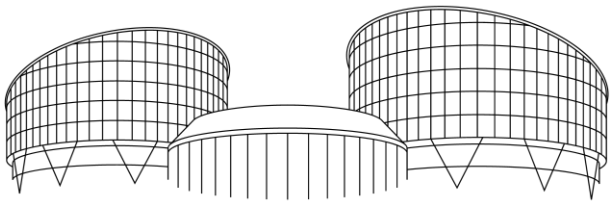

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SOLTYSYAK v. RUSSIA

(Application no. 4663/05)

JUDGMENT

STRASBOURG

10 February 2011

FINAL

20/06/2011

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

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

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 18 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 4663/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Sergey Timofeyevich Soltysyak ("the applicant"), on 18 January 2005.

2. The applicant was represented by Ms M. Voskobitova, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

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

4. On 3 September 2007 the President of the First Section decided to give notice of the application to the Government.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1958. He lived at the Baikonur space launch site in Kazakhstan which is rented by, and under the administration of, the Russian Federation and is under joint Kazakh-Russian jurisdiction.

A. Refusal to issue a travel document

7. From December 1983 to January 2004 the applicant served as a military officer in the Soviet (later Russian) Army at the Baikonur site. On 8 April 1986 he received security clearance and was granted access to information concerning rocket test launches, including the military unit responsible, launch parameters and test results, which were classified as top secret.

8. On 1 September 1999 the applicant signed a standard contract concerning access to State secrets, which provided in the relevant part as follows:

> "Pursuant to the State Secrets Act and other normative regulations concerning the protection of State secrets, of which I am aware, I take upon myself an obligation to keep confidential any information constitutive of State secrets and accept a temporary restriction on my rights which may affect:
>
> - the right to go abroad for a period of five years ..."

9. By an order of 21 May 2004, the applicant retired from the military upon reaching the age limit. His service travel document was taken away from him and destroyed.

10. On 24 November 2004 the applicant asked the passports and visas service of the Baikonur police department to issue him with a travel passport (*заграничный паспорт*).

11. On 11 May 2005 the passports and visas service sent him a notice which stated that his right to leave the Russian Federation had been temporarily suspended until August 2009 "on the basis of recommendation no. 9/196 of 16 February 2005 and the decision of the command of military unit 11284". According to the information submitted by the Government, the applicant was last exposed to secret information on 16 December 2003 and the restriction on his right to travel was due to expire on 16 December 2008.

12. The applicant complained to a court. He submitted that, lacking a travel document, he was unable to return to Russia from Kazakhstan or go to the Kaliningrad Region, which is the Russian exclave between Poland and Lithuania on the Baltic Sea.

13. On 24 May 2005 the Military Court of the 26th Garrison rejected the applicant's complaint. It found that the refusal to issue a travel passport had been lawful because the applicant had previously had knowledge of State secrets during his service in the military. Access to State secrets had not been granted to him against his will, and he had received a pay rise on that ground. Furthermore, the applicant did not need a travel document to return to Russia or to go to the Kaliningrad Region, his identity document (*общегражданский паспорт*) was sufficient for these purposes.

14. On 1 July 2005 the Third Circuit Military Court upheld, on an appeal by the applicant, the judgment of 24 May 2005.

B. Housing dispute

15. The applicant sued the military commander of the Russian Space Forces, claiming that he should have received full title to his service flat on his retirement.

16. On 5 October 2004 the Military Court of the 26th Garrison dismissed the action as having no grounds in domestic law. On 10 December 2004 the Third Circuit Military Court upheld the judgment on appeal.

II. RELEVANT DOMESTIC LAW

A. Entry and Leave Procedures Act (no. 114-FZ of 15 August 1996)

17. Section 2 provides that the right of a Russian citizen to leave the Russian Federation may only be restricted on the grounds of, and in accordance with, the procedure set out in the Act. Section 15(1) provides that the right of a Russian national to leave the Russian Federation may be temporarily restricted if he or she has had access to especially important or top-secret information classified as a State secret and has signed an employment contract providing for a temporary restriction on his or her right to leave the Russian Federation. In such cases the restriction is valid until the date set out in the contract, but for no longer than five years from the date the person last had access to especially important or top-secret information. The Interagency Commission for the Protection of State Secrets can extend this period up to a maximum of ten years.

