer v. Bulgaria*, 2011, § 56; *Prescher v. Bulgaria*, 2011, § 50; *Miażdżyk v. Poland,* 2012, § 39; *Landvreugd v. the Netherlands*, 2002, § 72).

b. Freedom of movement and data protection

81. The Court has examined complaints about collection and/or storage of data relating to, or having an impact on, the applicants' movements under Article 8, including in relation to:

- tracking of movements through GPS surveillance for the purposes of criminal investigation (*Uzun v. Germany,* 2010; *Ben Faiza v. France*, 2018);
- an inability to access or secure rectification of personal data in the Schengen database, which formed the basis for the denial of entry to all countries that applied the Schengen Agreement (*Dalea v. France* (dec.), 2010);
- an obligation to provide fingerprints when applying for a passport and the subsequent storage of the fingerprints on a microchip in the passport (*Willems v. the Netherlands* (dec.), 2021, §§ 23 and 38);
- collection and storage, in the "surveillance database", of information about the applicant's movements, by train or air, on account of his human rights activities, which enabled his immediate arrest upon arrival to the city where an opposition rally was planned (*Shimovolos v. Russia,* 2011) (see Case-Law Guide on Data Protection).

c. Freedom to choose one's residence and the right to respect for one's "home"

82. There is an apparent interplay between the freedom to choose one's residence under Article 2 of Protocol No. 4 and the right to respect for one's "home" and one's "private life" under Article 8.

83. However, Article 8 cannot be construed as conferring a right to live in a particular location (see *Ward v. the United Kingdom* (dec.), 2004, and *Codona v. United Kingdom* (dec.), 2006). In contrast, freedom to choose one's residence is at the heart of paragraph 1 of Article 2 of Protocol No. 4, which provision would be voided of all significance if it did not in principle require Contracting States to accommodate individual preferences in the matter (*Garib v. the Netherlands* [GC], 2017, §§ 140-141).

84. For these reasons, it is not possible to apply the same test under paragraph 4 of Article 2 of Protocol No. 4 as under paragraph 2 of Article 8, the interrelation between the two provisions notwithstanding (*Garib v. the Netherlands* [GC], 2017, § 141).

85. At the same time, where relevant, the Court can draw inspiration from its case-law principles developed under Article 8. For example, in *Garib v. the Netherlands* [GC], 2017, the Court took, *mutatis mutandis*, a similar view of the "general interest" in relation to the freedom to choose one's residence, for purposes of Article 2 § 4 of Protocol No. 4, as it had done in relation to environmental protection under Article 8 (*Garib v. the Netherlands* [GC], 2017, § 161).

d. Assessment of compliance under Article 2 of Protocol No. 4 and Article 8 § 2

86. Paragraph 3 of Article 2 of Protocol No. 4 is closely aligned with paragraph 2 of Article 8 (*A.-M.V. v. Finland*, 2017, § 94).

87. Indeed, in some cases, the Court has applied the reasoning or principles developed in its case-law under Article 8 to a complaint under Article 2 of Protocol No. 4, for instance, when assessing:

- whether the procedure for applying a travel ban provided adequate and sufficient safeguards against abuse (*Sissanis v. Romania*, 2007, § 70);
- the fairness of the decision-making process leading to the refusal to allow a mentally disabled adult to move to a remote and isolated place in order to live with his former foster parents (*A.-M.V. v. Finland*, 2017, § 94);
- the quality of the decision-making process leading to the transfer of villagers belonging to an ethnic minority to another municipality due to the expansion of a coal mine, and the accompanying measures (*Noack and Others v. Germany* (dec.), 2000).

3. Articles 9, 10 and 11

88. In some instances, restrictions on freedom of movement may result in an interference with, or a violation of, the applicants' rights to freedom of religion, freedom of expression or freedom of peaceful assembly respectively under Articles 9, 10 and 11 of the Convention (see Case-Law Guide on Article 9; Case-Law Guide on Article 10; Case-Law Guide on Article 11).

89. For example, restrictions on movements between a territorial entity not recognised by the international community and the government-controlled area prevented the Greek Cypriots of Orthodox faith enclaved in the "Turkish Republic of Northern Cyprus" from leaving their villages to attend religious ceremonies in places of worship elsewhere or to visit a monastery and thus amounted to a breach of their rights under Article 9 (*Cyprus v. Turkey* [GC], 2001, §§ 243-246).

90. In *Piermont v. France*, 1995, expulsion coupled with a re-entry ban, imposed on a member of the European Parliament shortly after her public speech in French Polynesia and immediately followed by an exclusion order served on her in New Caledonia, led the Court to a finding of a breach of Article 10 with regard to both measures. However, there had been no violation of Article 2 of Protocol No. 4, since, as a result of those measures, the applicant had no longer been "lawfully within the territory" either of French Polynesia, or of New Caledonia.

91. In *Women On Waves and Others v. Portugal*, 2009, the Court found a violation of Article 10 on account of the authorities' refusal to allow into territorial waters a civilian ship, which the applicant associations had intended to use for staging meetings and activities and transmitting information in their campaign for the decriminalisation of abortion. The Court decided that their complaint under Article 2 of Protocol No. 4 did not warrant a separate examination.

92. In *Van den Dungen v. the Netherlands*, Commission decision, 1995, an anti-abortionist, who had distributed leaflets to visitors and staff of an abortion clinic, was prohibited from going within 250m of the clinic for a period of six months. The Commission declared the application inadmissible, finding that the measure had been justified both under paragraph 2 of Article 10 and paragraph 3 of Article 2 of Protocol No. 4.

93. In *Bigliazzi and Others v. Italy* (dec.), 2008, the applicants complained about their inability to have access to, and to hold demonstrations in, the "red zone" in the city centre of Genoa, where a G8 summit had been held in 2001 and which had been surrounded by a barricade and declared off-limits for non-residents. They also complained about similar, but milder restrictions in the yellow buffer zone around the red one. The Court found that the impugned measures, subject to judicial review and lasting five days only, had been justified, both under Article 11 and Article 2 of Protocol No. 4, in the

face of a terrorist threat and a risk of violent outbursts. The application was rejected as manifestly ill-founded.

94. In *Djavit An v. Turkey*, 2003, the Court found a violation of Article 11 on account of the lack of a legal basis for refusals by the authorities of the "Turkish Republic of Northern Cyprus" to allow a Turkish Cypriot living there to cross the "green line" into southern Cyprus in order to engage in peaceful assembly with Greek Cypriots.

95. While restrictions on freedom of movement can, as shown above, interfere with the right to peaceful assembly under Article 11, the exercise of the latter right can impinge on freedom of movement. Prior notification of an assembly serves, *inter alia*, the aim of reconciling both rights. In order to balance various conflicting interests, the institution of preliminary administrative procedures appears to be common practice in member States when a public demonstration is to be organised (*Éva Molnár v. Hungary*, 2008, § 37; *Berladir and Others v. Russia*, 2012, § 42).

4. Article 1 of Protocol No. 1

96. Restrictions on freedom of movement can entail denial of access to property and thus result in a breach of Article 1 of Protocol No. 1 (*Loizidou v. Turkey* (merits), 1996, § 64; see also Case-Law Guide on Article 1 of Protocol No. 1).

97. Internally displaced persons are particularly concerned by this situation, which can be caused by the acts of a territorial entity not recognised by the international community (*Cyprus v. Turkey* [GC], 2001, § 189; *Chiragov and Others v. Armenia* [GC], § 201) or the State security forces (*Doğan and Others v. Turkey*, 2004, §§ 153-156).

98. Restrictions on the rights guaranteed by Article 2 of Protocol No. 4, notably on the freedom to choose one's residence, can be closely linked to the welfare and economic policies of Contracting States. When assessing their justification, the Court may draw upon the principles found in its case-law under Article 1 of Protocol No. 1 (*Garib v. the Netherlands* [GC], 2017, §§ 139 and 147).

III. Restrictions on the rights guaranteed by Article 2 of Protocol No. 4

99. The question whether there has been an interference – or, in terms of paragraphs 3 and 4 of Article 2 of Protocol No. 4, whether a restriction has been placed on the exercise of the rights guaranteed therein – is closely linked to the question of the scope of the right in issue and thus the applicability of this provision.

100. The Court examines the question of the applicability of Article 2 of Protocol No. 4, even where the parties did not dispute it (*Pagerie v. France*, 2023, § 151).

101. When examining this issue, the Court bears in mind that the Convention is intended to guarantee rights which are practical and effective, not theoretical and illusory (*L.B. v. Lithuania*, 2022, § 59).

102. When faced with a series of repetitive, identical measures, the Court will examine them as a whole, giving consideration to their combined effects (*Pagerie v. France*, 2023, § 153).

103. An obligation to seek permission each time one intends to leave a particular place or country does not correspond to the sense of the concept of "freedom of movement" (*Ivanov v. Ukraine*, 2006, § 85; *Diamante and Pelliccioni v. San Marino*, 2011, § 211).

104. The fact that such a permission was granted or that an applicant was not sanctioned for unauthorised leave is not relevant for the purposes of determining whether such a requirement

amounted to an interference with the applicant's freedom of movement (*Ivanov v. Ukraine*, 2006, § 85).

A. Freedom of movement

1. Forms of interference

105. The following situations have been considered to amount to a form of interference with the right to freedom of movement:

- a requirement not to leave one's place of residence or another specified area/municipality without permission. This requirement can be imposed:
  - as part of the bail conditions or as a separate measure in the context of criminal proceedings (*Fedorov and Fedorova v. Russia*, 2005, § 35; *Antonenkov and Others v. Ukraine*, 2005, § 52; *Nagy v. Hungary* (dec.), 2004; *Ivanov v. Ukraine*, 2006, § 85; *Komarova v. Russia*, 2006, § 55; *Hajibeyli v. Azerbaijan*, 2008, § 58; *Rosengren v. Romania*, 2008, § 32; *Nikiforenko v. Ukraine*, 2010, § 55; *Pokhalchuk v. Ukraine*, 2010, § 94; *Doroshenko v. Ukraine*, 2011, § 52; *Manannikov v. Russia*, 2018, § 60);
  - during bankruptcy proceedings (*Luordo v. Italy*, 2003, § 92; *Goffi v. Italy*, 2005, § 20; *Bassani v. Italy*, 2003, § 24; *Gasser v. Italy*, 2006, §§ 30-31; *Di Carlo et Bonaffini v. Italy* (dec.), 2006; *Bova v. Italy* (dec.), 2004; *Shaw v. Italy*, 2009, § 16; *Bottaro v. Italy*, 2003, § 54; *Campagnano v. Italy,* 2006, § 38);
  - in the context of a compulsory military service (*Golub v. the Republic of Moldova and Russia* [Committee], 2021, §§ 54 and 58);
  - as a compulsory residence order in the context of:
    - criminal prevention measures (*De Tommaso v. Italy* [GC], 2017, §§ 84-89; *Pagerie v. France*, 2023, § 154; *Fanouni v. France,* 2023, § 54 ; *Raimondo v. Italy*, 1994, § 39; *Labita v. Italy* [GC], 2000, §§ 63 and 193; *Vito Sante Santoro v. Italy,* 2004, § 37; *Marturana v. Italy*, 2008, § 190; *Villa v. Italy*, 2010, §§ 43-44; *S.M. v. Italy* (dec.), 2013, §§ 22-23; *Ciancimino v. Italy*, Commission decision, 1991; *Guzzardi v. Italy*, Commission decision, 1977);
    - extradition (*Cipriani v. Italy* (dec.), 2010);
    - expulsion (*M.S. v. Belgium*, 2012, §§ 49 et 193; *M v. France*, Commission decision, 1984; *Kenane v. France*, Commission decision, 1992; *Kalibi v. France*, Commission decision, 1984);
- a prohibition on leaving home at night except in case of necessity (*De Tommaso v. Italy* [GC], 2017, §§ 86-88; *Pagerie v. France*, 2023, § 154; *Fanouni v. France,* 2023, § 54; *Timofeyev and Postupkin v. Russia*, 2021, § 125; *Villa v. Italy*, 2010, §§ 43-44; *Vito Sante Santoro v. Italy,* 2004, § 37; *Labita v. Italy* [GC], 2000, §§ 63 and 193; *Raimondo v. Italy*, 1994, §§ 13 and 39; *S.M. v. Italy* (dec.), 2013, §§ 22-23; *Ciancimino v. Italy*, Commission decision, 1991);
- a prohibition on migrants leaving a "hotspot" facility at night (*J.R. and Others v. Greece*, 2018, § 86);
- an obligation to report regularly to the court (*Schmid v. Austria,* Commission decision, 1985) or the police (*De Tommaso v. Italy* [GC], 2017, §§ 17, 84 and 89; *Pagerie v. France*, 2023, § 154; *Fanouni v. France,* 2023, § 54; *Timofeyev and Postupkin v. Russia*, 2021, § 125; *S.M. v. Italy* (dec.), 2013, §§ 22-23; *M.S. v. Belgium*, 2012, §§ 49 et 193; *Villa v. Italy*, 2010, §§ 43-44; *Cipriani v. Italy* (dec.), 2010; *Vito Sante Santoro v. Italy,* 2004, § 37; *Raimondo v. Italy*, 1994, §§ 13 and 39; *Labita v. Italy* [GC], 2000, §§ 63 and 193; *Poninski v. Poland* (dec.), 2000; *Ciancimino v. Italy*, Commission decision, 1991);

- special police supervision, including the above measures and other associated restrictions (not leaving home without informing a supervising authority, not going to bars, nightclubs, amusement arcades or brothels or attending public meetings, not associating with individuals who have a criminal record and who are subject to preventive measures) (*De Tommaso v. Italy* [GC], 2017, §§ 84-89; *Raimondo v. Italy*, 1994, § 39; *Labita v. Italy* [GC], 2000, §§ 63 and 193; *Vito Sante Santoro v. Italy*, 2004, § 37; *Villa v. Italy*, 2010, §§ 43-44; *S.M. v. Italy* (dec.), 2013, §§ 22-23; *Ciancimino v. Italy*, Commission decision, 1991);
- a prohibition on leaving home from 7 p.m. until 7 a.m. during week-days and the whole day during week-ends, coupled with permission to attend one's work place during week-days (*Trijonis v. Lithuania* (dec.), 2005; see also *Dedu v. Romania* (dec.), 2024, §§ 77-81);
- a home-curfew for sixteen days requiring the applicants to stay within their local municipalities, not to leave their homes between 8 p.m. and 6 a.m. and to report three times a day to a police station (*Domenjoud v. France*, 2024, § 72);
- a general lockdown in order to tackle the COVID-19 pandemic, including a prohibition on leaving home on pain of a fine, except in an exhaustive number of circumstances and on production of a document attesting to valid reasons for doing so (*Terheş v. Romania* (dec.), 2021, § 45);
- a requirement to report any change of place of residence (*Schmid v. Austria*, Commission decision, 1985) or to have it registered by the police within a specific time-limit, on pain of a fine (*Bolat v. Russia*, 2006, § 66; *Corley and Others v. Russia*, 2021, § 72; *Ananiyevy v. Russia* [Committee], 2021; *Timofeyev and Postupkin v. Russia*, 2021, § 125);
- a fine imposed on a foreigner for having stayed overnight outside his registered place of residence (*Bolat v. Russia*, 2006, § 66);
- a prohibition on approaching a specified place (for example, a centre for asylum seekers (*M.S. v. Belgium*, 2012, §§ 49 et 193); a building site (*Cokarić and Others v. Croatia* (dec.), 2006); or an abortion clinic (*Van den Dungen v. the Netherlands*, Commission decision, 1995);
- a barring and protection order issued in the context of domestic violence, prohibiting a perpetrator from returning to the family home and the surrounding areas for a specified period (*Kurt v. Austria* [GC], 2021, §§ 14, 25 and 183);
- an inability to enter a specified area of a city, or a prohibition thereof (*Bigliazzi and Others v. Italy* (dec.), 2008; *Olivieira v. the Netherlands*, 2002, §§ 10 and 39; *Landvreugd v. the Netherlands*, 2002, §§ 10 and 46);
- "kettling" or containment of a crowd by a police cordon on public-order grounds (*Auray and Others v. France*, 2024, § 84);
- the applicant's retention, upon release, in the courtroom on safety grounds, due to the aggressive behaviour of the public (*Vadym Melnyk v. Ukraine*, 2022, § 87);
- extensive police monitoring of movements between a territorial entity not recognised by the international community and a government-controlled area and within the latter, coupled with the requirement to report to the police before each intended border crossing (*Denizci and Others v. Cyprus*, 2001, §§ 403-406);
- the inability of internally displaced persons to return to their homes situated on the territory of an entity not recognised by the international community (*Georgia v. Russia (II)* [GC], 2021, §§ 292-301);
- restrictions on freedom of movement resulting from the purported "annexation" of territory from one State to another and the ensuing *de facto* transformation (by the respondent State) of the administrative border line into a State border (complaint regarding the alleged existence of an administrative practice declared admissible: *Ukraine v. Russia (*re *Crimea)* (dec.) [GC], 2020, §§ 500-503);

- restrictions on freedom of movement between a territorial entity not recognised by the international community and a government-controlled area stemming from "borderisation" process (complaint regarding the alleged existence of an administrative practice declared admissible: *Georgia v. Russia (IV)* (dec.), 2023);
- alleged abduction and forcible transfer from a territorial entity not recognised by the international community to the State which exercises effective control over that entity (complaint regarding the alleged existence of an administrative practice declared admissible: *Ukraine and the Netherlands v. Russia* (dec.) [GC], 2022, §§ 895-898);
- police refusal to let the applicant cross the administrative border between two regions (*Timishev v. Russia*, 2005, § 44; *Gartukayev v. Russia*, 2005, § 21);
- a transit ban, under legislation implementing UN Security Council Resolutions, imposed on a resident of an enclaved area by the State surrounding it; and the resulting inability to travel within the country of which the applicant was a national (*Nada v. Switzerland* [GC], 2012, §§ 198 and 226-228);
- an obligation to provide fingerprints when applying for a passport and the subsequent storage of the fingerprints on a microchip in the passport (*Willems v. the Netherlands* (dec.), 2021, §§ 23 and 38).

