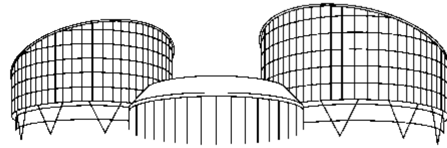

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF L.B. v. LITHUANIA

(Application no. 38121/20)

JUDGMENT

Art 2 P4 • Freedom to leave a country • Formalistic refusal to re-issue alien's passport to long-term resident of Chechen origin, ex-beneficiary of subsidiary protection and afraid to contact Russian authorities • Failure to carry out balancing exercise and to ensure measure justified and proportionate in applicant's individual circumstances • No examination of situation in country of origin and whether possibility of obtaining Russian passport accessible in practice

STRASBOURG

14 June 2022

FINAL

14/09/2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of L.B. v. Lithuania,

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

Jon Fridrik Kjølbro, *President,*
Carlo Ranzoni,
Egidijus Kūris,
Pauliine Koskelo,
Jovan Ilievski,
Gilberto Felici,
Diana Sârcu, *judges,*
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 38121/20) against the Republic of Lithuania 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 L.B. (“the applicant”), on 14 August 2020;

the decision to give notice to the Lithuanian Government (“the Government”) of the complaints concerning Article 8 of the Convention and Article 2 of Protocol No. 4 to the Convention and to declare inadmissible the remainder of the application;

the decision not to have the applicant’s name disclosed;

the parties’ observations;

Having deliberated in private on 24 May 2022,

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

INTRODUCTION

1. The case concerns the Lithuanian authorities’ refusal to issue a travel document to the applicant, a permanent resident previously granted subsidiary protection, on the grounds that he could request such a document from the authorities of his country of origin. The applicant complained that this had violated his rights under Article 8 of the Convention and Article 2 of Protocol No. 4 to the Convention.

THE FACTS

2. The applicant was born in 1974 and lives in Vilnius. He was represented by Ms I. Ivašauskaitė, a lawyer practising in Vilnius.

3. The Government were represented by their Agent, Ms K. Bubnytė-Širmenė.

I. THE APPLICANT'S ARRIVAL AND RESIDENCE IN LITHUANIA

4. In September 2001 the applicant was stopped by border guards at the Lithuanian-Polish border without any identity documents. He stated that he came from the Chechen Republic, that he had fled his country of origin and arrived in Lithuania *via* Belarus, and that he intended to go to Western Europe to seek asylum. He was arrested and subsequently lodged an asylum application in Lithuania.

5. During the asylum proceedings, the applicant stated that he had fought in the two Chechen wars alongside Chechen forces, between 1994 and 1996 and then between 1999 and 2001, and had been injured. In March 2001 he had been arrested by the federal security forces during a "clean-up" operation, on the grounds that his temporary identity certificate had expired. They had detained him for one day, beaten and humiliated him and demanded that he give them the names of other fighters. After that, the applicant had not returned to his home and had gone into hiding, fearing for his safety. He had eventually decided to leave the country, not wishing to hide in the woods during winter because of his deteriorating health.

6. The applicant also stated that he had never held a Russian passport because he had not needed one. He submitted that he had had a temporary identity certificate but had thrown it away in Belarus, because he had believed that having such a document might increase the likelihood of him being returned to Russia.

7. In 2003 the Migration Department refused to grant the applicant refugee status, a decision upheld by the administrative courts. They found that the applicant had not demonstrated that he had been persecuted in his country of origin on any of the grounds provided for by law (see paragraph 27 below). Moreover, he had not provided a consistent and credible account of his participation in the war or a convincing explanation of why he had got rid of his identity document. In addition, during the proceedings he had attempted to leave Lithuania, which were further grounds to doubt his credibility. Nonetheless, the authorities acknowledged that it was not safe for the applicant to return to the Chechen Republic because of the ongoing war, and that persons of Chechen origin did not have realistic alternatives for internal relocation in Russia. He was therefore issued with a temporary residence permit on humanitarian grounds, valid for one year (see paragraph 28 below).

8. In July 2003 the applicant applied for an alien's passport, a document which would allow him to travel abroad. He submitted that he did not have a Russian internal passport and was unable to obtain a Russian foreign passport because the Russian authorities had a practice of refusing to issue such documents to persons of Chechen origin. The Migration Department allowed the request and issued him with an alien's passport.