B. The State Secrets Act (no. 5485-1 of 21 July 1993)

18. The granting of access to State secrets presupposes the consent of the person concerned to partial and temporary restrictions on his or her rights in accordance with section 24 of the Act (section 21).

19. The rights of persons who have been granted access to State secrets may be restricted. The restrictions may affect their right to travel abroad during the period stipulated in the work contract, their right to disseminate information about State secrets and their right to respect for their private life (section 24).

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

20. The relevant part of Opinion no. 193 (1996) on Russia's request for membership of the Council of Europe, adopted by the Parliamentary Assembly on 25 January 1996 (7th Sitting), reads as follows:

> "10. The Parliamentary Assembly notes that the Russian Federation shares fully its understanding and interpretation of commitments entered into ... and intends:
>
> ...
>
> xv. to cease to restrict – with immediate effect – international travel of persons aware of state secrets, with the exception of those restrictions which are generally accepted in Council of Europe member States ..."

IV. SITUATION IN THE COUNCIL OF EUROPE MEMBER STATES

21. The laws of the founding members of the Council of Europe have not restricted the right of their nationals to go abroad for private purposes since the inception of the organisation. The Schengen Agreement, which was originally signed on 14 June 1985 by five States and has, to date, been implemented by twenty-five States, has removed border posts and checks in much of the Western part of Europe and abolished any outstanding restrictions on European travel.

22. Many other Contracting States, including, in particular, the former Socialist countries, repealed restrictions on international travel by persons having knowledge of "State secrets", a common legacy of the Socialist regime, during the process of democratic transition (for example, Estonia, Georgia, Hungary, Latvia, Lithuania and Poland). Among the Council of Europe States, with the exception of Russia, Azerbaijan was the last to abolish such a restriction in December 2005. Nevertheless, three member States (Armenia, Azerbaijan and Ukraine) provide for temporary restrictions on permanent emigration – but not on international travel for private purposes – for persons who have had access to State secrets.

V. RELEVANT UNITED NATIONS DOCUMENTS

23. Article 12 of the International Covenant on Civil and Political Rights ("ICCPR"), to which the Russian Federation is a party, defines the right to freedom of movement in the following terms:

> "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. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant."

24. General Comment No. 27: Freedom of movement (Article 12), adopted by the Human Rights Committee under Article 40 § 4 of the ICCPR on 2 November 1999 (CCPR/C/21/Rev.1/Add.9), reads as follows:

"1. Liberty of movement is an indispensable condition for the free development of a person ...

2. The permissible limitations which may be imposed on the rights protected under article 12 must not nullify the principle of liberty of movement, and are governed by the requirement of necessity provided for in article 12, paragraph 3, and by the need for consistency with the other rights recognized in the Covenant.

...

8. Freedom to leave the territory of a State may not be made dependent on any specific purpose or on the period of time the individual chooses to stay outside the country. Thus travelling abroad is covered, as well as departure for permanent emigration ...

...

9. ... Since international travel usually requires appropriate documents, in particular a passport, the right to leave a country must include the right to obtain the necessary travel documents. The issuing of passports is normally incumbent on the State of nationality of the individual. The refusal by a State to issue a passport or prolong its validity for a national residing abroad may deprive this person of the right to leave the country of residence and to travel elsewhere ...

...

11. Article 12, paragraph 3, provides for exceptional circumstances in which rights under paragraphs 1 and 2 may be restricted ...

...

14. Article 12, paragraph 3, clearly indicates that it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.

...