2. Measures not amounting to an interference

106. The following measures were found either to fall outside the scope of freedom of movement, or not to amount to an interference with this right:

- a requirement for elite athletes in a "target group" to notify to the authorities a daily one-hour slot during which they would be available at a specified location of their choosing for the purposes of unannounced testing. While this requirement meant that they were obliged to remain in a specific place for one hour each day and thus precluded discreet comings and goings, this was considered more a matter of interference with privacy than a surveillance measure. In particular, the measure in question could not be equated with electronic tagging ordered by way of adjustment of a sentence or in conjunction with a compulsory residence order. Article 2 of Protocol No. 4 therefore did not apply (*National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, 2018, §§ 199-200);
- a requirement to fasten a seatbelt while driving a motor car (*Viel v. France* (dec.), 1999);
- the cancellation of a driving licence; Article 2 of Protocol No. 4 does not extend to personal choices as to the use of particular means of transport (*Maszni v. Romania* (dec.), 2004);
- an obligation to carry an identity card and show it to the police whenever requested, under penalty of a fine, or an identity check as such (*Reyntjens v. Belgium*, Commission decision, 1992; *Basu v. Germany*, 2022, §§ 43-44);
- the seizure of an identity card not resulting in an impediment to free movement (*Bețleagă v. the Republic of Moldova and Russia*, 2019, § 64-65);
- a long-term failure to issue a foreign national with a residence permit, not affecting his freedom of movement in any concrete terms (*Aristimuño Mendizabal v. France* (dec.), 2005);
- a summons to appear before the prosecuting authorities (*Kuzmin v. Russia* (dec.), 2002, § 12);
- the possibility of being stopped and subjected to a preventive search by the police in city-centre areas designated as a security risk owing to the prevalence of violent crime there; feeling inhibited by fear of being forced to undergo a search upon entering the area is insufficient to qualify the measure as a restriction on freedom of movement (*Colon v. the Netherlands* (dec.), 2012, §§ 97-100);
- exposure to passive smoking in public and private places (*Botti v. Italy* (dec.), 2004);

- security checks to which passengers are subject in airports prior to departure (*Phull v. France* (dec.), 2005).

B. Freedom to choose one's residence

1. Questions of scope

107. Freedom to choose one's residence in principle requires Contracting States to accommodate individual preferences in the matter (*Garib v. the Netherlands* [GC], 2017, § 141).

108. At the same time, an unspecified personal preference for which no justification is offered cannot override public decision-making, in effect depriving the authorities of the possibility to weigh up the competing interests against each other and reducing the State's margin of appreciation to nought (*Garib v. the Netherlands* [GC], 2017, § 166).

109. Furthermore, Article 2 of Protocol No. 4 cannot be interpreted as obliging the State to provide financial support for an individual to purchase housing of his or her choosing (*Kutsenko v. Russia*, 2006, § 62) or to return the property that was confiscated from the applicant's late relatives by the former communist regime (*Todirică and Others v. Romania* (dec.), 2011, §§ 38-40).

110. Article 2 of Protocol No. 4 does not guarantee a right to a specific place of residence without a title to reside on such a specific place (*Van de Vin and Others v. the Netherlands*, Commission decision, 1992).

111. Nor can this provision be interpreted as awarding an alien the right to reside or continue residing in a country of which he or she is not a citizen. It does not concern the conditions under which a person has the right to remain in a country (*Ben Salah* v. *Italy*, 2009, § 53; *Makuc and Others v. Slovenia* (dec.), 2007, § 210; *Omwenyeke v. Germany* (dec.), 2007; *Szyszkowski v. San Marino* (dec.), 2003; *Dremlyuga v. Latvia* (dec.), 2003).

112. Article 2 of Protocol No. 4 does not confer on an alien "lawfully within the territory of a State" the right to remain permanently within the territory of that State (Explanatory Report to Protocol No. 4*,* § 8). Nor does this provision guarantee a right not to be expelled from the territory of a State (*Polley v. Belgium*, Commission decision, 1991).

113. Article 2 of Protocol No. 4 is not applicable to temporary relocation measures taken in the aftermath of a natural disaster and it does not encompass an obligation on States to make areas prone to natural risks more secure for their inhabitants (*Zilli and Bonardo v. Italy* (dec.), 2004).

2. Forms of interference

114. The following measures were found, or assumed, to amount to a restriction on, or to raise an issue with, the exercise of the freedom to choose one's residence:

- a requirement to report any change of place of residence (*Schmid v. Austria,* Commission decision, 1985) or to have it registered by the police within a specific time-limit, on pain of a fine (*Bolat v. Russia*, 2006, § 66; *Corley and Others v. Russia*, 2021, § 72; *Ananiyevy v. Russia* [Committee], 2021; *Timofeyev and Postupkin v. Russia*, 2021, § 125);
- a compulsory residence order, that is, an order requiring residence in a specific area or municipality (notably, different from one's place of residence) and not to leave it without permission (as a measure of criminal prevention: *Ciancimino v. Italy*, Commission decision, 1991; *Guzzardi v. Italy*, Commission decision, 1977);
- a ban on residence in specific areas (*Ciancimino v. Italy*, Commission decision, 1991);

- a denial of permission to settle in certain (city) areas for failure to meet statutory requirements concerning length of residence and type of income (*Garib v. the Netherlands* [GC], 2017, §§ 12 and 105);
- a prohibition on changing address (for instance, in the context of pending criminal proceedings: *Nagy v. Hungary* (dec.), 2004);
- the rejection of an application for permanent residence in a closed town with nuclear facilities (*Karpacheva and Karpachev v. Russia*, 2011, § 25);
- the refusal to allow a mentally disabled adult to move to a remote and isolated place in order to live with his former foster parents (*A.-M.V. v. Finland*, 2017, § 94);
- the transfer of villagers belonging to an ethnic minority to another municipality due to the expansion of a coal mine (*Noack and Others v. Germany* (dec.), 2000);
- the refusal to certify the applicant's residence at the chosen address, exposing her to administrative penalties and fines (*Tatishvili v. Russia*, 2007, § 46; *Sarmina and Sarmin v. Russia* (dec.), 2005);
- a residence ban against a foreign spouse of the applicant (*Schober v. Austria* (dec.), 1999);
- a court order, in accordance with the Hague Convention on the Civil Aspects of International Child Abduction, to return a child, resulting in the child and the abducting parent having to relocate abroad (*Lipkowsky and Mc Cormack v. Germany* (dec.), 2011);
- a ban on the exercise of a commercial activity, imposed as a result of criminal conviction and preventing the applicant from assisting her husband in this activity or even residing with him (*X. v. Belgium*, Commission decision, 1980);
- the decision by a State church to transfer a priest to another parish situated more than 100 kilometres from his home (*Ahtinen v. Finland* (dec.), 2005);
- a prohibition on a landowner to reside permanently in his house located in an area which is destined for holiday use only (*Valkeajärvi v. Finland* (dec.), 2015, § 34);
- an owner's prolonged inability to recover possession of her flat, which was confiscated during the communist regime as a sanction for her emigration, leased to tenants by the State and returned to her by a court decision after the change of regime (complaint declared admissible: *Gafencu v. Romania*, Commission decision, 1997);
- a prohibition on mobile home dwellers to live outside an officially recognised mobile home centre (*Van de Vin and Others v. the Netherlands*, Commission decision, 1992).

3. Measures not amounting to an interference

115. In the following situations, the Convention organs did not establish any restriction on, or an issue with, the exercise of the freedom to choose one's residence:

- the relocation of inhabitants of State-owned goldmining settlements in the Extreme North, following the decision to close them due to economic unsustainability and to provide replacement housing and subsidies to residents (*Chernykh v. Russia* (dec.), 2007);
- an applicant's relocation to a replacement flat, granted by the municipal authorities following the decision to demolish her dwelling within the framework of a city-wide programme for reconstruction of Soviet-era dilapidated housing: while the replacement flat was situated in another district of the same city, the applicant was not prevented from renting or purchasing a flat in her old neighbourhood or elsewhere *(Natalya Gerasimova v. Russia* (dec.), 2004);
- the dismissal of a request by a Chernobyl victim, who was entitled under domestic law to free housing from the State, to be provided with such housing specifically in Moscow: the

impugned decision did not prevent the applicant from moving to Moscow and renting or purchasing a flat there (*Nagovitsyn v. Russia*, 2008, § 60);

- a complaint about an insufficient award of damages for construction defects against a private company, allegedly preventing the applicant from purchasing other housing (*Kutsenko v. Russia*, 2006, §§ 61-62);
- an evacuation order requiring the applicants to temporarily leave their house, which was situated near an area struck by a landslide, and to move into an apartment provided by the municipal authorities; and the authorities' alleged failure to take the necessary measures against the risk of landslides and to make the area more secure (*Zilli and Bonardo v. Italy* (dec.), 2004);
- the denial of a permit to live in, and subsequent eviction from, a mobile home for failure to meet statutory eligibility requirements; the impugned decision did not restrict the applicant in his freedom to buy or rent a house in a place of his choosing (*Beckers v. the Netherlands*, Commission decision, 1991);
- the requirement on mobile home dwellers, following the closure of a regional mobile home centre, to move their mobile homes to the new locations, that were allotted to them in the same or the neighbouring municipality, with the possibility offered to indicate their wishes in that respect (*Van de Vin and Others v. the Netherlands*, Commission decision, 1992);
- the tax authorities' refusal to consider the applicant, who often changed his *de facto* place of residence for professional reasons, resident in the municipality where he owned a property (*S. v. Sweden,* Commission decision, 1988).

C. Freedom to leave any country

1. Questions of scope

116. Article 2 of Protocol No. 4, and in particular paragraph 2 granting the right to leave any country including one's own, does not preclude the exercise thereof from being conditional upon compliance with formal requirements such as obtaining a valid travel document (a passport) and/or a visa (*S.E. v. Serbia*, 2023, § 47; *Ioviță v. Romania* (dec.), 2017, § 74; *Mogoş and Others v. Romania* (dec.), 2004), or parental consent/court judgment authorising a minor's travel (*Lolova and Popova v. Bulgaria* (dec.), 2015, § 47; *Șandru v. Romania* (dec.), 2014, § 23).

117. The possibility to comply with any such requirements should be accessible in practice to the applicants (*L.B. v. Lithuania*, 2022, § 95-96), which implies corresponding obligations incumbent on State authorities (*S.E. v. Serbia*, 2023, §§ 80 and 84).

118. Article 2 of Protocol No. 4 does not imply an unlimited right to travel to any other country of the person's choice. It guarantees the right to leave any country only for any such country of the person's choice to which he or she may be admitted (*Shioshvili and Others v. Russia,* 2016, § 58; *Baumann v. France*, 2001, § 61; *Gochev v. Bulgaria,* 2009, § 44).

119. While Article 2 of Protocol No. 4 does not directly address restrictions on access to parts of other States (for example, conflict zones), the Court proceeded on the assumption that such a restriction fell within the scope of this provision (*Mørck Jensen v. Denmark*, 2022, §§ 61-62).

120. This provision does not confer a right to obtain a visa allowing a person to enter and to stay in a given State, with the consequence that one cannot rely on this provision to challenge the refusal of domestic authorities to grant a visa (*Consorts Demir v. France*, 2006, § 23).

121. More generally, there is no right guaranteed by the Convention or its Protocols of an alien to enter, reside or remain in a particular country as such (*Makuc and Others v. Slovenia* (dec.), 2007, § 210; *Yildirim v. Romania* (dec.), 2007).

122. Article 2 of Protocol No. 4 cannot be considered to impose on Contracting States a general obligation to issue aliens residing on their territory with any particular document permitting them to travel abroad. However, the Court may find this provision applicable where, in view of an alien's particular individual circumstances, his right to leave any country would not be practical and effective as a result of the refusal by his host country to issue him with a travel document (*S.E. v. Serbia*, 2023, §§ 47 and 75; *L.B. v. Lithuania*, 2022, § 59).

123. This would be the case, for example, where an alien is unable to obtain such a document from his country of origin, having fled from it with the intention of seeking asylum and is fearful of approaching its authorities. In this connection, the Court will have regard to whether the domestic law of the host country entitles lawfully resident foreign nationals to obtain an alien's passport (*L.B. v. Lithuania*, 2022, §§ 59-61, 90 and 93-94). Where a refugee is entitled by the domestic law of his/her host country to obtain a travel document, the authorities' inactivity will amount to an interference with his/her right to leave any country; indeed, the respondent State cannot bypass its obligations by requiring refugees to seek such a document from their country of origin, which they have fled fearing persecution, or to apply for the nationality of the host country (*S.E. v. Serbia*, 2023, §§ 79-81).

124. Measures aimed at preventing illegal immigration are outside the scope of Article 2 of Protocol No. 4. In *Xhavara and Others v. Italy and Albania* (dec.), 2001, the Court dealt with a naval blockade set up jointly by the Italian and Albanian authorities, with the Italian navy authorised to board and search Albanian boats. In so far as the impugned measures had been taken to prevent the applicants from entering Italy illegally, rather than leaving Albania, Article 2 of Protocol No. 4 was found to be inapplicable.

125. Article 2 of Protocol No. 4 cannot be invoked in connection with the inability to enter a State of which one is a national (*Victor-Emmanuel De Savoie v. Italy* (dec), 2001). Such issues are governed by Article 3 of Protocol No. 4 (see Case-Law Guide on Article 3 of Protocol No. 4).

126. The right to leave any country does not include the right to remove one's property thereout without restriction (*S. v. Sweden,* Commission decision, 1985).

2. Forms of interference

127. Both intentional or unintentional actions or omissions of a public authority may fall within the scope of Article 2 of Protocol No. 4 as long as they have the effect of excluding an applicant from the exercise of the right to leave any country (*S.E. v. Serbia*, 2023, §§ 48 and 75).

128. An interference with the right to leave any country takes place where an applicant is prevented from travelling to *any* country of his or her choice to which he or she may be admitted (*Baumann v. France*, 2001, § 61; *Khlyustov v. Russia,* 2013, § 64; *De Tommaso v. Italy* [GC], 2017, § 104; *Mursaliyev and Others v. Azerbaijan*, 2018, § 29; *L.B. v. Lithuania*, 2022, § 79; and *S.E. v. Serbia*, 2023, § 74).

129. Therefore, where an applicant retains the possibility only to cross the border with neighbouring States or to travel to countries belonging to a specific region, this is considered to amount to a restriction with his or her right to leave any country, including his own (*Soltysyak v. Russia,* 2011, § 37; *L.B. v. Lithuania*, 2022, § 81; *Cimpaka Kapeta v. Belgium*, 2025, § 63; *Peltonen v. Finland,* Commission decision, 1995; *K.S. v. Finland*, Commission decision, 1995).