9. Between 2004 and 2008 the applicant lodged yearly requests to be issued with a temporary residence permit on the grounds of subsidiary protection (see paragraphs 32 and 34 below), in view of the ongoing war and widespread human rights violations in the Chechen Republic and lack of alternatives for internal relocation in Russia. On each occasion, the Migration Department granted him subsidiary protection and issued him with a temporary residence permit, valid for one year.

10. In 2005 the applicant lodged a request to be granted refugee status. He submitted that new facts had emerged demonstrating that he was at risk of persecution by the Russian authorities, namely that he had been identified in the Russian press as a former fighter in the Chechen wars. He enclosed a copy of an article published on the website *Komsomolskaya Pravda* in April 2005, which stated that many former Chechen fighters had been granted asylum in Lithuania, and included a list of individuals, identified by their full name and year of birth, who had been members of "illegal armed groups". The applicant's name was among them. He submitted that it was widely known that the Russian authorities detained, tortured and killed Chechen fighters. As he had been identified as one in the press, he would therefore be at a real risk of persecution in Russia if he ever returned there. However, the Migration Department refused to grant him refugee status and the Vilnius Regional Administrative Court upheld that decision. They stated that the grounds on which the applicant had requested refugee status had already been assessed (see paragraph 7 above), and that the article in question was not sufficient to reach a different conclusion. They also noted that the applicant had been granted subsidiary protection and did not have to return to his country of origin.

11. In 2008 the applicant obtained a permanent residence permit in Lithuania, on the grounds that he had been lawfully living there for five years (see paragraph 35 below). The residence permit was valid for five years and extended for a further five years, on the same grounds, in 2013 and 2018.

12. Between 2004 and 2013, each time his alien's passport expired, the applicant applied for a new one, on the same grounds as before (see paragraph 8 above). On each occasion, the Migration Department issued him with such a document.

II. REFUSAL TO ISSUE THE APPLICANT WITH AN ALIEN'S PASSPORT

A. Decisions taken by the Migration Department

13. In August 2018 the applicant lodged a new request to be issued with an alien's passport, relying on the same grounds as before (see paragraph 8 above). However, on 6 September 2018 the Migration Department denied his request. It noted that, according to information published on the official

website of the Russian embassy in Lithuania, Russian nationals living abroad could obtain a passport at the embassy upon submission of the following documents, among others: a Russian foreign passport, or an application declaring that it had expired or been lost; and a Russian internal passport, or if it had expired or been lost, proof of identity. The relevant documents could be obtained online. The Migration Department observed that the applicant had previously been granted subsidiary protection not because of persecution by the Russian authorities but because of the war taking place at the time. Accordingly, that fact did not constitute an objective reason why he could not obtain a travel document from the authorities of his country of origin (see paragraph 38 below).

14. In September 2018 the applicant repeated his request to be issued with an alien's passport. He submitted that he had been living in Lithuania for nearly eighteen years. He had requested asylum on the grounds of his participation in the Chechen wars, and since subsidiary protection had been granted to him, it had been acknowledged that it was not safe for him in Russia. He submitted that it was widely known that former Chechen fighters were still being persecuted in Russia, and that the persecution of ordinary Chechens was intensifying. If he had to contact the Russian authorities in order to apply for a passport, he would have to reveal his location to them. He submitted that those were objective reasons why he was unable to obtain a travel document from the Russian authorities.

15. On 29 October 2018 the Migration Department refused to issue the applicant with an alien's passport, giving the same reasons as in its previous decision (see paragraph 13 above). It also noted that the applicant was not currently an asylum seeker or beneficiary of subsidiary protection in Lithuania, and that there was no indication that the Russian authorities were aware that he had had that status previously.

16. In June 2019 the applicant lodged another request to be issued with an alien's passport. He submitted that the fact that he had fought in the Chechen wars and sought asylum in Lithuania had been reported in the Russian media (see paragraph 10 above). He stated that a friend mentioned in the same article had returned to Russia and been convicted there. The applicant further submitted that he had been living in Lithuania for nearly nineteen years. If he applied for a Russian passport, the authorities would demand that he explain his situation, which would force him to disclose the reasons why he had left the country. Moreover, the Russian authorities would presumably carry out an identity check and learn from the media, and possibly from information held by the Russian secret services, of his previous participation in the war, which would put him in danger.