16. States have often failed to show that the application of their laws restricting the rights enshrined in article 12, paragraphs 1 and 2, are in conformity with all requirements referred to in article 12, paragraph 3. The application of restrictions in any individual case must be based on clear legal grounds and meet the test of

necessity and the requirements of proportionality. These conditions would not be met, for example, if an individual were prevented from leaving a country merely on the ground that he or she is the holder of State secrets ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 4

25. The applicant complained under Article 3 § 2 of Protocol No. 4, Article 2 of Protocol No. 4 and Article 14 of the Convention that, following the termination of his employment in 2004, he could not return to Russia from the Baikonur launch site in Kazakhstan or visit his ailing father or his mother's grave in Ukraine or go to any other visa-free CIS country, owing to the absence of a travel document. The Court considers that this complaint falls to be examined from the standpoint of Article 2 §§ 2 and 3 of Protocol No. 4 which provides as follows:

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

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

A. Admissibility

1. Compatibility ratione materiae

26. Referring to the applicant's status as a military serviceman and to the fact that the matter was examined in military courts, the Government claimed that the two conditions established by the Court for excluding the protection embodied in Article 6 of the Convention had been fulfilled (here they cited *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, ECHR 2007-IV) and that the complaint was therefore incompatible *ratione materiae* with the provisions of the Convention.

27. The applicant maintained that he had been affected by the restriction.

28. The Court observes that the criteria elaborated in the case of *Vilho Eskelinen* only concerned the applicability of Article 6, without prejudice to any other Convention rights. Article 2 § 2 of Protocol No. 4 guarantees the right to leave the country to everyone and it does not make a

distinction between civilians and military servicemen. Accordingly, the Government's objection is without merit and must be rejected.

2. Exhaustion of domestic remedies

29. The Government submitted that the applicant had not exhausted domestic remedies because he had not asked the Interagency Commission for the Protection of State Secrets to review the validity of the restriction on his right to travel.

30. The applicant replied that he had exhausted domestic remedies because he had brought judicial proceedings to challenge the restriction.

31. The Court notes that an application to the Interagency Commission was, in fact, no more than a petition submitted to the supervisory organ with the suggestion to make use of its powers if it sees fit to do so. If proceedings before the Commission are taken, they take place exclusively between the Commission and the officials concerned. The applicant would not be a party to such proceedings and would only be informed of the Commission's decision. It follows that an application to the Interagency Commission does not give the person employing it a personal right to the exercise by the State of its supervisory powers, and that such an appeal does not therefore constitute an effective remedy within the meaning of Article 35 of the Convention (see *Belevitskiy v. Russia*, no. 72967/01, §§ 59-60, 1 March 2007, and *Horvat v. Croatia*, no. 51585/99, § 47, ECHR 2001-VIII).

32. Further, the Court observes that an application to the Commission was not a pre-requisite for challenging the refusal to issue a travel document before a court of general jurisdiction. The applicant instituted judicial proceedings, in which the Russian courts at two levels of jurisdiction took cognisance of the merits of his complaint and rejected it as unfounded. The Court finds that since the domestic courts examined the substance of the applicant's complaint, he cannot be said to have failed to exhaust domestic remedies (compare, for instance, *Dzhavadov v. Russia*, no. 30160/04, § 27, 27 September 2007).

33. It follows that the Government's objection as to the alleged non-exhaustion of domestic remedies must also be rejected.

3. Conclusion as to the admissibility

34. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Existence of an interference

35. The Government accepted that there had been an interference with the applicant's right to leave his own country. They submitted, however, that an identity document would have been sufficient for the applicant to travel to Ukraine, Kyrgyzstan, Tajikistan, and Belarus. He could also have travelled by air or by sea to the Kaliningrad exclave. He did not need a travel document to visit his relatives or return to Russia from Kazakhstan.

36. The applicant emphasised that he had had a vital interest in obtaining a travel document: his father and brother lived in Kiev, his mother was buried in Ukraine, and his aunt and uncle lived in Riga, Latvia, where the applicant had been born.