130. The most common form of restriction is the prohibition on leaving one's own or another specific country.

131. Travel bans have been implemented through, or accompanied by, the following measures:

- An applicant's inclusion in a specific database (*Khlyustov v. Russia,* 2013);
- Measures, by means of which an individual is dispossessed, or denied the use, of an identity document such as a passport, including:

- the entry of a specific mark in a passport (*Sissanis v. Romania*, 2007);
- the refusal to issue or renew an identity document (*Peltonen v. Finland,* Commission decision, 1995; *K.S. v. Finland*, Commission decision, 1995; *Marangos v. Cyprus*, No. 31106/96, Commission decision, 20 May 1997; *Bartik v. Russia*, 2006; *Soltysyak v. Russia,* 2011; *Berkovich and Others v. Russia*, 2018; *Milen Kostov v. Bulgaria*, 2013; *Vlasov and Benyash v. Russia*, 2016; *Ignatov v. Bulgaria*, 2009; *Kerimli v. Azerbaijan*, 2015; *Torresi v. Italy* (dec.), 2019; *Rotaru v. the Republic of Moldova*, 2020;
- the invalidation, withdrawal or seizure of an identity document (*Stamose v. Bulgaria,* 2012; *Bevc v. Croatia* (dec.), 2020; *Folnegović v. Croatia* (dec.), 2017; *Napijalo v. Croatia*, 2003; *Battista v. Italy*, 2014; *Diamante and Pelliccioni v. San Marino*, 2011; *Nalbantski v. Bulgaria*, 2011; *Baumann v. France*, 2001, § 63; *Miażdżyk v. Poland,* 2012; *; Pop Blaga v. Romania* (dec.), 2012*; Földes and Földesné Hajlik v. Hungary,* 2006; *Pfeifer v. Bulgaria*, 2011; *Potapenko v. Hungary,* 2011; *A.E.* v. *Poland*, 2009; *Iordan Iordanov and Others v. Bulgaria,* 2009; *Gochev v. Bulgaria*, 2009; *Riener v. Bulgaria,* 2006; *Hristov v. Bulgaria* (dec.), 2006; *Schmid v. Austria,* Commission decision, 1985; *M. v. Germany*, Commission decision, 1984).

132. Travel bans have been imposed as a result of or in the following contexts:

- failure to perform military service (*Peltonen v. Finland,* Commission decision, 1995; *K.S. v. Finland*, Commission decision, 1995; *Marangos v. Cyprus*, Commission decision, 1997);
- access to "State secrets" during past employment (*Bartik v. Russia*, 2006; *Soltysyak v. Russia,* 2011; *Berkovich and Others v. Russia*, 2018);
- breach of foreign immigration rules followed by deportation to home country (*Stamose v. Bulgaria,* 2012);
- refusal to pay customs penalties (*Napijalo v. Croatia*, 2003);
- pending extradition proceedings (*Dzhaksybergenov v. Ukraine,* 2011);
- in order to prevent minor children from being removed to a foreign country, notably pending proceedings concerning custody or contact rights (*Roldan Texeira and Others v. Italy* (dec.), 2000; *Diamante and Pelliccioni v. San Marino*, 2011);
- pending rehabilitation of a convicted offender (*Nalbantski v. Bulgaria*, 2011; *Milen Kostov v. Bulgaria*, 2013; *Sarkizov and Others v. Bulgaria*, 2012; *Vlasov and Benyash v. Russia*, 2016);
- in order to ensure enforcement of a prison sentence, which is temporarily postponed (*M. v. Germany*, Commission decision, 1984);
- failure to pay debts, such as:
  - tax debts (*Riener v. Bulgaria,* 2006; *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, 2021);
  - child maintenance payments (*Battista v. Italy*, 2014; *Torresi v. Italy* (dec.), 2019);
  - judgment debts to the State (*Komolov v. Russia*, 2020) or to a private party (*Ignatov v. Bulgaria*, 2009; *Gochev v. Bulgaria*, 2009; *Khlyustov v. Russia,* 2013; *Cherepanov v. Russia*, 2016; *Rotaru v. the Republic of Moldova*, 2020; *Stetsov v. Ukraine,* 2021);
- pending criminal proceedings against:
  - third parties (*Baumann v. France*, 2001; *Mursaliyev and Others v. Azerbaijan*, 2018; *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, 2021);
  - the applicants (*Sissanis v. Romania*, 2007; *Miażdżyk v. Poland,* 2012; *Bevc v. Croatia* (dec.), 2020; *Folnegović v. Croatia* (dec.), 2017; *Bulea v. Romania*, 2013; *Kerimli v. Azerbaijan*, 2015; *Munteanu v. Romania* (dec.), 2015; *Popoviciu v. Romania*, 2016; *Földes and Földesné Hajlik v. Hungary,* 2006; *Pfeifer v. Bulgaria*, 2011; *Prescher v. Bulgaria*, 2011; *A.E.* v. *Poland*, 2009; *Bessenyei v. Hungary,* 2008; *Hristov*

v. Bulgaria (dec.), 2006; *Makedonski v. Bulgaria*, 2011; *Potapenko v. Hungary*, 2011; *Pop Blaga v. Romania* (dec.), 2012; *Iordan Iordanov and Others v. Bulgaria*, 2009; *Schmid v. Austria*, Commission decision, 1985).

133. Restrictions on the exercise of the right to leave any country, including one's own, have also taken the form of:

- prohibition, on pain of criminal liability, on entry and stay, without permission, in areas in which a terrorist organisation is a party to an ongoing armed conflict (*Mørck Jensen v. Denmark*, 2022);
- an interruption of the applicants' train journey by the authorities, who forced them to wait for twelve days for a transit visa (*Shioshvili and Others v. Russia*, 2016);
- stopping the applicants, of Roma ethnicity, at the border and not allowing them to leave the country, citing the preservation of the State's relations with the EU against the background of a perceived increase in the numbers of nationals of the respondent State making unfounded asylum applications in the EU and Schengen member States, thus abusing the existing visa-free regime (*Memedova and Others v. North Macedonia*, 2023);
- preventing a minor on a school trip from crossing the border for lack of documentation necessary to prove the non-custodial parent's consent (*Șandru v. Romania* (dec.), 2014);
- a courts' refusal to allow a child's travel abroad to join his parent in the absence of the other parent's consent (*Penchevi v. Bulgaria*, 2015);
- a lengthy examination by domestic courts of an application seeking to allow a child's travel abroad to join her parent in the absence of the other parent's consent (proceedings lasting about 2 years and 10 months: *Lolova and Popova v. Bulgaria* (dec.), 2015, § 41);
- lawful detention pending expulsion, with a view to criminal proceedings or in order to serve a prison sentence (*C. v. Germany*, Commission decision, 1985; *X. v. Germany*, Commission decision, 1977; *X. v. Germany*, Commission decision, 1970; *X. v. Germany*, Commission decision, 1970);
- revocation of the applicant's provisional discharge from psychiatric hospital on the grounds of her intended trip abroad without any arrangements for adequate care in the destination country (*Nordblad v. Sweden*, Commission decision, 1993);
- issuance of a provisional passport, with a period of validity limited to one year, on account of pending criminal proceedings (*Csorba v. Hungary* (dec.), 2007);
- the refusal or failure to issue a travel document (for example, an aliens passport) to :
  - a stateless person (*Härginen v. Finland*, Commission decision, 1998);
  - a refugee (*S.E. v. Serbia*, 2023, §§ 49-50 and 79);
  - a long-term resident who fled his country of origin and was unable to obtain a travel document therefrom, as he feared contacting the authorities of that country (*L.B. v. Lithuania*, 2022, §§ 60, 90 and 93-94);
- the repatriation of a foreign mentally-ill offender in detention, made conditional upon his placement in a mental hospital in his home country (*I.H. v. Austria*, Commission decision, 1989).

3. Measures not amounting to an interference

134. In the following situations, the Convention organs did not establish any restriction on, or an issue with, the exercise of the freedom to leave any country:

- where there were financial repercussions of the exercise of the right, such as:

  - the suspension of payment of the applicants' old-age pension in case of emigration (*Gorfunkel v. Russia,* 2013, §§ 37-38; *Cinnan v. Sweden*, Commission decision, 1988);
  - denial of permission to persons, who emigrated, to remove currency abroad due to outstanding tax liabilities (*S. v. Sweden,* Commission decision, 1985);
  - the requirement that a frontier worker pay contributions to health insurance schemes both in the State of residence, where he moved, and in his home State, where he pursued his occupation (*Roux v. France*, Commission decision, 1995);
  - the calculation of pension rights of migrant workers, who returned to retire in their home country, taking into account the lower amount of contributions paid when working abroad and resulting in a reduction of pension (*Maggio and Others v. Italy* (dec.), 2010);
  - an inability of nationals residing abroad to obtain restitution of property, confiscated during the former communist regime as a sanction for their emigration, due to a statutory condition of permanent residence on the territory of the State concerned (*Brezny v. Slovak Republic*, Commission decision, 1996);
- the quashing of a final court judgment ordering restitution of property, which was confiscated during the former communist regime as a sanction for the applicant's emigration, on grounds unrelated to the merits of the dispute (*Oprescu v. Romania*, 2003, §§ 33-36);
- a personal choice not to enter or to leave a specific country for fear of being arrested on the basis of an outstanding arrest warrant (*E.M.B. v. Romania* (dec.), 2010, §§ 32-34 and 48-49; *Stapleton v. Ireland* (dec.), 2010, §§ 22 and 33; *Krombach v. France* (dec.), 2000; compare and contrast *Lypovchenko and Halabudenco v. the Republic of Moldova and Russia*, 2024, §§ 148-149, in the specific context of the applicant's choice not to return to the self-proclaimed "Moldovan Republic of Transnistria" (MRT) in view an unlawful search-and-arrest warrant issued by a *de facto* "MRT" court);
- a court ruling declaring a child's removal and retention abroad unlawful, within the meaning of the Hague Convention on the Civil Aspects of International Child Abduction, without, however, ordering her return or prohibiting her from leaving the country of origin; the ruling was considered in the light of the abducting parent's eventual agreement to return with the child (*D.J. and A.-K.R. v. Romania* (dec.), 2009, § 74);
- the dismissal of an application, under the Hague Convention on the Civil Aspects of International Child Abduction, for the return of a child, without imposing any travel restrictions on the latter (*Monory v. Hungary and Romania* (dec.), 2004);
- the denial of permission to a noncustodial parent to travel abroad with his child when exercising contact rights (*R.R. v. Romania (no 1)* (dec.), 2008; *R.R. v. Romania (no 3)* (dec.), 2011, §§ 203-205);
- the non-enforcement of adoption orders in favour of foreign nationals and failure to hand over the adolescent children, who were opposed to their adoption abroad and otherwise were not prevented from travelling outside their home country (*Pini and Others v. Romania*, 2004, §§ 195-197).

D. Victim status and imputability issues

1. The *locus standi* of relatives (indirect victims)

135. In view of their particular nature, the rights guaranteed by Article 2 of Protocol No. 4, in principle, belong to the category of non-transferable rights (*Lindner and Hammermayer v. Romania*, 2002, § 24).

136. In *Lindner and Hammermayer v. Romania,* 2002, the applicants complained that their late mother's property had been confiscated during the former communist regime on account of her emigration. In the Court's view, given its specific nature, such a complaint could not, in the circumstances of the case, be regarded as transferable, especially as there was no evidence that, before her death, the applicants' mother had personally complained of an infringement of her right to freedom of movement. In any event, the complaint falling outside the Court's jurisdiction *ratione temporis*, the Court was unable to consider whether the existence of a general interest would require it to proceed with its examination (*Lindner and Hammermayer v. Romania,* 2002, §§ 22-26; see also Practical Guide on Admissibility Criteria).

2. Impugned measure not affecting applicant owing to specific circumstances

137. In *Lolova and Popova v. Bulgaria* (dec.), 2015, the Court considered, *inter alia*, the repeated refusals by the police to issue a passport to a minor. In the specific circumstances, the impugned refusals did not affect the child's ability to leave the country in any concrete terms: her father had not consented to her travel and the domestic proceedings seeking court authorisation for her travel in the absence of the father's consent had been pending throughout the period in question. Indeed, the passport was issued to the applicant shortly after the court decision authorising travel had become enforceable. The complaint was therefore rejected for lack of victim status (§§ 47-48).

3. Measures of a general character and requisite specification of a complaint

138. In order to be able to claim victim status, an applicant must provide information to show how exactly the impugned measure affected, or would be likely to affect, him directly or would target him because of his possible individual characteristics (*Zambrano v. France* (dec.), § 43 in the context of COVID-19; see also the Practical Guide on Admissibility Criteria).

139. This is also true where an applicant complains about measures of a general character affecting a large number of people. Rather than assuming that, as a result of their adoption, his freedoms were automatically violated, the applicant must explain, in specific terms, how such measures affected his individual situation and put forward a concrete description of his actual experience (*Magdić v. Croatia* (dec.), 2022, § 11; *Piperea v. Romania* (dec.), 2022, § 13). The following cases concerning nation-wide measures in response to the Covid-19 pandemic provide an illustration of this requirement.

140. In *Magdić v. Croatia* (dec.), 2022, the applicant complained, *inter alia*, about the prohibition to leave the place of domicile and residence save in exceptional circumstance and with the requisite authorization. However, he did not indicate where and when he had intended to travel but had been unable to because of the impugned measures. Similarly, in *Piperea v. Romania* (dec.), 2022, the applicant, a university professor, took issue with measures such as social distancing, the need for mask-wearing and self-isolation in the event of a positive SARS-CoV-2 test, as well as the requirement on people leaving home to fill out a document stating where they were going, why and for how long. He particularly complained that distancing from students had hampered his ability to perform his teaching duties under optimal circumstances. However, the applicant did not indicate whether he had actually been asked to show his papers when going anywhere or whether he had actually had to isolate himself. Nor did he specify on which dates or during which period he had been unable to enter the university premises or how the specific arrangements at his workplace had interfered with his freedom of movement. In sum, both above applications were declared inadmissible for lack of victim status and/or substantiation.

4. Authorities' acknowledgement of a breach without awarding damages

141. Bearing in mind that a finding of a violation may, in itself, constitute adequate just satisfaction under Article 41 of the Convention for any non-pecuniary damage suffered, the Court accepted that

the authorities' acknowledgement of a violation of the applicants' freedom of movement without awarding damages could entail the loss of victim status in cases characterised by the short duration of the impugned restriction (two months or less) and in the following circumstances:

- where no claim for damages had been brought (*D.J. and A.-K.R. v. Romania* (dec.), 2009, §§ 79-80);
- where no actual travel plans had been thwarted, nor had any circumstances required the applicant's presence outside the country, the restriction thus amounting to a formal and theoretical hindrance rather than a practical impediment to the exercise of freedom of movement (*Timishev v. Russia* (dec.), 2004).

5. Imputability to a State

142. When an applicant's inability to exercise freedom of movement stems from his/her own conduct or omission, it is not imputable to the respondent State.

143. For example, in *Mogoş and Others v. Romania* (dec.), 2004, the applicants, stateless persons who had previously given up their Romanian nationality, were arrested by the German police and forcibly deported to Romania, under an agreement between the German and Romanian authorities on stateless persons of Romanian origin within the territory of Germany. As they refused to enter Romanian territory, they were transferred to an airport transit centre and remained there. The Court found that their alleged inability to leave Romania had been a consequence of their refusal to enter Romanian territory and to comply with the requisite formalities, notably to apply for a stateless persons' passport with the Romanian authorities and for a visa with the consular authorities of a country of their choice. The applicants' complaint was therefore rejected as incompatible *ratione personae* with the provisions of the Convention.

144. In *Ioviţă v. Romania* (dec.), 2017, the applicant's right to use her passport was suspended upon the authorities' finding that it had been tampered with. The criminal investigation against her on this account was promptly discontinued for lack of evidence of her involvement. While the suspension measure was lifted shortly afterwards, the applicant was unable to leave the country immediately. In so far as her complaint concerned the latter period, the Court noted that the domestic authorities could not be held responsible for the fact that she had an invalid passport that had to be replaced by a valid one. Her predicament stemmed from her own failure to keep her passport in her possession with the necessary diligence (§§ 73 and 75). Having also regard to the short overall duration of the measure (less than four months) and the quality of domestic review, this complaint was dismissed as manifestly ill-founded.

IV. Lawfulness of the restriction test

145. Any measure restricting the right to liberty of movement must be in accordance with law (*De Tommaso v. Italy* [GC], 2017, § 104; *Khlyustov v. Russia,* 2013, § 64).