17. In addition, the applicant submitted that, after the collapse of the Soviet Union, he had never applied for Russian citizenship, since he supported the creation of an independent Chechen Republic and had no links to Russia. Therefore, although in Lithuania he was considered a Russian

national, there were no documents confirming this, and he should be considered stateless.

18. On 20 June 2019 the Migration Department once again refused to issue the applicant with an alien's passport. It stated that he had not provided any documents proving that he did not have Russian citizenship. Since his arrival in Lithuania in 2001, he had been considered to be a Russian national, and during the asylum proceedings he himself had stated that he had previously had a temporary identity certificate. It also appeared from some of his previous statements that he had had a passport which had been lost during the war. There were therefore no grounds to consider him stateless, and he should continue to be treated as a Russian national. The Migration Department also reiterated the grounds for its previous decisions (see paragraphs 13 and 15 above).

19. In September 2019 the applicant lodged another request to be issued with an alien's passport, providing essentially the same arguments as in his previous requests (see paragraphs 14 and 16 above). He also stated that he had never held a Russian passport.

20. On 23 September 2019 the Migration Department again refused the applicant's request, providing the same reasons as in its previous decisions (see paragraphs 13, 15 and 18 above). When notifying the applicant of that decision, it informed him that if he repeated his request for an alien's passport, he would have to provide proof that he had applied for a travel document at the Russian embassy and had been refused one.

B. Proceedings before the administrative courts

21. In October 2019 the applicant lodged an appeal against the Migration Department's decision of 23 September 2019 with the administrative courts. He submitted, firstly, that the Migration Department had incorrectly held that the Russian authorities were unaware that he had sought asylum in Lithuania, because that information had been reported in the media (see paragraph 10 above). Furthermore, he contended that the fact that he was at a risk of persecution by the Russian authorities had been demonstrated by the material collected in his asylum proceedings.

22. The Migration Department disputed the applicant's complaint. It submitted, in particular, that the press article relied on by the applicant had already been assessed in 2005. Moreover, the information provided in the article was not entirely accurate – not all the persons on the list were of Chechen origin, and there were mistakes in the names and dates of birth. The article did not therefore constitute reliable and sufficient proof that the applicant was personally at risk of persecution.

23. During the hearing before the Vilnius Regional Administrative Court, the applicant further submitted that as he had two minor children who lived

in the United Kingdom and he worked in cargo transportation, he often needed to travel abroad.

24. On 9 January 2020 the court dismissed the applicant's appeal. It found that he had been granted subsidiary protection on several occasions between 2003 to 2008 but that since then he had not lodged any further requests for such protection. He was not therefore currently a beneficiary of subsidiary protection in Lithuania. The court also stated that his arguments concerning the risk of persecution which he allegedly faced in his country of origin had already been examined in the asylum proceedings. In those proceedings, it had been established that he could not return to Russia because of the ongoing war, whereas a personal risk of persecution had not been established, and he had not indicated any new circumstances warranting a different conclusion. Lastly, the court noted that the applicant could request identity documents from the Russian authorities online – he did not need to contact them directly. Since he had not attempted to obtain such documents to date, there was no proof that he would be unable to do so.

25. The applicant lodged an appeal against that decision. He firstly submitted that, in accordance with the relevant domestic and European Union law, international protection granted to a person did not expire when its beneficiary obtained a permanent residence permit on different grounds (see paragraphs 46 and 51 below). Since the Migration Department had never taken a decision to revoke the subsidiary protection granted to him on the grounds that he no longer needed it (see paragraphs 33 and 50 below), he remained a beneficiary of asylum in Lithuania even after obtaining a permanent residence permit. He further submitted that people who had been granted asylum were entitled to confidentiality – their personal information could not be disclosed to the authorities of their country of origin (see paragraph 30 below). He argued that any contact with the Russian authorities, whether in person or online, would require him to disclose his identity and location to them, which would put him in danger.

26. On 26 February 2020 the Supreme Administrative Court upheld the decision of the first-instance court. It held that the applicant had not provided any objective reasons why he would not be able to obtain a travel document from the Russian authorities, especially as he could request such a document online. In the court's view, the applicant's arguments regarding his fear of contacting the Russian authorities could not be considered well-founded and realistic. It also noted that the article in the Russian press to which the applicant had referred had been published in 2005 and could not therefore, in view of the time which had passed, constitute proof that he was at risk of persecution by the Russian authorities.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. Law on Refugee Status

27. The Law on Refugee Status was in force from 2 August 1995 to 29 April 2004, with several amendments. At the material time, Article 2 § 1 defined a refugee as a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, was outside the country of his or her nationality and was unable or, owing to such fear, unwilling to avail him or herself of the protection of that country.