37. The Court reiterates that in accordance with its established case-law, the right of freedom of movement as guaranteed by paragraphs 1 and 2 of Article 2 of Protocol No. 4 is intended to secure to any person a right to liberty of movement within a territory and to leave that territory, which implies a right to leave for any country of the person's choice to which he may be admitted. In particular, a measure by means of which an individual is denied the use of a document which, had he so wished, would have permitted him to leave the country, amounts to an interference within the meaning of Article 2 of Protocol No. 4 (see *Bartik v. Russia*, no. 55565/00, § 36, ECHR 2006-XV; *Timishev v. Russia* (dec.), nos. 55762/00 and 55974/00, 30 March 2004; and *Napijalo v. Croatia*, no. 66485/01, § 68, 13 November 2003). While the applicant was able to cross the Russian-Ukrainian or Russian-Kazakh border with his internal identity document, he needed a travel passport to go to virtually any other country in the world or, for example, to go by land to the Kaliningrad Region through Lithuanian territory.

38. Following the termination of the applicant's employment in 2004, his service passport which had previously enabled him to travel abroad was taken away from him and destroyed (see paragraph 9 above). As the applicant's request for a travel document was refused in the subsequent period and until at least August 2009, the Court finds that there has been an interference within the meaning of Article 2 of Protocol No. 4 (see *Bartik*, cited above, § 37).

2. Justification for the interference

(a) The applicable test

39. The Court has next to determine whether the interference complained about was justified. It reiterates that Article 2 § 2 of

Protocol No. 4, which guarantees the right to leave any country, including one's own, must be read subject to the third paragraph of that Article, which provides for certain restrictions that may be placed on the exercise of that right in the interests of, *inter alia*, national security or public safety. The applicable test is similar in all cases: in order to comply with Article 2 of Protocol No. 4 a restriction must be "in accordance with the law", pursue one or more of the legitimate aims contemplated in paragraph 3 of the same Article and be "necessary in a democratic society" (see *Bartik*, cited above, § 38).

(b) Whether the interference was "in accordance with law"

40. The Government pointed out that the possibility of imposing a restriction on the right to go abroad in respect of those persons who have had access to State secrets featured in section 15 of the Entry and Leave Procedures Act and the State Secrets Act. The applicant had voluntarily accepted that restriction for a period of five years, which had been included in his employment contract.

41. The applicant did not dispute the Government's submissions.

42. The Court accepts that the possibility of a five-year restriction on the applicant's right to travel following the termination of his employment was provided for in the Entry and Leave Procedures Act and the State Secrets Act and also in his employment contract. However, according to the Government's own admission, the five-year period was set to expire on 16 December 2008 (see paragraph 11 above). The legal basis for maintaining the restriction beyond that date until August 2009 is unclear.

43. The Court finds that the impugned measure had a legal basis until 16 December 2008 but that it was not "in accordance with law" for the remaining period after that date. Accordingly, it will pursue the examination of the justification for the interference only in respect of the period that spanned from the termination of the applicant's employment in 2004 and up to 16 December 2008.

(c) Whether the interference pursued a legitimate aim

44. The parties agreed that the restriction on the applicant's right to travel abroad had been introduced for the protection of security and the defence capacity of the Russian Federation.

45. The Court accepts that the interests of national security may be a legitimate aim for an interference with the rights set forth in Article 2 of Protocol No. 4.

(d) Whether the restriction was "necessary in a democratic society"

46. The Government submitted that the information to which the applicant had had access was highly valuable for the protection of national security and that its confidentiality was crucial for national interests. The

applicant's right to travel abroad had been restricted because it was more difficult for the State to ensure the security of its nationals in foreign countries. The Government emphasised that the information on military research could have ended up in the hands of foreign intelligence services and also terrorist or extremist organisations. Finally, they pointed out that the applicant had been a military serviceman who had, by voluntarily signing the employment contract, accepted the possibility of a five-year restriction on his right to travel abroad and that he had received a twenty per cent pay rise on that account. In their view, these elements distinguished the present case from the case of *Bartik v. Russia* (cited above) where the applicant had been a civilian scientist who had not signed such a contract.

47. The applicant replied that the Government had failed to explain how the restriction on his right to travel abroad had furthered the interests of national security, even though he had had access to certain State secrets. He also pointed out that a twenty per cent pay rise had not been sufficient compensation for the five-year ban on leaving the country to visit his closest relatives.