146. Where the Court concludes that the interference with an applicant's rights under Article 2 of Protocol No. 4 was not "in accordance with law", this finding makes it unnecessary to determine whether the interference pursued a legitimate aim and was necessary in a democratic society, as required by paragraph 3 of this provision, or whether it was "justified by the public interest in a democratic society, as stipulated in paragraph 4 (*Sissanis v. Romania*, 2007, § 78; *Tatishvili v. Russia,* 2007, § 54; *Shioshvili and Others v. Russia,* 2016, § 61; *Mursaliyev and Others v. Azerbaijan*, 2018, § 35; *Timishev v. Russia,* 2005, § 49; *Gartukayev v. Russia*, 2005, § 21; *Karpacheva and Karpachev v. Russia*, 2011, § 26; *Dzhaksybergenov v. Ukraine,* 2011, § 62; *Bolat v. Russia*, 2006, § 69; *Cherepanov v. Russia*, 2016, § 46; *Rotaru v. the Republic of Moldova*, 2020, § 34; *Golub v. the Republic of Moldova and Russia* [Committee], 2021, §§ 60-62; *S.E. v. Serbia*, 2023, § 88).

147. In some cases, the Court has found that the interference with the applicants' liberty of movement had been neither "in accordance with law" nor "necessary", for instance, where no legal basis or legitimate aim for the impugned restrictions had been advanced by the respondent Government (*Denizci and Others v. Cyprus*, 2001, § 406); on account of the delay in serving the decision revoking the imposed restrictions (*Raimondo v. Italy*, 1994, § 40) and on account of the unlawful prolongation of the restrictions without any compensation for the damage sustained (*Vito Sante Santoro v. Italy,* 2004, § 45).

148. The phrase "in accordance with the law" requires domestic law to be compatible with the rule of law (*Khlyustov v. Russia,* 2013, § 70; *S.E. v. Serbia*, 2023, § 82).

149. The principle of legality, which is one of the principles stemming from the rule of law, requires the State authorities, at all levels of public power, to adopt any subsidiary regulations as required by primary legislation, by the set deadline or in a timely manner, as appropriate. Where an interference with an applicant's rights stems from the legislative inaction lasting for a considerable period of time, such a situation is in breach of the lawfulness requirement (*S.E. v. Serbia*, 2023, §§ 82-85 and 88).

150. The expression "in accordance with law" not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to the persons concerned and foreseeable as to its effects (*De Tommaso v. Italy* [GC], 2017, § 106; *Sissanis v. Romania*, 2007, § 66; *Khlyustov v. Russia,* 2013, § 68; *Mursaliyev and Others v. Azerbaijan*, 2018, § 31; *Olivieira v. the Netherlands*, 2002, § 47; *Landvreugd v. the Netherlands*, 2002, § 54).

151. In accordance with the accessibility requirement, the individual concerned must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Legal acts that are in the public domain are considered to satisfy this condition (*Khlyustov v. Russia,* 2013, §§ 68 and 73).

152. As to the requirement of foreseeability, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision so as to enable citizens to regulate their conduct; they must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Such consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice (*De Tommaso v. Italy* [GC], 2017, § 107). It would be unrealistic, however, to require national legislators to lay down an exhaustive list of the forms of conduct capable of justifying the exercise of public order powers (*Pagerie v. France*, 2023, § 184).

153. The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed (*De Tommaso v. Italy* [GC], 2017, § 108; *Pagerie v. France*, 2023, § 179). It is, moreover, primarily for the national authorities to interpret and apply domestic law (*Khlyustov v. Russia,* 2013, §§ 68-69; *Sissanis v. Romania*, 2007, § 75).

154. A rule is "foreseeable" when it affords a measure of protection against arbitrary interferences by the public authorities. A law which confers discretion must indicate the scope of that discretion, although the detailed procedures and conditions to be observed do not necessarily have to be incorporated in rules of substantive law (*De Tommaso v. Italy* [GC], 2017, § 109; *Khlyustov v. Russia,* 2013, § 70; *Rotaru v. the Republic of Moldova*, 2020, § 124; *Pagerie v. France*, 2023, § 176).

155. In order to comply with the foreseeability requirement, a law should define, with sufficient detail, precision and clarity, the category of individuals to whom restrictions are applicable, the types

of behaviour and/or other factors capable of triggering the applicability of a restriction, as well as the authority empowered to authorise such an interference, and the content and temporal limits of the obligations imposed in this context (*De Tommaso v. Italy* [GC], 2017, § 125; *Timofeyev and Postupkin v. Russia*, 2021, § 129; *Sissanis v. Romania*, 2007, §§ 68-69).

156. At the same time, the "foreseeability" requirement cannot be interpreted as requiring the modalities of application of a law to be predictable even before its application in a given case becomes relevant (*Garib v. the Netherlands* [GC], 2017, § 114).

157. In order to be compatible with the rule of law and provide protection against arbitrariness, the applicable law must provide minimum procedural safeguards commensurate with the importance of the principle at stake (*Rotaru v. the Republic of Moldova*, 2020, § 24; *Pagerie v. France*, 2023, § 177).

158. In particular, an interference by the executive authorities with an individual's rights under Article 2 of Protocol No. 4 must be subject to an effective control which should normally be assured by the judiciary, at least in the last resort, through judicial control offering the best guarantees of independence, impartiality and a proper procedure (*Rotaru v. the Republic of Moldova*, 2020, § 25; *Sissanis v. Romania*, 2007, § 70; *Khlyustov v. Russia,* 2013, § 74; *Pagerie v. France*, 2023, § 177).

159. The scope of the judicial review should include both the lawfulness and the proportionality of the impugned restriction. Moreover, the authorities are not entitled to maintain lengthy periods of restrictions on an individual's freedom of movement without periodic reassessment of their justification (*Rotaru v. the Republic of Moldova*, 2020, §§ 25 and 33; *Sissanis v. Romania*, 2007, § 70; *Riener v. Bulgaria,* 2006, §§ 124 and 126; *Gochev v. Bulgaria,* 2009, § 50; *Pagerie v. France*, 2023, § 177).

160. The above requirements are also applicable to the special legislation governing the operation of the state of emergency: under no circumstances can such special legislation run counter to the rule of law. The Court will undertake a close review of the safeguards against abuse and arbitrariness laid down in such legislation, so as to determine whether they effectively governed and constrained the discretion afforded to the administrative authorities (*Pagerie v. France*, 2023, §§ 186-191).

161. The domestic authorities are not entitled to use state-of-emergency legislation to take measures restricting freedoms under Article 2 of Protocol No. 4 if such measures bear no relation to the circumstances justifying its enactment; to proceed otherwise would be to breach the requirement of foreseeability of the law. However, in an emergency situation those authorities might be obliged to make operational choices in order to assume their responsibilities to the full. There could be an indirect link between the aim pursued when declaring a state of emergency, and the justification for measures taken on the basis thereof, provided that it is strong enough to eliminate any possibility of abuse (*Domenjoud v. France*, 2024, § 98). Having regard to the safeguards existing under domestic law, the Court was satisfied that the legal basis (special legislation governing the state of emergency) of a preventive home-curfew ordered against the applicants suspected of potential participation in violent actions during a climate change summit was foreseeable (§§ 99-101).

162. In *Dedu v. Romania* (dec.), 2024, §§ 95-100, the Court found that a disciplinary finding against a senior secret service officer, which had been based a classified document, had been "in accordance with the law", given that the applicant had had access to the document due to his role and because domestic law had provided sufficient safeguards against the risks of abuse and arbitrariness, as the contested measure had been subject to a two-tier review by the domestic courts, which had had access to the classified document and addressed the applicant's arguments.

163. A subsequent court finding that there had been a procedural defect in lower instance proceedings will not as such retrospectively affect the lawfulness of the interference during the prior period (*S.M. v. Italy* (dec.), 2013, § 26; *De Tommaso v. Italy* [GC], 2017, § 114).

164. Where a restriction on freedom of movement is applied as a preventive measure in the context of pending criminal proceedings, its lawfulness is closely linked to the existence of an offence under the domestic law at the material time and a reasonable suspicion that the applicant had committed the impugned offence (*Bevc v. Croatia* (dec.), 2020, §§ 48-53).

165. As a preventive measure likely to affect the fundamental rights and freedoms of peaceful demonstrators, the legal framework regulating the use of the "kettling" technique by the police needs to define the rules on its use with sufficient precision, setting out precisely under what circumstances and conditions it could be implemented, how it should be carried out and time-limits for its use (*Auray and Others v. France*, 2024, §§ 91-94).

166. Certain questions related to the foreseeability and clarity of the impugned restriction, in particular with regard to its duration, are closely linked to the issue of proportionality and can be examined as an aspect thereof under paragraph 3 of Article 2 of Protocol No. 4 (*Riener v. Bulgaria*, 2006, § 113).

V. The "necessity of the restriction in a democratic society" test under paragraph 3

167. Any measure restricting the right to liberty of movement must pursue one of the legitimate aims referred to in paragraph 3 of Article 2 of Protocol No. 4 and strike a fair balance between the public interest and the individual's rights (*De Tommaso v. Italy* [GC], 2017, § 104; *Pagerie v. France*, 2023, § 171; *Battista v. Italy*, 2014, § 37; *Khlyustov v. Russia*, 2013, § 64; *Labita v. Italy* [GC], 2000, §§ 194-195).

168. The test as to whether the impugned measure was "necessary in a democratic society" therefore involves two steps. It must be established, in the first place, that the measure taken was in pursuit of a legitimate aim, and, secondly, that the interference with the rights protected was no greater than necessary to achieve it. Such a test has been applied in multiple contexts (*Bartik v. Russia*, 2006, §§ 38 and 46).

A. Legitimate aims

169. The legitimate aims liable to justify an interference are set out in paragraph 3 of Article 2 of Protocol No. 4 (national security or public safety, the maintenance of *ordre public*, the prevention of crime, the protection of health or morals and the protection of the rights and freedoms of others) and the list is exhaustive.

170. The economic well-being of the country is excluded from the list of the legitimate aims under paragraph 3 of Article 2 of Protocol No. 4 (Explanatory Report to Protocol No. 4, § 16). The economic well-being of the country and related financial considerations (for example, lack of available resources or technical solutions) cannot therefore justify restrictions which fall to be examined under the "necessity in a democratic society" test set out in paragraph 3 of Article 2 of Protocol No. 4 (*S.E. v. Serbia*, 2023, § 87).

171. The notion of "*ordre public*" should be understood in the broad sense in general use in continental countries. The need to punish crime is covered by the notion of the maintenance of "*ordre public*" (Explanatory Report to Protocol No. 4, §§ 16-17).

172. For the purposes of this Article, only reasons relating to the aims referred to in the third paragraph constitute, where applicable, lawful grounds for the adoption by the relevant authorities of measures restricting freedom of movement (*Baumann v. France*, 2001, § 60; *S.E. v. Serbia*, 2023, § 82).

173. The temporary nature and short duration of the impugned measures do not justify a departure from this rule. Article 2 of Protocol No. 4 does not provide for any restriction on freedom of movement based on the length of the deprivation of that right (*Baumann v. France*, 2001, § 60).

174. A respondent Government cannot rely on circumstances posterior and external to the decision taken *ab initio* by the authorities, which gave rise to the impugned measure, to justify its consequences with regard to a complaint lodged by an applicant under Article 2 of Protocol No. 4 (*Baumann v. France*, 2001, § 60). For instance, in *Baumann v. France*, 2001, the actual duration of the restriction on the applicant's freedom of movement was short (only one month) due to his intervening arrest by foreign authorities. Having regard to the absence of any judicial co-operation between the States concerned in this respect, the Court refused to take into consideration the applicant's arrest in assessing the legitimacy of the impugned restriction.

175. The legitimate aims set out in paragraph 3 of Article 2 of Protocol No. 4 are broadly defined and have been interpreted with a degree of flexibility, like the restriction clauses under other provisions of the Convention and its Protocols and, in most cases, the Court deals with the point summarily. The cases in which the Court has voiced doubts about the cited aim are rare (*Merabishvili v. Georgia* [GC], 2017, §§ 295-297 and 302).

176. In *Stamose v. Bulgaria,* 2012, the travel ban imposed on the applicant in his home country after his deportation from the United States of America was designed to discourage and prevent breaches of the immigration laws of other States, and thus reduce the likelihood of those States refusing other Bulgarian nationals entry to their territory, or toughening or refusing to relax their visa regime in respect of Bulgarian nationals. The Court decided not to rule on the issue of whether the impugned interference pursued the legitimate aims of maintenance of *ordre public* or the protection of the rights of others, focusing its scrutiny on the necessity of the restriction instead (§ 32).

177. In *Napijalo v. Croatia*, 2003, the Court did not identify any legitimate aim, finding that the applicant had been unable to ascertain the grounds justifying the prolonged retention of his passport. While the latter had been seized due to the applicant's refusal to pay customs penalties, no proceedings had ever been instituted against the applicant on this ground, and the retention had continued due to the lack of co-ordination between the various authorities involved (§§ 79-82).

178. In *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, 2021, the Court was unconvinced that the travel ban imposed on the applicant in connection with a tax debt had pursued the claimed legitimate aim: the authorities had not at all sought to collect the debt through other – more appropriate - means, notably, by deducting the debt amount from the money available on the applicants' bank accounts or seizing any other assets, despite the applicants' explicit request to this effect (§§ 93-95).

179. In *Baumann v. France*, 2001, the applicant's passport was seized in the context of an on-the-spot investigation against third parties, who were arrested and charged shortly thereafter. Given that the applicant had neither been prosecuted nor considered a witness and had remained uninvolved in those proceedings, the Court was unable to find any ground to justify the continued retention of such a strictly personal document, at least from the date on which the applicant had requested its return. The applicant's subsequent arrest abroad for the purposes of unrelated criminal proceedings was considered irrelevant in this respect (§§ 60 and 66).

B. Proportionality assessment

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

the requirements of the Convention (*Khlyustov v. Russia,* 2013, § 84). A margin of appreciation must be left to the competent national authorities in this regard (*Pagerie v. France*, 2023, § 193).

181. The question whether a fair balance was struck between the general interest and the applicant's right to freedom of movement must be assessed according to all the special features of the case (*Hajibeyli v. Azerbaijan*, 2008, § 63).

182. The Court has examined restrictions on the freedom of movement imposed in a wide variety of situations and, in so far as they are relevant, applied the principles laid down in one context to cases concerning different circumstances (*Stamose v. Bulgaria,* 2012, § 29; *Battista v. Italy*, 2014, § 36).

183. Where the impugned restriction does not reflect an established European consensus and has no support among the Council of Europe member States, the respondent State is under an obligation to provide a particularly compelling justification for maintaining it (*Soltysyak v. Russia,* 2011, § 51; *Berkovich and Others v. Russia*, 2018, § 98).

184. The case-law would suggest that the proportionality assessment is based on three main pillars: the justification of the restriction in light of its protective function, the quality of the domestic assessment and the severity of the restriction. The latter issue encompasses the duration and specific impact on the applicant.

1. Link between a restriction and its purported protective function

185. The requirement commonly referred to as the test of proportionality demands that restrictive measures be *appropriate* to achieve their protective function (*Bartik v. Russia*, 2006, § 46; *Soltysyak v. Russia,* 2011, § 48; *Berkovich and Others v. Russia*, 2018, § 93).

186. In other words, a restriction is justified only so long as it furthers the legitimate aim pursued (*Gochev v. Bulgaria,* 2009, § 49; *Battista v. Italy*, 2014, § 41).

187. Accordingly, an issue may arise in this respect where a restriction is maintained:

- solely due to a lack of cooperation and coordination between the authorities (*Napijalo v. Croatia*, 2003, § 80);
- beyond its expiry date (*Vito Sante Santoro v. Italy,* 2004, § 45) or after its purpose was fully attained (*Ignatov v. Bulgaria*, 2009, § 38) solely due to the authorities' inactivity;
- due to the delay in serving the decision revoking the imposed restrictions (*Raimondo v. Italy*, 1994, § 40; *Villa v. Italy*, 2010, §§ 51-52).

188. The restriction may be justified in a given case only if there are clear indications of a genuine public interest which outweigh the individual's right to freedom of movement (*Popoviciu v. Romania*, 2016, § 91; *Hajibeyli v. Azerbaijan*, 2008, § 63; *Pagerie v. France*, 2023, § 194). Such indications must be based on concrete elements which are truly indicative of the continued existence of the risk that the impugned restriction seeks to forestall (*Vlasov and Benyash v. Russia*, 2016, § 34; *Nalbantski v. Bulgaria*, 2011, § 65; *Labita v. Italy* [GC], 2000, § 196; *Pagerie v. France*, 2023, §§ 194 and 201).

189. The effects and specific conditions of a given measure should be suited to its purpose (*Pagerie v. France*, 2023, § 199; *Fanouni v. France,* 2023, § 62).