B. Old Law on the Legal Status of Aliens

28. The old Law on the Legal Status of Aliens was in force from 1 July 1999 to 29 April 2004, with several amendments. Article 19 § 3 provided that a temporary residence permit could be issued to a foreign national on humanitarian grounds. Under Article 18 § 2, a temporary residence permit was valid for one year.

C. New Law on the Legal Status of Aliens

29. The new Law on the Legal Status of Aliens entered into force on 30 April 2004 and has since been amended several times.

30. Article 68 § 2 provides that information obtained during asylum proceedings cannot be disclosed to the asylum seeker's country of origin.

31. Article 86 § 1 provides, *inter alia*, that refugee status must be granted to an individual who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, unwilling to avail him or herself of the protection of that country.

32. Article 87 § 1 provides that subsidiary protection must be granted to an individual who is outside the country of his or her nationality and is unable to return to it owing to a well-founded fear of torture or inhuman or degrading treatment or punishment; the death penalty or execution; or a serious and individual threat to his or her life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

33. Article 90 § 2 (1) states that subsidiary protection granted to an individual may be revoked if the individual in question may return to his or her country of origin because the circumstances for which subsidiary protection was granted have ceased to exist. Under Article 90 § 3, when such

circumstances come to light, the Migration Department starts the procedure of revoking subsidiary protection and adopts a decision to revoke it.

34. Article 40 § 1 (9) provides that a foreign national who has been granted subsidiary protection in Lithuania has the right to obtain a temporary residence permit. At the material time, Article 48 § 2 provided that a temporary residence permit on the grounds of subsidiary protection was valid for one year.

35. Article 53 § 1 (8) provides that a foreign national who has lived in Lithuania lawfully for an uninterrupted period of five years has the right to obtain a permanent residence permit. Article 53 § 4 states that a permanent residence permit is issued for five years and can be renewed.

36. Article 2 § 15 states that a permanent residence permit is a document which grants an alien the right to live in Lithuania and attests to his or her status as a permanent resident.

37. Under Article 89 § 1, an individual who has been granted subsidiary protection may obtain an alien's passport in accordance with Article 37 of the Law.

38. Article 37 § 1 states that a foreign national who has a temporary or permanent residence permit in Lithuania, who does not have a valid passport or an equivalent travel document issued by another country, and who, for objective reasons, is unable to obtain such a document from the authorities of his or her country of origin, may be issued with an alien's passport, in accordance with rules established by the Minister of Interior.

39. Article 2 § 29 states, *inter alia*, that an alien's passport is a document which, during the period of its validity, gives an alien the right to leave and return to Lithuania.

40. Article 135 provides, *inter alia*, that it is not permitted to leave Lithuania without a valid travel document.

D. Order on Examining Asylum Applications, Adoption and Execution of Decisions

41. The Order on Examining Asylum Applications, Adoption and Execution of Decisions, issued by the Minister of Interior, was in force from 21 November 2004 to 25 February 2016, with several amendments.

42. From 21 November 2004 to 31 March 2015, paragraph 81 read as follows:

> "81. Subsidiary protection is granted to an asylum seeker for one year. In accordance with an order issued by the Minister of Interior, the asylum seeker shall be issued with a temporary residence permit, valid for the duration of the subsidiary protection."

43. From 1 April 2015 to 25 February 2016, paragraph 81 read as follows:

> "81. After subsidiary protection is granted to an asylum seeker, in accordance with an order issued by the Minister of Interior, he or she shall be issued with a temporary

residence permit, valid for the duration indicated in Article 48 § 2 of the Law on the Legal Status of Aliens."

44. The Order provided that if the alien believed that the circumstances owing to which he or she had been granted subsidiary protection had not changed, he or she could lodge a new application for subsidiary protection no later than two months before the expiry of the temporary residence permit (paragraph 82 of the Order).

E. Order on the Granting and Revocation of Asylum

45. The Order on the Granting and Revocation of Asylum in the Republic of Lithuania, issued by the Minister of Interior, entered into force on 26 February 2016 and has since been amended several times.