48. The Court reiterates that the test as to whether the impugned measure was "necessary in a democratic society" involves showing that the action taken was in pursuit of that legitimate aim, and that the interference with the rights protected was no greater than was necessary to achieve it. In other words, this requirement, commonly referred to as the test of proportionality, demands that restrictive measures should be appropriate to achieve their protective function (compare with point 14 of the Human Rights Committee's General Comment on Article 12 of the ICCPR, cited in paragraph 24 above).

49. The Court has already examined the same restriction from the standpoint of the proportionality test in the case of *Bartik v. Russia* and found as follows:

> "49. The Government did not indicate how the unqualified restriction on the applicant's ability to travel abroad served the interests of national security. The Court, for its part, considers that it is precisely the link between the restrictive measure at issue and its purported protective function that is missing. Historically, the purported "protective function" of the impugned measure was to prevent disclosure of classified information concerning 'State secrets'. At the time the restriction was conceived, the State was able to control transmission of information to the outside world, using a combination of restrictions on outgoing and incoming correspondence, prohibition on international travel and emigration and a ban on unsupervised contacts with foreigners within the country. However, once the ban on personal contacts with foreigners was removed and correspondence was no longer subject to censorship, the necessity of restriction on international travel for private purposes by persons aware of 'State secrets' became less obvious. In these circumstances, in so far as the ban on international travel for private reasons purported to prevent the applicant from communicating information to foreign nationals, in a contemporary democratic society such a restriction fails to achieve the protective function previously assigned to it. That view is shared by the UN Human Rights Committee, which expressed the opinion, in general terms, that 'the test of necessity and the requirement of

> proportionality ... would not be met ... if an individual were prevented from leaving a country merely on the ground that he or she is the holder of 'State secrets" (see point 16 of General Comment no. 27, paragraph [24] above).
>
> 50. The Parliamentary Assembly's Opinion on Russia's request for membership of the Council of Europe indicates that the repeal of restrictions on international travel for private purposes was regarded as a necessary condition for membership of the Council of Europe, as the organisation of States adhering to the principles of individual freedom, political liberty and the rule of law (Preamble to the Statute of the Council of Europe) ... The express mention in the Parliamentary Assembly's Opinion on Russia's accession request of Russia's undertaking to cease restrictions on international travel by persons with knowledge of State secrets suggests that the Assembly did not consider the existence of such a restriction compatible with membership of the Council of Europe. Indeed, many member States of the Council of Europe have never had a comparable restriction in their legislation, whereas many others have abolished it during the process of democratic reforms... However, Russia's undertaking to abolish that restriction has not been implemented and the relevant provisions of domestic law have remained in force to date ..."

50. The Court finds nothing in the Government's submissions in the instant case that would warrant a different conclusion.

51. The Court reiterates its constant approach that it takes into account relevant international instruments and reports, and in particular those of other Council of Europe organs, in order to interpret the guarantees of the Convention and to establish whether there is a common European standard in the field. Where there is a common standard which the respondent State has failed to meet, this may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases (see *Tănase v. Moldova* [GC], no. 7/08, § 176, ECHR 2010-..., and *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 85, 12 November 2008). An overview of the situation in the Council of Europe Member States demonstrates that at present Russia has remained the only Member State that has retained the restrictions on international travel for private purposes by persons who had been previously aware of "State secrets". Whereas Western European Member States have never imposed such restrictions, Central and Eastern European States abolished them during the process of democratic transition. Azerbaijan was the last one to remove that restriction in December 2005 (see paragraph 22 above). On the international level, the UN Human Rights Committee deplored the blanket nature of similar restrictions, expressing the opinion that the curtailing of an individual's right to leave the country merely on the ground that he or she was the holder of State secrets would not meet the test of necessity and proportionality (see paragraph 24 above *in fine*). In Russia, however, the impugned restriction has remained in force to date, despite the Russian Government commitment to abolish it with immediate effect, adopted in 1996 as a condition for its membership of the Council of Europe (see Opinion no. 193 (1996) on Russia's request for membership of the Council of Europe, cited in paragraph 20 above). Russia did not enter any reservation to Article 2 of

Protocol No. 4 when ratifying the Convention. Having regard to the established common European and international standard, the Court considers that the Russian Government were under an obligation to provide a particularly compelling justification for maintaining the restriction in question.