190. The effectiveness of a preventive measure frequently depends on the speed of its implementation (*Pagerie v. France*, 2023, § 199; *Fanouni v. France,* 2023, § 62; *Gochev v. Bulgaria,* 2009, § 53).

191. The elements relevant for the assessment of the link between a given restriction and its purported protective function are context dependent.

a. Ban on international travel for persons having had access to "State secrets"

192. The Court has examined applications against Russia wherein the impugned restriction, aimed at preventing disclosure of classified information to foreign nationals, had been designed during the Soviet regime, at a time when the State was able to control transmission of information to the outside world through various means, such as censorship of correspondence and a ban on unsupervised contacts with foreigners. The Court was, however, unable to see how the unqualified restriction on international travel for private purposes by persons, who had had access to "State secrets" during past employment, could serve the interests of national security in a contemporary democratic society: notably, the confidential information which the applicants possessed could be transmitted in a variety of ways which did not require their presence abroad or even direct physical contact with anyone. Nor could such a restriction be explained by the need to ensure the applicants' safety abroad: while such a concern should have been greatest during their employment, so long as they actually had access to current sensitive information, their freedom to leave Russia had been least restricted during that period. There was, moreover, no actual assessment of the security risks in the applicant's individual cases because of the blanket nature of the prohibition. The Court therefore considered that the link to the protective function previously assigned to such a measure was missing (*Bartik v. Russia*, 2006, § 49; *Soltysyak v. Russia,* 2011, §§ 49-52; *Berkovich and Others v. Russia*, 2018, §§ 93-96).

b. Restrictions imposed in the context of pending criminal proceedings

193. It is not in itself objectionable for States to apply various preventive measures restricting the liberty of an accused in order to ensure the efficient conduct of criminal proceedings and to secure the applicant's presence throughout the trial (*Hajibeyli v. Azerbaijan*, 2008, § 60; *Pop Blaga v. Romania* (dec.), 2012, § 159; *Hristov v. Bulgaria* (dec.), 2006; *Rosengren v. Romania*, 2008, § 33; *Ivanov v. Ukraine*, 2006, § 88; *Fedorov and Fedorova v. Russia*, 2005, § 41; *Antonenkov and Others v. Ukraine*, 2005, § 61; *Popoviciu v. Romania*, 2016, § 88; see also Case-Law Guide on Article 5).

194. In order to assess whether a given restriction is sufficiently connected to the above aim, the Court has had regard to the following issues:

- the applicant's conduct and, in particular, the risk of absconding (*Pop Blaga v. Romania* (dec.), 2012, § 160; *Bulea v. Romania*, 2013, § 63; *Folnegović v. Croatia* (dec.), 2017, §§ 49-51; *Prescher v. Bulgaria*, 2011, § 49; *Pfeifer v. Bulgaria*, 2011, § 56; *Cipriani v. Italy* (dec.), 2010; *Kerimli v. Azerbaijan*, 2015, § 54; *Manannikov v. Russia*, 2018, § 63);
- the gravity of the offence with which the applicant was charged and, notably, whether it was punishable with imprisonment (*Folnegović v. Croatia* (dec.), 2017, § 48; *Doroshenko v. Ukraine*, 2011, § 54; *Pokhalchuk v. Ukraine*, 2010, § 96; *Nikiforenko v. Ukraine*, 2010, § 59; *Cipriani v. Italy* (dec.), 2010; *Ivanov v. Ukraine*, 2006, § 96; *Makedonski v. Bulgaria,* 2011, § 39; *Hristov v. Bulgaria* (dec.), 2006);
- the complexity of the proceedings (*Popoviciu v. Romania*, 2016, § 94; *Miażdżyk v. Poland,* 2012, §§ 38 and 41);
- the progress of the investigation and the authorities' diligence in conducting it throughout the whole duration of the imposed restriction (*Hajibeyli v. Azerbaijan*, 2008, §§ 64-67; *Prescher v. Bulgaria*, 2011, § 50; *Pfeifer v. Bulgaria*, 2011, § 56; *Hristov v. Bulgaria* (dec.), 2006; *Kerimli v. Azerbaijan*, 2015, § 53; *Makedonski v. Bulgaria,* 2011, § 42);
- the possibility to effectively conduct the proceedings without imposing the impugned restriction (*Miażdżyk v. Poland,* 2012, §§ 40-41);
- whether the restriction was maintained after the charges against the applicant had become time-barred (*Hajibeyli v. Azerbaijan*, 2008, § 68; *Pokhalchuk v. Ukraine*, 2010, § 96; *Rosengren v. Romania*, 2008, § 38; *Ivanov v. Ukraine*, 2006, § 96; *Kerimli v. Azerbaijan*, 2015, § 51).

195. The authorities' inactivity, especially after the criminal charges against an applicant have become time-barred, is a weighty factor in the Court's analysis (*Hajibeyli v. Azerbaijan*, 2008, §§ 67-68; *Kerimli v. Azerbaijan*, 2015, § 51-53).

196. The factual and organisational complexity of a case can justify the application of a travel ban for a limited period of time (*Popoviciu v. Romania*, 2016, § 94), but not throughout the whole duration of the criminal proceedings (*Miażdżyk v. Poland,* 2012, § 38).

c. Restrictions imposed for the purposes of crime prevention

197. Restrictions on freedom of movement may be justified by the need to prevent crimes being committed (see also Case-Law Guide on Article 5). The Court has countenanced serious restrictions on the freedom of movement of individuals suspected of being members of a criminal syndicate, even in the absence of a criminal conviction (*Raimondo v. Italy*, 1994, § 39; *Labita v. Italy* [GC], 2000, § 195).

198. An acquittal does not necessarily deprive such measures of all foundation, as concrete evidence gathered at trial, though insufficient to secure a conviction, may nonetheless justify reasonable fears that the person concerned may in the future commit criminal offences (*Labita v. Italy* [GC], 2000, § 195).

199. The Court has also allowed such restrictions in respect of an individual who was a danger to society and who had been found guilty of a violent offence (*Villa v. Italy*, 2010, §§ 45-50).

200. At the same time, the mere fact that an individual has been criminally convicted and has not yet been rehabilitated cannot justify the imposition of restrictions on his or her freedom to leave his or her country (*Nalbantski v. Bulgaria*, 2011, § 66; *Vlasov and Benyash v. Russia*, 2016, § 35).

201. In order to assess whether a given restriction is sufficiently connected to the aim of crime prevention, the Court has regard to the following elements:

- the applicant's conduct and, in particular, the risk of offending or re-engaging in criminal conduct (*Villa v. Italy*, 2010, § 46; *Vlasov and Benyash v. Russia*, 2016, § 35);
- the nature and severity of the assessed risk
  - to the life and health of a specific victim, for example, in the context of protective and preventive measures taken against a perpetrator of domestic violence (*Kurt v. Austria* [GC], 2021, § 183);
  - of the applicant's engagement in terrorism (*Pagerie v. France*, 2023, § 201; *Fanouni v. France,* 2023, § 55);
- medical data (*Villa v. Italy*, 2010, § 46);
- the nature and gravity of the offences committed by the applicant (*Villa v. Italy*, 2010, § 46; *Sarkizov and Others v. Bulgaria*, 2012, § 66), as well as recidivism (*Timofeyev and Postupkin v. Russia*, 2021, § 134).

202. Where restrictions are imposed in the context of a terrorist threat, the following factors are of relevance:

- the seriousness and duration of such threat (*Pagerie v. France*, 2023, § 200);
- the timing of restrictions, for example shortly after terrorist attacks (*Pagerie v. France*, 2023, § 199; *Fanouni v. France*, 2023, § 62; *M.B. v. France*, 2024, § 60);
- the existence of a set of factors and a body of evidence probative of a course of "conduct" amounting to a threat, for example:
  - such factors may include religious radicalisation, violent tendencies, criminal record;
  - the relevant evidence may include public statements, association with jihadists, jihadist propaganda videos found on the applicant's devices (*Pagerie v. France*, 2023, §§ 198-201;

M.B. v. France, 2024, §61); discovery of prohibited weapons and ammunition at the applicant's home (*Fanouni v. France*, 2023, §§ 55 and 62);

- general threat to the society stemming from unauthorized entry and stay in a zone of armed conflict involving a terrorist organization (*Mørck Jensen v. Denmark*, 2022, § 67).

203. In *Domenjoud v. France*, 2024, the Court found, in respect of one of the applicants, that there had been an adequate link between a home-curfew order, which had primarily aimed at preventing police confrontations and damage within the framework of security arrangements for an international summit, and the framework of the state of emergency which had been enacted following terrorist attacks, having regard to the very specific circumstances of the case (§§ 108, 110 and 116-123). By contrast, the political views of a radical nature by another applicant were found not to be sufficient to substantiate the risk that he might contribute to the disruptions feared by the domestic authorities (§ 133).

204. A restriction on freedom of movement cannot be based solely on an individual's beliefs or religious practice (*Pagerie v. France*, 2023, § 199; *Fanouni v. France*, 2023, § 62).

205. In the context of special police supervision imposed on a person suspected of being a member of the Mafia, the Court found that a family connection – notably, the mere fact of being the brother-in-law of a Mafia boss, since deceased – was insufficient in the absence of any other concrete evidence to show that there was a real risk that the applicant would offend (*Labita v. Italy* [GC], 2000, § 196).

d. Restrictions designed to prevent breaches of immigration laws

206. The Court may be prepared to accept that a prohibition on leaving one's own country imposed in relation to breaches of the immigration laws of another State may, in certain compelling situations, be justified (*Stamose v. Bulgaria,* 2012, § 36).

207. The factors relevant for determining this issue are: the gravity of the breach committed by the applicant; the risk that he or she might commit further breaches of another State's immigration rules; his or her family situation; his or her financial and personal situation; and whether he or she has a criminal record (*Stamose v. Bulgaria,* 2012, § 35).

208. The normal consequences of a serious breach of a country's immigration laws would be for the person concerned to be removed from that country and prohibited (by the laws of that country) from re-entering its territory for a certain period of time (*Stamose v. Bulgaria,* 2012, § 34).

e. Restrictions imposed in the context of recovery of debts or penalties

209. In order to comply with the requirements of Article 6 and Article 1 of Protocol No. 1, the State authorities are obliged to provide the necessary assistance to a creditor in the enforcement of court judgments issued against private debtors (*Khlyustov v. Russia,* 2013, § 92).

210. A measure which seeks to restrict an individual's right to leave the country for the purpose of securing the payment of taxes may pursue the legitimate aims of maintenance of *ordre public* and protection of the rights of others (*Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, 2021, § 92). The public interest in recovering unpaid tax of a significant amount could warrant appropriate limitations on the applicant's rights to freedom of movement. States have a certain margin of appreciation to frame and organise their fiscal policies and make arrangements to ensure that taxes are paid (*Riener v. Bulgaria*, 2006, § 119).

211. However, a restriction with the applicant's freedom of movement on grounds of unpaid debt can only be justified as long as it serves its aim – recovering the debt (*Riener v. Bulgaria*, 2006, § 122; *Ignatov v. Bulgaria*, 2009, § 37; *Gochev v. Bulgaria,* 2009, § 49; *Battista v. Italy*, 2014, § 41; *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, 2021, § 94).

212. Such a restriction cannot amount to a *de facto* punishment for inability to pay (*Riener v. Bulgaria,* 2006, § 123).

213. The competent authority must be able to explain how a travel ban might ensure collection of the debt, taking into account the applicant's personal circumstances and other situational factors *(Stetsov v. Ukraine,* 2021, § 31; *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan,* 2021, § 94).

214. In order to assess whether a given restriction appropriately serves the aim of collecting debts or penalties, the following factors were found to be of relevance:

- whether the applicant's conduct and attitude give reasons to believe that he or she would evade payment if allowed to leave the country (*Riener v. Bulgaria,* 2006, §§ 126-127; *Khlyustov v. Russia,* 2013, § 98; *Komolov v. Russia*, 2020, § 32; *Torresi v. Italy* (dec.), 2019, §§ 36-37);
- the applicant's individual situation, notably, financial resources and ability to pay the amount due (*Riener v. Bulgaria,* 2006, §§ 126-127; *Gochev v. Bulgaria,* 2009, § 52; *Khlyustov v. Russia,* 2013, § 98; *Battista v. Italy*, 2014, § 44; *Komolov v. Russia*, 2020, § 32; *Torresi v. Italy* (dec.), 2019, §§ 38; *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, 2021, § 93);
- a high amount of debt (*Riener v. Bulgaria,* 2006, § 119; *Komolov v. Russia*, 2020, § 32);
- the intervening extinction of the debt by prescription (*Riener v. Bulgaria,* 2006, § 129; *Rotaru v. the Republic of Moldova*, 2020, § 30) or through payment (*Ignatov v. Bulgaria*, 2009, § 38);
- the circumstances surrounding the debtor's failure to pay and/or pointing to the likelihood that his or her leaving the country might undermine the chances to collect the debt (*Riener v. Bulgaria,* 2006, §§ 125-127; *Gochev v. Bulgaria,* 2009, § 53);
- the authorities' diligence in conducting enforcement or other relevant proceedings throughout the whole duration of the imposed restriction (*Napijalo v. Croatia*, 2003, § 79; *Gochev v. Bulgaria,* 2009, § 52; *Riener v. Bulgaria,* 2006, §§ 124-125);
- the authorities' reasonable efforts to collect the debt through other appropriate means, for instance, through seizure of assets, or inquiry into the applicant's resources abroad (*Riener v. Bulgaria,* 2006, §§ 124-125; *Komolov v. Russia*, 2020, § 32; *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, 2021, § 93);
- the availability of civil-law cooperation mechanisms at European and/or international level (*Battista v. Italy*, 2014, § 45; *Torresi v. Italy* (dec.), 2019, § 36).

215. In addition to being difficult to establish, and leaving a wide margin for subjectivity, the debtor's intention in cases of non-payment of the debt cannot be the sole ground justifying the impugned restriction where it continues beyond a brief initial period (*Stetsov v. Ukraine*, 2021, § 31).

216. The Court is unable to rule on whether the imposition and maintenance of a restriction over a considerable period would be objectively justified by the aim of guaranteeing recovery of the debts where domestic decisions do not provide sufficient information in this respect. This was the case in *Gochev v. Bulgaria,* 2009: the domestic decisions had been based solely on the applicant's failure to provide security to his creditors and on the evaluation of his assets against the amount of debt (*Gochev v. Bulgaria,* 2009, § 52).

217. The Court has not yet addressed the issue of whether the application of a measure restricting the freedom to leave a country on account of debts owed to private persons can be justified by their particular importance for the creditor, as, for example, in the case of a maintenance order (*Gochev v. Bulgaria,* 2009, § 57).

f. Restrictions imposed in the context of bankruptcy proceedings

218. Restrictions placed on the applicant's freedom of movement in order to protect the interests of his creditors in the context of bankruptcy proceedings are not in themselves open to criticism (*Luordo v. Italy*, 2003, § 96).

219. In order to assess the appropriateness and necessity of such restrictions, the Court has regard to the complexity and length of the proceedings, and notably to the question of whether any delays are attributable to the authorities' and/or the applicant's conduct (*Luordo v. Italy*, 2003, § 96; *Gasser v. Italy*, 2006, §§ 30-31; *Campagnano v. Italy,* 2006, § 38).

g. Restrictions on travel for minor children

220. In so far as such measures are intended to protect the interests of the children concerned and their parents, the Court has assessed their appropriateness and necessity on the basis of the following factors:

- whether there are objective grounds to fear that the child concerned may be kidnapped (*Diamante and Pelliccioni v. San Marino*, 2011, § 213) or removed permanently (*Roldan Texeira and Others v. Italy* (dec.), 2000);
- whether a given destination State is a party to the Hague Convention on the Civil Aspects of International Child Abduction (*Diamante and Pelliccioni v. San Marino*, 2011, § 213).

2. Appropriate domestic assessment

221. To assess the proportionality of a measure, it is essential, on the one hand, that the authorities give reasons for taking it and, on the other hand, that it be accompanied by appropriate procedural safeguards by which the authorities assess the continued justification for the measure and prevent arbitrariness (*Căşuneanu v. Romania* (dec.), 2011, § 53).

222. The absence of reasons in domestic decisions applying or extending a restriction on freedom of movement is increasingly jeopardising for the applicant's rights, as the necessity of a restriction will inevitably diminish with the passage of time (*Rosengren v. Romania*, 2008, § 39).