46. The Order provides that an alien benefits from asylum in Lithuania from the date when he or she is granted refugee status or subsidiary protection until the day when that status is revoked in accordance with the relevant legal provisions (paragraph 130 of the Order from 26 February 2016 to 27 July 2021, and paragraph 110 from 28 July 2021 onwards).

F. Order on Issuing an Alien's Passport

47. The Order on Issuing an Alien's Passport, issued by the Minister of Interior, entered into force on 21 November 2004 and has since been amended several times.

48. The Order provides that an official of the Migration Department examining an application for an alien's passport must assess, *inter alia*, the reasons why the individual is unable to obtain a travel document from the authorities of his or her country of origin (paragraph 30 of the Order from 10 November 2004 to 19 July 2011, paragraph 25 from 20 July 2011 to 30 June 2019, and paragraph 29 from 1 July 2019 onwards).

49. Since 1 July 2019, paragraph 29 has provided that where an application for an alien's passport has been lodged by a foreign national who has a valid temporary residence permit issued under Article 40 § 1 (9) of the Law on the Legal Status of Aliens (see paragraph 34 above), and who states that he or she is afraid to contact the authorities of his or her country of origin in order to obtain a passport or a travel document, such fear constitutes an objective reason within the meaning of Article 37 § 1 of the Law on the Legal Status of Aliens (see paragraph 38 above).

II. EUROPEAN UNION LAW

50. The relevant parts of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of

international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted ("the Qualification Directive") provide:

Article 16
Cessation

"1. A third-country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required ..."

Article 19
Revocation of, ending of or refusal to renew subsidiary protection status

"1. ... Member States shall revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16. ..."

Article 25
Travel document

"...

2. Member States shall issue to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to travel outside their territory, unless compelling reasons of national security or public order otherwise require."

51. The relevant parts of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, as amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 to extend its scope to beneficiaries of international protection, provide:

Article 8
Long-term resident's EU residence permit

"...

4. Where a Member State issues a long-term resident's EU residence permit to a third-country national to whom it granted international protection, it shall enter the following remark in that long-term resident's EU residence permit, under the heading "Remarks": "International protection granted by [name of the Member State] on [date].

..."

52. The relevant parts of the Convention implementing the Schengen Agreement of 14 June 1985 provide:

Article 2

"1. Internal borders may be crossed at any point without any checks on persons being carried out.

2. However, where public policy or national security so require a Contracting Party may, after consulting the other Contracting Parties, decide that for a limited period national border checks appropriate to the situation shall be carried out at internal borders. If public policy or national security require immediate action, the Contracting Party concerned shall take the necessary measures and at the earliest opportunity shall inform the other Contracting Parties thereof.

3. The abolition of checks on persons at internal borders shall not affect the provisions laid down in Article 22, or the exercise of police powers throughout a Contracting Party's territory by the competent authorities under that Party's law, or the requirement to hold, carry and produce permits and documents provided for in that Party's law.

..."

Article 21

"1. Aliens who hold valid residence permits issued by one of the Contracting Parties may, on the basis of that permit and a valid travel document, move freely for up to three months within the territories of the other Contracting Parties, provided that they fulfil the entry conditions referred to in Article 5(1)(a), (c) and (e) and are not on the national list of alerts of the Contracting Party concerned.

..."

53. The relevant parts of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders ("the Schengen Borders Code") provide:

TITLE II
EXTERNAL BORDERS
Article 6
Entry conditions for third-country nationals

"1. For intended stays on the territory of the Member States of a duration of no more than 90 days in any 180-day period, which entails considering the 180-day period preceding each day of stay, the entry conditions for third-country nationals shall be the following:

(a) they are in possession of a valid travel document entitling the holder to cross the border ..."

TITLE III
INTERNAL BORDERS
Article 22
Crossing internal borders

"Internal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out."

THE LAW

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

54. The applicant complained about the Lithuanian authorities' refusal to issue him with an alien's passport. He relied on Article 8 of the Convention and Article 2 of Protocol No. 4 to the Convention.