52. The Court reiterates that, as in the *Bartik* case, the confidential information which the applicant possessed could be transmitted in a variety of ways which did not require his presence abroad or even direct physical contact with anyone. The Government's claim that the applicant would be abducted by foreign intelligence services or terrorist organisations while abroad appears to be mere conjecture not supported by any actual assessment of the security risks in the applicant's individual case because of the blanket nature of the prohibition on private international travel in respect of all those who, like the applicant, had had access to State secrets in the past.

53. The applicant's status as a military serviceman or the fact that he acknowledged the possibility of a restriction in 1999 do not alter the conclusion that the restriction failed to achieve the protective function that had been previously assigned to it. Even though the Court has previously accepted that the rights of military personnel may, in certain circumstances, be restricted to a greater degree than would be permissible in the case of civilians (see *Engel and Others v. the Netherlands*, 8 June 1976, §§ 73 and 103, Series A no. 22; *Kalaç v. Turkey*, 1 July 1997, § 28, *Reports of Judgments and Decisions* 1997-IV; *Larissis and Others v. Greece*, 24 February 1998, §§ 50 and 51, *Reports* 1998-I; *Hadjianastassiou v. Greece*, 16 December 1992, §§ 39 and 46, Series A no. 252; and *Pasko v. Russia*, no. 69519/01, § 86, 22 October 2009), such a restriction must in all cases be commensurate with its protective function. However, as noted above, there does not appear to have been a reasonable relationship of proportionality between the means employed and the aim pursued.

54. Finally, the Court reiterates that, unlike some other Articles of the Convention, such as Article 4 § 3 (d) or Article 11 § 2, Article 2 of Protocol No. 4 guarantees to everyone the freedom to leave one's own country and does not distinguish between civilians and members of the armed forces. The applicant has been affected by the restriction on his right to travel abroad for a considerable period of time, that is, for more than five years following the termination of his employment. Accordingly, the Court considers that the applicant was made to bear a disproportionate burden which undermined the essence of his right under Article 2 of Protocol No. 4 and which not necessary in democratic society.

(e) Conclusion

55. In the light of the foregoing, the Court finds as follows:

(a) in the period following the termination of the applicant's employment in 2004 and up until 16 December 2008 the impugned restriction was not "necessary in a democratic society", and

(b) in the subsequent period the restriction had no basis in law or in contract (see paragraph 43 above).

56. There has therefore been a violation of Article 2 of Protocol No. 4.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

57. The applicant also complained under Article 6 of the Convention that the proceedings in the housing dispute had been unfair because the courts had misinterpreted the domestic law and his evidence, and under Article 1 of Protocol No. 1 that he had been denied title to the flat.

58. Having regard to the information before it and considering that it has only limited power to deal with alleged errors of fact or law committed by the national courts, to which it falls in the first place to interpret and apply the domestic law, the Court finds no appearance of unfairness of the kind prohibited under Article 6 of the Convention in the civil dispute, to which the applicant was a party. It further reiterates that Article 1 of Protocol No. 1 does not guarantee, as such, the right to acquire property (see, for example, *Grishchenko v. Russia* (dec.), no. 75907/01, 8 July 2004).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

61. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

62. The Government submitted that the claim was excessive.

63. The Court accepts that the applicant suffered distress as a result of the unjustified restriction on his ability to leave Russia. However, it considers the applicant's claim excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000, plus any tax that may be chargeable on it.

B. Costs and expenses

64. The applicant also claimed 30,000 Russian roubles (RUB) for legal costs and RUB 1,000 for postal expenses. He produced postal receipts and a copy of the legal-services agreement with his counsel.

65. The Government submitted that the postal receipts only covered the amount of RUB 486.4 and that no "billing documents" had been provided.

66. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 850 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the applicant's right to leave the country admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 2 of Protocol No. 4;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable on the date of settlement:
      (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
      (ii) EUR 850 (eight hundred and fifty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President