223. Even if justified at the outset, a measure restricting an individual's freedom of movement may become disproportionate and breach that individual's rights if it is automatically extended over a long period (*Luordo v. Italy*, 2003, § 96*; Földes and Földesné Hajlik v. Hungary,* 2006, § 35; *Riener v. Bulgaria,* 2006, § 121; *Battista v. Italy*, 2014, § 41; *Gochev v. Bulgaria,* 2009, § 49).

224. The domestic authorities are under an obligation to ensure that a restriction of an individual's rights under Article 2 of Protocol No. 4 is, from the outset and throughout its duration, justified and proportionate in view of the circumstances (*Gochev v. Bulgaria,* 2009, § 50; *Vlasov and Benyash v. Russia*, 2016, § 32; *Nalbantski v. Bulgaria*, 2011, § 64; *Battista v. Italy*, 2014, § 42; *L.B. v. Lithuania*, 2022, § 96).

225. The Court has found a breach of the above duty in numerous cases where the applicants had been subjected to an automatic, blanket measure, without any examination or periodic reassessment of its justification and proportionality, and without any regard to the applicants' individual circumstances (*Bartik v. Russia*, 2006, § 49; *Soltysyak v. Russia,* 2011, § 52; *Berkovich and Others v. Russia*, 2018, § 96; *Riener v. Bulgaria,* 2006, §§ 127-128; *Battista v. Italy*, 2014, §§ 47-48; *Gochev v. Bulgaria,* 2009, § 57; *Kerimli v. Azerbaijan*, 2015, § 56; *Földes and Földesné Hajlik v. Hungary,* 2006, § 36; *A.E.* v. *Poland*, 2009, § 49; *Bessenyei v. Hungary,* 2008, § 23; *Makedonski v. Bulgaria,* 2011, § 44*; Potapenko v. Hungary,* 2011, § 24; *Nalbantski v. Bulgaria*, 2011, § 66; *Milen Kostov v. Bulgaria*, 2013, § 17; *Sarkizov and Others v. Bulgaria*, 2012, § 67; *Vlasov and Benyash v. Russia*, 2016, § 36; *Stamose v. Bulgaria,* 2012, § 36; *Rotaru v. the Republic of Moldova*, 2020, § 31; *Stetsov v. Ukraine*, 2021, § 31).

226. Indeed, in the absence of provision of reasons and proper judicial review of the question of proportionality by the domestic authorities, the Court cannot speculate as to whether or not there were grounds that could have justified the restriction imposed (*Sarkizov and Others v. Bulgaria*, 2012, § 68; *Vlasov and Benyash v. Russia*, 2016, § 36).

a. Requirement of an individualised assessment

227. The decision to impose or extend a restriction on an individual's freedom of movement must be reached on the basis of a thorough assessment of its justification and proportionality, weighing up the competing interests at stake against each other (*Battista v. Italy*, 2014, §§ 44 and 47).

228. Such assessment must include all the relevant aspects of the particular situation (*A.-M.V. v. Finland*, 2017, § 89) and factors specific to the applicant (*Pagerie v. France*, 2023, § 195; *Fanouni v. France,* 2023, § 57), for example, his or her family, professional, financial and personal situation, his or her conduct (including, where applicable, the gravity of a breach committed and the risk of its repetition), as well as the existence of a criminal record (*Stamose v. Bulgaria,* 2012, § 35).

229. Where an applicant is a foreign national and depending on the nature of his complaint, the assessment of his individual circumstances may need to cover the situation in his country of origin (*L.B. v. Lithuania*, 2022, §§ 93-96).

230. Where an applicant is required to comply with certain formalities in order to exercise his freedom of movement, the domestic authorities must assess whether such a possibility was accessible to him in practice in the light of his particular individual circumstances (*L.B. v. Lithuania*, 2022, §§ 95-96).

231. A restriction imposed for reasons of international comity and practicality, without any regard to the individual circumstances of the person concerned, cannot be justified by the mere fact that it might have been prompted by international pressure (*Stamose v. Bulgaria,* 2012, § 36).

232. Domestic authorities should display particular care and scrutiny where an applicant's situation involves strong humanitarian considerations (*Berkovich and Others v. Russia*, 2018, § 96).

233. While the effectiveness of a preventive measure frequently depends on the speed of its implementation, this does not relieve the relevant domestic body of its obligation to gather relevant information once the measure has been imposed (*Gochev v. Bulgaria,* 2009, § 53).

234. The domestic assessment was found to be deficient where no account had been taken of the applicant's individual circumstances as affected by the impugned measure, especially where there was disruption to family life (*Riener v. Bulgaria,* 2006, § 126; *Prescher v. Bulgaria*, 2011, § 50; *Pfeifer v. Bulgaria*, 2011, § 56; *Manannikov v. Russia*, 2018, § 62; *Miażdżyk v. Poland,* 2012, § 39; *Milen Kostov v. Bulgaria*, 2013, § 23; *Bartik v. Russia*, 2006, §§ 47-48; *Berkovich and Others v. Russia*, 2018, § 96).

235. The fact that the domestic authorities took into consideration the applicant's individual circumstances weighs heavily in the Court's analysis (*Torresi v. Italy* (dec.), 2019, § 37; *Bulea v. Romania*, 2013, § 63).

b. Requirement of a regular re-examination

236. The domestic authorities may not extend for long periods measures restricting an individual's freedom of movement without regular re-examination of their justification (*Földes and Földesné Hajlik v. Hungary,* 2006, § 65; *Riener v. Bulgaria,* 2006, § 124; *Battista v. Italy*, 2014, § 42; *Gochev v. Bulgaria,* 2009, § 50; *Ignatov v. Bulgaria*, 2009, § 37; *Pagerie v. France*, 2023, § 195).

237. The question whether domestic law provides for restrictions on freedom of movement to be reviewed at regular intervals is therefore a relevant consideration (*Manannikov v. Russia*, 2018, § 63;

Kerimli v. Azerbaijan, 2015, § 56; *Rotaru v. the Republic of Moldova*, 2020, § 32; *Villa v. Italy*, 2010, § 48; *Timofeyev and Postupkin v. Russia*, 2021, §§ 135-136).

238. Where a restriction concerns entry and stay in particular areas (for example, armed conflict zones), the Court has regard to whether the situation in the relevant areas is revised carefully and on an ongoing basis to justify the impugned restriction (*Mørck Jensen v. Denmark*, 2022, § 67).

239. The Court has found that a restriction amounted, in reality, to an automatic, blanket measure where no re-examination took place (*Bessenyei v. Hungary,* 2008, § 23; *Battista v. Italy*, 2014, § 42) or where a reassessment took place only once in several years (*Gochev v. Bulgaria,* 2009, § 55; *Makedonski v. Bulgaria,* 2011, § 44; *A.E.* v. *Poland*, 2009, § 49).

240. In a similar vein, a restriction is characterized as automatic when it is periodically extended without any substantive reassessment of its justification and proportionality (*Riener v. Bulgaria,* 2006, § 127; *Khlyustov v. Russia,* 2013, § 99).

241. The requisite frequency of such reassessments will depend on the nature of the impugned restriction and the particular circumstances of each case (*Villa v. Italy*, 2010, § 48; *Timofeyev and Postupkin v. Russia*, 2021, § 133).

242. In *Timofeyev and Postupkin v. Russia*, 2021, the applicant, a repeat and dangerous offender, was placed under administrative surveillance for six years upon completion of his prison term and required to report once a month to the police. While he was unable to challenge this measure during the initial period of three years, the Court did not find this circumstance incompatible with the periodic review requirement, given the nature and low frequency of the impugned restriction. Furthermore, after that initial period, the necessity of maintaining that measure could have been the subject of judicial review at six-monthly intervals between each rejection of any request for early termination of the measure submitted by the applicant (§ 137).

243. The periodic review requirement was found to be satisfied where a reassessment took place:

- five times in about one year and ten months in respect of measures of special supervision requiring the applicant, a dangerous offender, to report once a month to the police, not to leave his place of residence and not to leave home at night (*Villa v. Italy*, 2010, § 49);
- eight times in thirteen months in respect of the restrictions imposed in the context of a terrorist threat and including a prohibition on leaving the municipality where the applicant lived, a requirement to stay at home at night and an obligation to report to the police three times a day on pain of imprisonment (*Pagerie v. France*, 2023, §§ 197 and 201);
- every thirty days in three months (*Popoviciu v. Romania*, 2016, § 95) and three times in about two years (*Torresi v. Italy* (dec.), 2019, §§ 37-38) in respect of a ban on travel abroad.

c. Availability of judicial review

244. The review of the justification and proportionality of a restriction should normally be carried out, at least in the final instance, by the courts, since they offer the best guarantees of the independence, impartiality and lawfulness of the procedure (*Sissanis v. Romania*, 2007, § 70; *Gochev v. Bulgaria,* 2009, § 50; *Timofeyev and Postupkin v. Russia*, 2021, § 133).

245. The scope of the judicial review should enable the court to take account of all the factors involved, including those concerning the proportionality of the restrictive measure (*Gochev v. Bulgaria,* 2009, § 50; *Bulea v. Romania*, 2013, § 60; *Battista v. Italy*, 2014, § 42; *Vlasov and Benyash v. Russia*, 2016, § 32; *Timofeyev and Postupkin v. Russia*, 2021, § 133; *Cimpaka Kapeta v. Belgium*, 2025, § 80).

246. The quality of the judicial review may, in certain cases, militate in favour of a wide margin of appreciation of the respondent State (*Mørck Jensen v. Denmark*, 2022, § 66).

247. The Court has found that the scope and quality of the domestic judicial review failed to satisfy the requirements of Article 2 of Protocol No. 4 where:

- such review was confined only to the formal lawfulness of the impugned restriction (*Vlasov and Benyash v. Russia*, 2016, § 36; *Khlyustov v. Russia,* 2013, § 100; *Bartik v. Russia*, 2006, § 48; *Berkovich and Others v. Russia*, 2018, § 96);
- the domestic courts were not competent to examine the manner in which the authorities had exercised their discretionary power to assess the need for the impugned restriction (*Gochev v. Bulgaria,* 2009, § 54; *Nalbantski v. Bulgaria*, 2011, § 66; *Milen Kostov v. Bulgaria*, 2013, § 17; *Stamose v. Bulgaria,* 2012, § 35);
- the domestic courts were not competent to examine complaints about the authorities' arbitrary refusal to discontinue the proceedings underlying the restriction imposed on the applicant's freedom of movement (*Kerimli v. Azerbaijan*, 2015, § 52);
- arguments and factors specific to the applicant's individual situation had been disregarded or held to be irrelevant (*Milen Kostov v. Bulgaria*, 2013, § 23; *Berkovich and Others v. Russia*, 2018, § 96; *Battista v. Italy*, 2014, § 44; *Manannikov v. Russia*, 2018, § 63; *Pfeifer v. Bulgaria*, 2011, § 56; *L.B. v. Lithuania*, 2022, §§ 93-96);
- the domestic courts had failed to evaluate whether the impugned restriction was necessary for, and capable of, achieving the legitimate aim it had been intended to serve, whether it corresponded to a pressing social need and whether a less restrictive measure could be applied (*Bartik v. Russia*, 2006, § 48; *Berkovich and Others v. Russia*, 2018, § 96);
- the domestic courts had not provided any redress for the damage suffered as a consequence of the measure found to be unlawful and/or unjustified (*Vito Sante Santoro v. Italy,* 2004, § 45).

248. The judicial review proceedings should provide the appropriate procedural safeguards (*Pagerie v. France*, 2023, § 196; *Fanouni v. France,* 2023, § 56). The Court may examine in particular:

- whether the rights of the defence were fully respected (*Ciancimino v. Italy*, Commission decision, 1991), notably, whether the applicant had access to a lawyer and a real opportunity to obtain information on the accusations against him, which prompted the imposition of the impugned restriction on his or her freedom of movement (*Marturana v. Italy*, 2008, §§ 188-189; *Pagerie v. France*, 2023, § 207);
- whether the applicant was effectively able to put forward his or her arguments and whether his or her submissions were thoroughly analysed (*Popoviciu v. Romania*, 2016, §§ 92-93; *Bulea v. Romania*, 2013, § 63; *A.-M.V. v. Finland*, 2017, § 90; *L.B. v. Lithuania*, 2022, §§ 93-96; *Pagerie v. France*, 2023, § 204; *Fanouni v. France,* 2023, § 58);
- whether the domestic courts provided adequate and sufficient reasons, devoid of formalism or arbitrariness (*Ioviță v. Romania* (dec.), 2017, § 76; *Căşuneanu v. Romania* (dec.), 2011, §§ 53-54; *Moldovan Duda v. Romania* (dec.), 2016, § 38; *L.B. v. Lithuania*, 2022, §§ 95-96);
- whether the proceedings were adversarial (*Marturana v. Italy*, 2008, § 189; *Moldovan Duda v. Romania* (dec.), 2016, § 37; *Fanouni v. France*, 2023, § 58);
- whether the applicant was involved at all stages of the proceedings and heard in person (*A.-M.V. v. Finland*, 2017, § 90);
- whether sufficient procedural safeguards attached to the presentation in evidence of confidential documents (for example, intelligence reports) (*Pagerie v. France*, 2023, § 207; *Fanouni v. France*, 2023, §§ 60-61; *Domenjoud v. France*, 2024, §§ 112-115 and 126-129; *Cimpaka Kapeta v. Belgium*, 2025, §§ 80-84).

3. Severity of a restriction

249. The test as to whether the impugned measure was "necessary in a democratic society" involves demonstrating that the interference with the protected rights was no greater than necessary to achieve the legitimate aim pursued (*Bartik v. Russia*, 2006, § 46; *Soltysyak v. Russia,* 2011, § 48; *Berkovich and Others v. Russia*, 2018, § 93).

250. In other words, the impugned restriction must be commensurate with its protective function: there should be a reasonable relationship of proportionality between the means employed and the aim pursued (*Soltysyak v. Russia,* 2011, § 53).

251. When assessing the severity of a given restriction, the Court considers its specific impact on the applicant, as well as its duration.

a. Impact on the applicant

252. The following factors have been found relevant for the assessment of the questions of how and to what extent the imposed restriction affected the applicant's individual circumstances:

i. Type and nature of restriction

253. A prohibition against leaving one's place of residence is considered to be a far more onerous and severe restriction than a prohibition against leaving a particular country (*Hristov v. Bulgaria* (dec.), 2006). The impact of a refusal to issue a passport is lesser if the individual is able to travel certain countries with his or her identity card, rather than being prevented to leave the country at all (*Cimpaka Kapeta v. Belgium*, 2025, § 77).

254. When assessing a compulsory residence order, the Court has regard to size of the relevant area, its population, the applicant's ability to move around freely within that area, to have a social life and to maintain contact with the outside world (*Pagerie v. France*, 2023, § 202).

255. Regarding an obligation to report regularly to a specified authority, the imposed frequency thereof is a relevant consideration. Such frequency was considered to be low where the applicant was required to report only once a month (*Timofeyev and Postupkin v. Russia*, 2021, § 137). Where the imposed frequency is high, the Court may have regard to the accessibility of the relevant authority and the applicant's mobility difficulties (*Pagerie v. France*, 2023, § 202).

256. The Court considered that the applicant had been subjected to a particularly high degree of interference, where the imposed restrictions combined, for a total of more than 13 months, a prohibition on leaving the municipality where he lived, a requirement to stay at home at night and an obligation to report to the police three times a day on pain of imprisonment (*Pagerie v. France*, 2023, § 197).

257. Where the interference lies in pecuniary sanctions imposed on the applicant, the amount of these is a relevant consideration (*Ananiyevy v. Russia* [Committee], 2021, § 10).

258. Where a restriction concerns entry and stay in a specific area (for example, an armed conflict zone), the size of the area is a relevant factor (*Mørck Jensen v. Denmark*, 2022, § 65).

ii. Scope of restriction

259. The Court has particular regard to the scope of the impugned restriction, notably whether it was:

- a blanket, indiscriminate measure (*Stamose v. Bulgaria,* 2012, § 34; *Bartik v. Russia*, 2006, § 48; *Soltysyak v. Russia,* 2011, § 49; *Berkovich and Others v. Russia*, 2018, § 98); or
- a qualified measure, allowing interim relief to be sought (*Makedonski v. Bulgaria,* 2011, § 40; *Hristov v. Bulgaria* (dec.), 2006; *Iordan Iordanov and Others v. Bulgaria,* 2009, § 73) or

exemption on particular grounds (*Peltonen v. Finland*, Commission decision, 1995; *K.S. v. Finland*, Commission decision, 1995).