55. The Court reiterates that it is the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018). Taking note, in particular, of the arguments which the applicant presented during the domestic proceedings, it considers that the case falls to be examined solely under Article 2 of Protocol No. 4, the relevant parts of which read:

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

A. Admissibility

56. The applicant, who is not a Lithuanian national but a permanent resident of Lithuania, complained that the refusal to issue him with an alien's passport had violated his right to leave the country, enshrined in Article 2 § 2 of Protocol No. 4 to the Convention. The Government did not dispute the applicability of that provision in the present case. However, the question of applicability concerns a matter which goes to the Court's jurisdiction and which it is not prevented from examining of its own motion (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, 5 July 2016).

57. The Court has applied Article 2 § 2 of Protocol No. 4 in a number of cases concerning foreign nationals who had been banned from leaving the country pending criminal proceedings against them (see, among other authorities, *Baumann v. France*, no. 33592/96, ECHR 2001-V (extracts), and *Miażdżyk v. Poland*, no. 23592/07, 24 January 2012). It has also applied that provision in cases in which State authorities refused to issue passports to their own nationals, thereby precluding them from travelling abroad (see, among other authorities, *Bartik v. Russia*, no. 55565/00, ECHR 2006-XV, and *Rotaru v. the Republic of Moldova*, no. 26764/12, 8 December 2020). However, the present case appears to be the first concerning the refusal to issue a travel document to a foreign national.

58. As the Court has held on numerous occasions, Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see *F.G. v. Sweden* [GC], no. 43611/11, § 111, 23 March 2016, and the cases cited therein). Thus, the Convention does not guarantee, for example, the right to a particular type of residence permit (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 91, ECHR 2007-I).

59. In the Court's view, Article 2 of Protocol No. 4 to the Convention 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. At the same time, the Court emphasises that, under Article 2 § 2 of Protocol No. 4, the right to leave any country, including his own, is granted to "everyone". It also reiterates that the Convention is intended to guarantee rights which are practical and effective, not theoretical and illusory (see, among many other authorities, *M.A. v. Denmark* [GC], no. 6697/18, § 162, 9 July 2021).

60. In the present case, it has not been disputed that the applicant lawfully resides in Lithuania and that he does not have any other valid identity documents than those issued to him by the Lithuanian authorities (see paragraphs 4, 6, 8, 17 and 19 above). Nor has it been disputed that, under domestic law, the residence permit which he holds does not give him the right to travel abroad (see paragraphs 36 and 39 above). Accordingly, the Court considers that the applicant's right to leave Lithuania would not be practical and effective without him obtaining some type of travel document.

61. Moreover, Lithuanian law entitles lawfully resident foreign nationals to obtain an alien's passport, provided that they meet the relevant conditions (see paragraph 38 above).

62. In such circumstances, the Court finds that Article 2 of Protocol No. 4 to the Convention is applicable to the applicant's complaint concerning the refusal to issue him with an alien's passport.

63. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' observations*

(a) The applicant

64. The applicant submitted that he had left his country of origin and sought asylum in Lithuania because of his previous participation in the Chechen wars, and that during the asylum proceedings he had provided detailed and consistent information about his active role as a fighter.

However, the Lithuanian authorities had refused to acknowledge that he was at a real risk of persecution, giving abstract and unsubstantiated reasons. He pointed out that, at the relevant time, the Migration Department had had a policy of granting refugee status only in exceptional cases.

65. Be that as it may, he had been granted asylum – subsidiary protection – in Lithuania in 2004. He contended that he remained a beneficiary of asylum to the present day. The relevant EU law, with which domestic law had to comply, did not provide that subsidiary protection expired after a certain period of time – it could only end or be revoked under certain circumstances (see paragraph 50 above). The grounds on which subsidiary protection could be revoked were also stipulated in the Law on the Legal Status of Aliens (see paragraph 33 above), but the Migration Department had never adopted such a decision in respect of the applicant. He submitted that neither the fact that he had been required to renew his temporary residence permit every year nor the fact that he had subsequently obtained a permanent residence permit on different grounds had affected his status as a beneficiary of subsidiary protection.

66. The applicant contended that he was unable to enjoy freedom of movement without having a valid travel document. Such a document was necessary in order to travel outside the Schengen Area, including the United Kingdom, where his children lived (see paragraph 23 above). Moreover, he submitted that even within the Schengen Area he could be required to present a travel document and stated that in November 2020 he had been ordered to leave Germany because he had not had a valid travel document. In view of the fact that he worked in cargo transportation, the refusal to issue him with an alien's passport had also restricted his ability to carry out his professional activities.