260. The GDR's border-policing regime, examined in *Streletz, Kessler and Krenz v. Germany* [GC], 2001, provides an extreme example of a restriction on freedom of movement that was incommensurate in scope with the claimed protective function. The applicants, senior GDR officials who had been convicted for participating in the killing of East Germans attempting to escape to West Germany, argued that the introduction and continued operation of that regime had been necessary to protect national security, public order, public health or morals and the rights and freedoms of others. In the Court's view, it could not be contended that a general measure preventing almost the entire population of a State from leaving its territory had been necessary to protect its security or the other legitimate interests mentioned (*Streletz, Kessler and Krenz v. Germany* [GC], 2001, § 100).

261. In *Stamose v. Bulgaria,* 2012, the Court qualified the restriction imposed on the applicant as "draconian" in the light of the stated aim to prevent breaches of immigration rules. The applicant was automatically prohibited from travelling to any and every foreign country for a period of two years on account of his having committed a breach of the immigration rules of one particular country. The travel ban was imposed by the applicant's home State, which could not be regarded as directly affected by the applicant's infringement, and notwithstanding the fact that the applicant had already suffered the normal consequences thereof, notably his deportation from the third-party country concerned (*Stamose v. Bulgaria,* 2012, §§ 33-34).

262. In *Mørck Jensen v. Denmark*, 2022, the Court dealt with a prohibition, on pain of criminal sanctions, on entry and stay, without permission, in areas in which a terrorist organisation is a party to an ongoing armed conflict. The Court observed that the prohibition was not absolute as persons performing a public function or office with a Danish, foreign or international organisation were explicitly exempted from the provision. Moreover, the applicant could have obtained permission to enter and stay in the relevant area if he had had a meritorious purpose (*Mørck Jensen v. Denmark*, 2022, §§ 65 and 67).

iii. Applicant's interest in exercising freedom of movement

263. In order to decide whether a fair balance was struck between the general and personal interests at stake in a given case, the Court must ascertain whether the applicant had a genuine interest in exercising the right affected by the impugned restriction (*Fedorov and Fedorova v. Russia*, 2005, § 44; *Antonenkov and Others v. Ukraine*, 2005, § 64; *Bulea v. Romania*, 2013, § 62).

264. To this end, the Court verifies whether the applicant applied for an adjustment of the terms of the imposed restriction (*Pagerie v. France*, 2023, § 202; *Fanouni v. France,* 2023, § 62) or whether he/she sought to leave by:

- requesting permission to do so from the competent authorities (*Fedorov and Fedorova v. Russia*, 2005, § 45; *Antonenkov and Others v. Ukraine*, 2005, § 65; *Hristov v. Bulgaria* (dec.), 2006; *Manannikov v. Russia*, 2018, § 64; *Komarova v. Russia*, 2006, § 55; *Makedonski v. Bulgaria,* 2011, § 41; *Pagerie v. France*, 2023, § 202; *Fanouni v. France,* 2023, § 62); or
- challenging the prolonged application of the restriction before the domestic courts (*Timofeyev and Postupkin v. Russia*, 2021, § 135; *Hajibeyli v. Azerbaijan*, 2008, § 65; *Bulea v. Romania*, 2013, § 63; *Iordan Iordanov and Others v. Bulgaria,* 2009, §§ 73-74; *Miażdżyk v. Poland,* 2012, § 37; *Doroshenko v. Ukraine*, 2011, § 55; *Rosengren v. Romania*, 2008, § 39; *Munteanu v. Romania* (dec.), 2015, § 26).

265. A prolonged inability to return to one's place or country of habitual residence and the resulting separation from one's family also point to a genuine interest in exercising freedom of movement

(*Munteanu v. Romania* (dec.), 2015, § 25; *Manannikov v. Russia*, 2018, § 62; *Miażdżyk v. Poland,* 2012, § 39).

266. An applicants' failure to show such a genuine interest by seeking to lift a restriction weighs heavily in the Court's finding that a fair balance has not been upset (*Hristov v. Bulgaria* (dec.), 2006).

267. This is also true in respect of restrictions of a rather lengthy duration (over seven years), such as a travel ban or a prohibition against leaving one's place of residence in the context of criminal proceedings (*Iordan Iordanov and Others v. Bulgaria,* 2009, §§ 73-74; *Doroshenko v. Ukraine*, 2011, § 55; *Komarova v. Russia*, 2006, § 55; *Spiteri v. Malta*, 2025, §§ 92 and 94).

268. In this connection, the Court also takes into account the lack of diligence on the applicant's part either in exhausting the available remedies as soon as possible, or in complying with the requisite formalities in a timely fashion.

269. For example, in *Munteanu v. Romania* (dec.), 2015, the applicant challenged the travel ban almost one year after its start, even though it was extended on a monthly basis by decisions amenable to appeal before the courts. The Court noted that the applicant's failure to contest such decisions any sooner could not be imputable to the authorities (§ 26).

270. Similarly, in *Şandru v. Romania* (dec.), 2014, the applicant, a minor on a school trip, was prevented by the customs authorities from crossing the border on the ground that the court order, which he had produced as a substitute for his father's written consent, though enforceable, did not have the requisite mark "final and irrevocable". The Court did not consider this one-off measure to be disproportionate, noting that the applicant could have obtained the order in due form by applying to the court sufficiently well in advance: notably, he had paid for the school trip around one month before the intended departure, but had waited three weeks before making the urgent application for such an order (§ 26).

iv. Access to interim relief in practice

271. In assessing the impact of a given restriction, an important consideration is whether an applicant was actually granted or denied a request for interim relief, for example, permission to leave the country or place of residence (*Fedorov and Fedorova v. Russia*, 2005, § 44; *Antonenkov and Others v. Ukraine*, 2005, § 64).

272. Repeated denials of such requests, especially on stereotyped grounds, can point to a disproportionate character of the impugned restriction (*Prescher v. Bulgaria*, 2011, § 50; *Pfeifer v. Bulgaria*, 2011, § 56; *Potapenko v. Hungary,* 2011, § 23; *Miażdżyk v. Poland,* 2012, §§ 37 and 41; *Manannikov v. Russia*, 2018, § 64).

273. The fact that an applicant was granted a permission to leave weighs heavily in the Court's finding of no violation of Article 2 of Protocol No. 4, where the duration of the impugned restriction is not excessive and no issue arises regarding a deficient link with its protective function (*Fedorov and Fedorova v. Russia*, 2005, §§ 45-46; *Antonenkov and Others v. Ukraine*, 2005, §§ 65-66; *Munteanu v. Romania* (dec.), 2015, §§ 27-28; *Torresi v. Italy* (dec.), 2019, § 37).

274. At the same time, the fact that an applicant was able to benefit from interim relief is not determinative where the Court has serious doubts as to the justification of the continued application of the impugned measure (*Prescher v. Bulgaria*, 2011, § 50), especially in the absence of the requisite periodic reassessments (*Makedonski v. Bulgaria,* 2011, §§ 41-42 and 44).

275. The Court also has regard to whether the authorities acted with the necessary diligence when examining requests for interim relief. In particular, the period of about six months which the authorities had taken to reply to such a request was considered unreasonable (*Makedonski v. Bulgaria,* 2011, § 43).

v. Lack of notification

276. Lack of timely notification of the impugned restriction to the person concerned is a relevant factor in the proportionality assessment. The Court has examined the situations where the lack of notification had resulted in the applicant being forced to interrupt an undertaken journey (*Komolov v. Russia*, 2020, §§ 12 and 32) or being unable to challenge the imposed measure well in advance before an intended trip (*Ignatov v. Bulgaria*, 2009, §§ 38-39).

277. The lack of notification of a restriction or its extension is also is difficult to reconcile with the legal certainty principle, which is inherent in the Convention (*Riener v. Bulgaria,* 2006, § 129).

vi. Specific individual circumstances

278. The Court pays particular attention to the following consequences of, or issues arising in connection with, the application of a restriction on an applicants' freedom of movement:

- disruption to family and/or professional life and financial hardship resulting from prolonged inability to return to:
  - one's home country (*Miażdżyk v. Poland,* 2012, §§ 39 and 41; *Munteanu v. Romania* (dec.), 2015, § 25);
  - the place of habitual residence (*Manannikov v. Russia*, 2018, § 62);
  - a foreign country of habitual residence (*Riener v. Bulgaria,* 2006, § 126; *Prescher v. Bulgaria*, 2011, § 50; *Pfeifer v. Bulgaria*, 2011, § 56; *Milen Kostov v. Bulgaria*, 2013, § 23);
- an inability to visit ailing or dependent relatives (*Bartik v. Russia*, 2006, §§ 47-48; *Berkovich and Others v. Russia*, 2018, § 96; *Manannikov v. Russia*, 2018, § 64);
- an inability to attend a funeral of a close relative (*Berkovich and Others v. Russia*, 2018, § 96*; Potapenko v. Hungary,* 2011, § 23);
- an ability to access health care or a specific required medical treatment (*Folnegović v. Croatia* (dec.), 2017; *Miażdżyk v. Poland,* 2012, § 39) or health related difficulties (*Pagerie v. France*, 2023, § 202);
- a foreign national being afraid to contact the authorities of his country of origin which he had fled with the intention of seeking asylum abroad (*L.B. v. Lithuania*, 2022, §§ 90, 93-96).

279. In order to obtain an overall view of the impact of the impugned measure, the Court may also have regard to the applicant's circumstances in the period preceding his or her application, for example:

- pre-trial detention (*Miażdżyk v. Poland,* 2012, § 34);
- prolonged inability to travel abroad due to conditions of employment (*Bartik v. Russia*, 2006, § 51).

vii. Alleged waiver of freedom of movement

280. The Court's approach is to weigh the applicant's alleged waiver of rights when considering the proportionality of the impugned restriction rather than negating any interference with the relevant right *(Golub v. the Republic of Moldova and Russia* [Committee], 2021, § 53).

281. Where a respondent Government claims that an applicant has freely consented to the impugned restriction, the Court verifies whether the alleged waiver is unambiguous and fully consensual (*Berkovich and Others v. Russia*, 2018, § 97).

282. For instance, in *Berkovich and Others v. Russia*, 2018, the Court rejected the argument that, by taking up employment with access to "State secrets", the applicants had *ipso facto* consented to a five-year ban on international travel to be applied upon its termination. The Court took into account

the following factors: the applicants had had no influence on the terms of their employment; while they had been given a pay rise, it was on account of their enhanced responsibility for handling confidential information and not as compensation for their future inability to travel abroad; nor had they been eligible for any such compensation after the termination of their employment as long as the impugned restriction was in force (§ 97).

283. It is not clear, however, whether the validity of the waiver would be the primary concern where the impugned restriction, in any event, lacks appropriate justification due to a deficient link with its purported protective function (*Berkovich and Others v. Russia*, 2018, § 97; *Soltysyak v. Russia,* 2011, § 53).

284. The Court will not take any such waiver into consideration where the impugned restriction does not comply with the lawfulness requirement (*Golub v. the Republic of Moldova and Russia* [Committee], 2021, § 61).

b. Duration

285. When assessing the severity of a restriction, the Court has particular regard to its duration (*Nikiforenko v. Ukraine*, 2010, § 56; *Ivanov v. Ukraine*, 2006, § 90; *Diamante and Pelliccioni v. San Marino*, 2011, § 210; *Șandru v. Romania* (dec.), 2014, § 26; *Pagerie v. France*, 2023, § 195).

286. The necessity for maintaining a given restriction will inevitably diminish with the passage of time (*Luordo v. Italy*, 2003, § 96; *Rosengren v. Romania*, 2008, § 39; *Manannikov v. Russia*, 2018, § 63).

287. Even where a restriction on the individual's freedom of movement was initially warranted, maintaining it automatically over a lengthy period of time may become a disproportionate measure violating the individual's rights (*Riener v. Bulgaria,* 2006, § 121; *Battista v. Italy*, 2014, § 41; *Ignatov v. Bulgaria*, 2009, § 36; *Makedonski v. Bulgaria,* 2011, § 45).

288. In some cases, the mere duration of the restriction can be sufficient to conclude that it was disproportionate (*Luordo v. Italy*, 2003, § 96; *Ivanov v. Ukraine*, 2006, § 96).

289. In most cases, the comparative duration of the restriction, in itself, cannot be taken as the sole basis for determining whether a fair balance was struck between the general interest and the applicant's personal interest in enjoying freedom of movement. This issue must be assessed by having regard to other relevant factors and according to all the special features of the case (*Hajibeyli v. Azerbaijan,* 2008*,* § 63; *Miażdżyk v. Poland,* 2012, § 35; *Popoviciu v. Romania*, 2016, § 91).

290. The weight of the duration factor is less important in cases concerning restrictions that lack adequate justification and/or are maintained automatically (*Stamose v. Bulgaria,* 2012, § 33).

i. Calculating the period to be taken into consideration

291. The Court is competent *ratione temporis* to examine the period after the date on which Protocol No. 4 came into force in respect of the respondent State. The Court may nevertheless have regard to facts and decisions taken prior to that date, in so far as they remain relevant thereafter (*Makedonski v. Bulgaria,* 2011, §§ 32 and 44; *Riener v. Bulgaria,* 2006, §§ 95 and 120; *Hajibeyli v. Azerbaijan*, 2008, §§ 62 and 67).

292. When assessing the overall duration of the impugned restriction, the Court does not exclude the periods where the applicant was able to exercise his or her freedom of movement unlawfully, by circumventing the imposed measure (*Rosengren v. Romania*, 2008, § 38; *Ivanov v. Ukraine*, 2006, §§ 83 and 93-94).

293. Nor does the Court exclude from the overall duration the periods where the impugned restriction was temporarily lifted, for instance, the period between the discontinuation and subsequent resumption of the underlying proceedings or the period between the end of one set of the relevant proceedings and the institution of a separate set. The Court has examined situations

where such periods ranged from three days to nearly six months. The Court considered that it would appear artificial to split the total period of the restrictive measure into several parts for the purpose of the Convention proceedings, and notably for the application of the six-month time-limit under Article 35 § 1 of the Convention (*Ivanov v. Ukraine*, 2006, §§ 92-94; *Manannikov v. Russia*, 2018, § 61).

ii. Restrictions of an automatic nature and/or with deficient link to protective function

294. Duration is not the salient point when it comes to restrictions with a clearly deficient link to their purported protective function, for instance, restrictions that are maintained solely due to the authorities' inactivity or lack of cooperation (*Napijalo v. Croatia*, 2003, § 80; *Vito Sante Santoro v. Italy*, 2004, § 45; *Ignatov v. Bulgaria*, 2009, § 38).

295. For example, restrictions that had been maintained only due to the belated notification of the decisions revoking them were found to be in breach of Article 2 of Protocol No. 4, even though the impugned delays did not exceed six months (*Raimondo v. Italy*, 1994, § 40; *Villa v. Italy*, 2010, § 51).

296. In a similar vein, duration is not considered to be the main issue when the Court deals with restrictions that are imposed and maintained automatically, without the requisite periodic reassessments of their justification and proportionality.

297. The Court has examined automatic restrictions that were applied for a specified period (*Bartik v. Russia*, 2006, § 49; *Soltysyak v. Russia*, 2011, § 52; *Berkovich and Others v. Russia*, 2018, § 96; *Nalbantski v. Bulgaria*, 2011, § 66; *Milen Kostov v. Bulgaria*, 2013, § 17; *Sarkizov and Others v. Bulgaria*, 2012, § 67; *Vlasov and Benyash v. Russia*, 2016, § 36; *Stamose v. Bulgaria*, 2012, § 36).

298. The Court has also considered restrictions of indefinite duration, notably restrictions that were applied automatically for the entire duration of the underlying proceedings (*Riener v. Bulgaria*, 2006, §§ 120-128; *Battista v. Italy*, 2014, §§ 43-48; *Gochev v. Bulgaria*, 2009, §§ 51-57; *Kerimli v. Azerbaijan*, 2015, §§ 51-56; *Földes and Földesné Hajlik v. Hungary*, 2006, §§ 35-36; *A.E. v. Poland*, 2009, §§ 48-49; *Bessenyei v. Hungary*, 2008, § 23; *Potapenko v. Hungary*, 2011, §§ 23-24; *Makedonski v. Bulgaria*, 2011, § 44; *Stetsov v. Ukraine*, 2021, §§ 30-32).

299. When examining this category of cases, the Court has dealt with restrictions that lasted for periods ranging from one to over 10 years. However, while the Court may note the actual duration of the impugned restrictions, the factors relating to their justification in light of the intended protective function or their impact on the applicant's individual circumstances carry much more weight in its analysis leading to the finding of a breach of Article 2 of Protocol No. 4 (*Stamose v. Bulgaria*, 2012, §§ 33-36; *Riener v. Bulgaria*, 2006, §§ 120-128; *Battista v. Italy*, 2014, §§ 43-48; *Gochev v. Bulgaria*, 2009, §§ 51-57; *Kerimli v. Azerbaijan*, 2015, §§ 51-56).

300. For instance, in *Bessenyei v. Hungary*, 2008, the contested travel ban lasted only two years. However, that duration had no bearing on the Court's finding that the restriction in issue amounted to a blanket measure of indefinite duration, which ended only by virtue of an intervening change in the legislation.

iii. Excessive duration entailing a breach of Article 2 of Protocol No. 4

301. Excessive duration of a restriction can be sufficient, on its own, to reach the conclusion that it was disproportionate to the legitimate aim it sought to achieve (*Manannikov v. Russia*, 2018, § 62; *Ivanov v. Ukraine*, 2006, § 96; *Luordo v. Italy*, 2003, § 96).

302. However, even in such cases, the Court tends to reinforce this conclusion by referring to other relevant factors relating to the conduct and object of the underlying proceedings (*Luordo v. Italy*, 2003, § 96; *Ivanov v. Ukraine*, 2006, § 90; *Pokhalchuk v. Ukraine*, 2010, § 96).

303. The threshold of excessiveness depends on the type of the impugned restriction and the nature of the underlying proceedings (*Hristov v. Bulgaria* (dec.), 2006).

304. For instance, the length of a prohibition against leaving one's place of residence was found to be in itself disproportionate where it exceeded:

- 7 years and 5 months in the context of bankruptcy proceedings (*Luordo v. Italy*, 2003, § 92; *Goffi v. Italy*, 2005, § 20; *Bassani v. Italy*, 2003, § 24; *Gasser v. Italy*, 2006, §§ 30-31; *Shaw v. Italy*, 2009, § 16; *Bottaro v. Italy*, 2003, § 54);
- 8 years and 8 months in the context of criminal proceedings (*Ivanov v. Ukraine*, 2006, § 96; *Pokhalchuk v. Ukraine*, 2010, § 96; *Nikiforenko v. Ukraine*, 2010, § 59).

iv. Compliance with domestic statutory time-limits

305. Non-observance of domestic statutory time-limits does not automatically upset the fair balance to be maintained between the interests at stake (*S.M. v. Italy* (dec.), 2013, § 27).

306. In *S.M. v. Italy* (dec.), 2013, the applicant appealed against a restriction, imposed for a period of two years. While it took the domestic court eight months, instead of the statutory thirty days, to rule on the appeal, the Court did not consider this situation to be disproportionate. In any event, the restriction was lifted well before the end of the period initially set.

307. The fact that the domestic courts have diligently examined an applicant's challenge against an impugned restriction and within the statutory time-limits can lean in favour of finding no disproportionality in a given case (*Ioviţă v. Romania* (dec.), 2017, § 74).

308. This is also true where the domestic authorities comply with the time-limits in this context when issuing requisite travel documents. At the same time, compliance with statutory time-limits does not dispense the Court from ascertaining whether the period in question was not objectively too long (*Lolova and Popova v. Bulgaria* (dec.), 2015, § 48).

v. One-off restrictions and restrictions of short duration

309. Where a restriction is sufficiently justified in the light of its purported protective function, its one-off nature (*Șandru v. Romania* (dec.), 2014, § 26) or short duration can lean strongly against finding a breach of Article 2 of Protocol No. 4 (*Diamante and Pelliccioni v. San Marino*, 2011, § 214; *Popoviciu v. Romania*, 2016, § 97).

310. Indeed, restrictions that were justified and lasted less than six months have been found to be proportionate (*Diamante and Pelliccioni v. San Marino*, 2011, § 214; *Popoviciu v. Romania*, 2016, § 97; *Cipriani v. Italy* (dec.), 2010; *Pop Blaga v. Romania* (dec.), 2012; *Ioviţă v. Romania* (dec.), 2017, § 74; *Fanouni v. France*, 2023, § 54).

311. At the same time, the one-off nature of a given restriction or its short duration does not stop the Court from considering other factors relevant for the assessment of its proportionality and the quality of the domestic review (*Șandru v. Romania* (dec.), 2014, § 26; *Diamante and Pelliccioni v. San Marino*, 2011, § 213; *Popoviciu v. Romania*, 2016, §§ 92-95).

312. For instance, in *Komolov v. Russia*, 2020, a travel ban, which was imposed for a period of six months, was found to be disproportionate in view of its insufficient justification by the domestic authorities and the superficial character of the judicial review (§§ 31-33).

vi. Duration found acceptable in the absence of concerns regarding other factors

313. In the following cases, no specific issue arose with regard to the justification of the restrictions complained of, the quality of the domestic assessment or the excessive impact on the applicant's

individual circumstances. In these circumstances, the Convention organs did not consider the duration of the impugned restrictions problematic:

- a prohibition against leaving one's place of residence in the context of:
  - bankruptcy proceedings – lasting less than 3 years and 9 months (*Di Carlo et Bonaffini v. Italy* (dec.), 2006; *Bova v. Italy* (dec.), 2004; *Campagnano v. Italy*, 2006, § 38);
  - expulsion – lasting nearly 2 years and 6 months (*Kenane v. France*, Commission decision, 1992);
  - criminal proceedings –
    - not exceeding 4 years and 10 months (*Fedorov and Fedorova v. Russia*, 2005, §§ 45-46; *Antonenkov and Others v. Ukraine*, 2005, §§ 65-66);
    - lasting up to 7 years and 2 months, where no genuine interest to leave had been shown (*Doroshenko v. Ukraine*, 2011, § 55; *Komarova v. Russia*, 2006, § 55);
- a compulsory residence order as a measure of criminal prevention – lasting around 2 years and 10 months (*Ciancimino v. Italy*, Commission decision, 1991);
- special supervision including a prohibition against leaving home at night and an obligation to report once a month to a specified authority – imposed for 6 years for the purposes of crime prevention (*Timofeyev and Postupkin v. Russia*, 2021, §§ 136-137);
- special supervision including an obligation to report to the police once a week – imposed for over one year and one month (*Chereches v. Romania* [Committee], 2021, § 43);
- restrictions imposed for thirteen months in the context of a terrorist threat and including a prohibition on leaving the municipality where the applicant lived, a requirement to stay at home at night and an obligation to report to the police three times a day on pain of imprisonment (*Pagerie v. France*, 2023, §§ 197 and 203);
- a prohibition on leaving home at night during week-days and the whole day during week-ends, coupled with permission to attend the work place during week-days – measure imposed in the context of criminal proceedings and lasting around 1 year and 4 months (*Trijonis v. Lithuania* (dec.), 2005)
- a travel ban in the context of:
  - debt recovery – around 2 years (*Torresi v. Italy* (dec.), 2019, § 36);
  - criminal proceedings –
    - not exceeding 6 years and 5 months (*Bulea v. Romania*, 2013, § 62; *Folnegović v. Croatia* (dec.), 2017; *Munteanu v. Romania* (dec.), 2015, § 26);
    - lasting up to 7 years and 2 months, where no genuine interest to leave had been shown (*Hristov v. Bulgaria* (dec.), 2006; *Iordan Iordanov and Others v. Bulgaria*, 2009, §§ 73-74);
    - lasting for over 7 years, where for the applicant was charged with serious crimes necessitating international cooperation, in view of the applicant's history of being uncooperative, absconding and trying to evade justice as well as the fact that he had not sought permission to leave once after two years (*Spiteri v. Malta*, 2025, §§ 91-94);
- a prohibition against approaching an abortion clinic imposed on an anti-abortion campaigner for a period of 6 months (*Van den Dungen v. the Netherlands*, Commission decision, 1995);
- a prohibition to enter a specified area of a city in connection with the G8 summit, lasting 5 days (*Bigliazzi and Others v. Italy* (dec.), 2008).

VI. The “public interest” test under paragraph 4

314. The “public interest” test under paragraph 4 applies only to the restrictions on the rights to freedom of movement and freedom to choose one’s residence set out in paragraph 1 of Article 2 of Protocol No. 4, imposed “in particular areas” within a State’s territory.

315. The term "area", as used in paragraph 4, does not refer to any definite geographical or administrative unit. The meaning of this provision is that the restrictions in question must be localised within a well-defined area (Explanatory Report to Protocol No. 4, § 18).

316. The applicability of paragraph 4 of Article 2 of Protocol No. 4 is not limited to situations of an acute and temporary emergency (*Garib v. the Netherlands* [GC], 2017, § 109).

317. The “public interest” test comprises two steps: first, whether the restriction served the “public interest” and, second, whether it was “justified in a democratic society” (*Garib v. the Netherlands* [GC], 2017, §§ 115-116 and 136-141).

318. So far, the Court has examined very few cases under paragraph 4 of Article 2 of Protocol No. 4 (*Garib v. the Netherlands* [GC], 2017; *Olivieira v. the Netherlands*, 2002; *Landvreugd v. the Netherlands*, 2002).

A. Whether a restriction served the “public interest”

319. The fourth paragraph was added to Article 2 of Protocol No. 4 to provide for restrictions for reasons of “economic welfare” (*Garib v. the Netherlands* [GC], 2017, § 109).

320. The Court acknowledged the public interest character of the restrictions that were intended to:

- reverse the social decline of impoverished inner-city areas by limiting the influx of new underprivileged inhabitants (*Garib v. the Netherlands* [GC], 2017, §§ 115-116);
- tackle an emergency situation in certain city areas, caused by the trafficking in and the overt use of hard drugs in public, by imposing individual prohibition orders (*Olivieira v. the Netherlands*, 2002, § 61; *Landvreugd v. the Netherlands*, 2002, § 71).

B. Whether a restriction was “justified in a democratic society”

321. In this context the Court ascertains whether an impugned measure was disproportionate and whether the domestic authorities overstepped their margin of appreciation (*Garib v. the Netherlands* [GC], 2017, §§ 144, 157 and 165; *Olivieira v. the Netherlands*, 2002, §§ 64-65; *Landvreugd v. the Netherlands*, 2002, §§ 71-74).

1. Issues specific to restrictions stemming from a general policy

a. Margin of appreciation

322. In matters of general policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight. The margin of appreciation available to the legislature in implementing social and economic policies should be a wide one: the Court will respect the legislature’s judgment as to what is in the “public” or “general” interest unless that judgment is manifestly without reasonable foundation (*Garib v. the Netherlands* [GC], 2017, § 137).

323. The legislature’s margin in principle extends both to its decision to intervene in the subject area and, once having intervened, to the detailed rules it lays down in order to achieve a balance between the competing public and private interests. However, this does not mean that the solutions reached

by the legislature are beyond the scrutiny of the Court. It falls to the Court to examine carefully the arguments taken into consideration during the legislative process and leading to the choices that have been made by the legislature and to determine whether a fair balance has been struck between the competing interests of the State and those directly affected by those legislative choices (*Garib v. the Netherlands* [GC], 2017, § 138).

324. The central question under paragraph 4 of Article 2 of Protocol No. 4 is not whether different rules might have been adopted, but whether, in striking the balance at the point at which it did, the legislature exceeded the margin of appreciation afforded to it under that Article (*Garib v. the Netherlands* [GC], 2017, § 157).

b. Factors relevant for assessing legislative and policy framework

325. To the extent that it is called upon to assess socio-economic policy choices, the Court should, in principle, do so in light of the situation as it presents itself to the authorities at the material time and not after the event and with the benefit of hindsight (*Garib v. the Netherlands* [GC], 2017, § 147).

326. In this assessment, the Court relies on the following considerations:

- whether the policy choices in issue, at the time they were made, were appropriate for achieving the stated purposes (*Garib v. the Netherlands* [GC], 2017, § 147);
- the quality of the domestic decision-making process (*Garib v. the Netherlands* [GC], 2017, § 150);
- whether adequate provision was made for the rights and interests of the affected persons, notably through periodic review, procedural safeguards and exemption clauses in case of individual hardship (*Garib v. the Netherlands* [GC], 2017, §§ 151-156);
- whether the impugned policy choices produced disproportionate negative effects at the level of the individuals affected (*Garib v. the Netherlands* [GC], 2017, §§ 144 and 148).

327. In *Garib v. the Netherlands* [GC], 2017, the Court examined a policy imposing conditions concerning length of residence and type of income on persons wishing to settle in certain inner-city areas affected by impoverishment and social problems. In accordance with the impugned policy, persons who, like the applicant, had not been resident in the municipality for six years, and whose only income was from social-security benefits, were denied housing permits by the authorities. The Court observed that the relevant legislative proposal had been properly scrutinised, the legislation was not "manifestly without reasonable foundation", its implementation had been kept under periodic review and the authorities had considered the measures adopted to have been effective in dealing with the stigmatisation of the areas concerned. Regarding the question of proportionality, the Court noted that no person was deprived of housing or forced to leave one's dwelling; the policy, subject to temporal and geographical limitation, could be applied only if sufficient alternative housing remained available locally for ineligible persons and the six-years' waiting period to qualify for a housing permit in the targeted areas was not excessive. Moreover, derogation from the length-of-residence requirement was allowed in individual cases where strict application of it would be excessively harsh. Finally, procedural safeguards included full judicial review. On this basis, the Court did not find that the legislator had exceeded the margin of appreciation afforded to it.

2. Factors relevant for assessing individual burden

328. In examining whether an applicant suffered disproportionate hardship, the Court has regard to the following elements:

- the applicant's personal conduct, including, where relevant, the existence of a threat to public order (*Garib v. the Netherlands* [GC], 2017, § 158);

- specific impact on the applicant's individual circumstances in view of his or her particular needs, including family requirements and financial resources (*Garib v. the Netherlands* [GC], 2017, § 161);
- whether the applicant had a genuine interest in exercising the right affected by the impugned restriction (*Garib v. the Netherlands* [GC], 2017, §§ 162-164).

329. The applicant's personal conduct, however virtuous, cannot be decisive on its own when weighed in the balance against the public interest served by a general policy (*Garib v. the Netherlands* [GC], 2017, § 158).

330. An unspecified personal preference for which no justification is offered cannot override public decision-making, in effect reducing the State's margin of appreciation to nought (*Garib v. the Netherlands* [GC], 2017, § 166).

331. In *Garib v. the Netherlands* [GC], 2017, the Court was called upon to determine whether the applicant's ineligibility for residence in certain designated impoverished areas had amounted to such disproportionate hardship that her interest should outweigh the general interest in reversing social decline in those areas, that was served by the consistent application of the exclusion rule affecting her. The applicant, who was already resident in such an area, had been denied a permit to move to a different apartment in that same area. In this context, the Court drew upon its environmental protection case-law under Article 8 and examined the suitability of the accommodation available to the applicant in view of her particular needs. In the first place, it had not been shown that her continued residence in the apartment, which she had rented in the designated area, constituted actual hardship for her and her children. Nor had the dwelling outside that area, to where she had eventually moved, been shown to be inadequate or inconvenient. Secondly, the Court attached importance to the fact that the applicant had not given any good reason for wishing to remain in the designated area. Nor had she explained her reasons for moving elsewhere not long before she became eligible for residence in the area concerned. Moreover, once eligible, she had not expressed any wish to move back. In other words, she had neither justified her preference for the designated area, nor displayed sufficient interest in residing therein. The denial of permit complained of had therefore not amounted to disproportionate hardship in the applicant's individual circumstances, so as to entail a breach of Article 2 of Protocol No. 4 (*Garib v. the Netherlands* [GC], 2017, §§ 160-165).

332. In *Olivieira v. the Netherlands*, 2002, and *Landvreugd v. the Netherlands*, 2002, the Court examined orders prohibiting the applicants, who were drug addicts, from entering a specified area in a city for 14 days, in response to the emergency situation caused by significant drugs-related activity. The Court did not find these measures disproportionate, attaching significance to the following elements: in the first place, prior to imposing the impugned restrictions, the mayor had issued several prohibition orders for eight hours and warned the applicants that 14-day prohibition orders would be imposed if they used hard drugs in public again in the near future. Nevertheless, the applicants had returned each time to the area to use drugs; secondly, the applicants did not live or work in the area concerned and provision had been made for one of them to enter the area with impunity for the purpose of collecting his social-security benefits and his mail. The restrictions in issue had therefore not amounted to a violation of Article 2 of Protocol No. 4 (*Olivieira v. the Netherlands*, 2002, § 64; *Landvreugd v. the Netherlands*, 2002, § 72).

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The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (http://hudoc.echr.coe.int) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), and of the Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties. All the language versions available for cited cases are accessible via the 'Language versions' tab in the HUDOC database, a tab which can be found after you click on the case hyperlink.

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