67. He further submitted that, during the domestic proceedings, he had provided objective reasons why he could not contact the Russian authorities either in person or online. He stated that he had not had any contact with them for more than twenty years. Were he to approach them now, his situation would raise suspicions and he would be asked to explain the circumstances of his residence in Lithuania, thereby identifying himself as a former Chechen fighter. He contended that, according to publicly available information, former Chechen fighters were still being persecuted in Russia.

68. In the applicant's view, by suggesting that he should request a travel document online, the Lithuanian authorities implicitly acknowledged that he would be at risk if he contacted the Russian authorities in person. In any event, even if he could request such a document online, he would have to collect it in person, so he could not avoid direct contact with the Russian authorities.

69. Lastly, the applicant submitted that the Government had failed to demonstrate that the refusal to issue him with an alien's passport had pursued any legitimate aim and had been necessary in a democratic society. He

emphasised that he had not committed any crimes and did not pose any threat to national security or public order.

(b) The Government

70. The Government acknowledged that the refusal to issue the applicant with an alien’s passport had amounted to an interference with his right to freedom of movement. Nonetheless, they maintained that that interference had been justified.

71. They submitted that the refusal had been in line with the Law on the Legal Status of Aliens and the relevant by-laws, which stated that, in order to obtain an alien’s passport, an individual had to provide objective reasons why he or she was unable to obtain such a document from the authorities of his or her country of origin (see paragraphs 38 and 48 above). The relevant Lithuanian authorities had found that the applicant had failed to provide such reasons.

72. The Government further submitted that the interference in question had sought a legitimate aim, namely that “it [had been] acknowledged in the Court’s case-law that national policies with regard to the issuing of identity documents [were] related to the maintenance of public order”.

73. With regard to the necessity of the impugned interference, the Government contended that the domestic authorities had properly taken into account all the relevant circumstances of the applicant’s situation. He, like several hundred other Chechen nationals in Lithuania, had been granted subsidiary protection because of the ongoing armed conflict and widespread human rights violations in Chechnya. The Migration Department had thoroughly assessed all the relevant circumstances and found that he had failed to demonstrate that he was personally at risk of persecution by the Russian authorities as a result of his alleged participation in the war.

74. The Government emphasised that the Lithuanian authorities had never shared any information obtained during the applicant’s asylum proceedings with the Russian authorities. As to the article which had identified him as an asylum seeker (see paragraph 10 above), the domestic authorities had provided adequate reasons why it could not be accepted as proof that the applicant was at risk of persecution (see paragraphs 22 and 26 above).

75. The Government contended that the applicant’s claim that he was still a beneficiary of asylum was unsubstantiated. In accordance with the law in force at the time he had been granted subsidiary protection, such protection was granted for one year (see paragraph 42 above). The Migration Department had not therefore been required to adopt a decision revoking the subsidiary protection in order for it to expire. This was demonstrated by the fact that, until 2008, the applicant had lodged yearly applications to be granted subsidiary protection (see paragraph 9 above). After obtaining a permanent residence permit in 2008, he had not lodged any more applications for asylum and, as a result, the subsidiary protection had ceased in 2009. The

legal amendments which had introduced subsidiary protection not limited in time had only been enacted in 2015 (see paragraph 43 above), but the applicant had not requested subsidiary protection after that date. The Government contended that the possession of a permanent residence permit had not precluded the applicant from seeking asylum if he had felt that he needed it.

76. They further submitted that, between 2003 and 2013, the Migration Department had issued the applicant with an alien's passport on several occasions because, at that time, Russian nationals did not have any possibility of obtaining a travel document outside the territory of Russia. In order to obtain such a document, individuals were asked to provide documents proving their Russian citizenship, and these could only be obtained in Russia or, in some cases, in the Chechen Republic, where the armed conflict had been ongoing. In the light of those circumstances, the Migration Department had accepted that there were objective reasons which precluded the applicant from obtaining a travel document from the authorities of his country of origin.

77. However, the Migration Department had adopted a different decision when the practice of the Russian authorities had changed. Under the changed procedure, it was no longer necessary to travel to Russia in order to obtain identity documents and all the relevant procedures could be carried out online. On those grounds, the Migration Department had concluded that there were no longer any objective reasons why the applicant would not be able to request a travel document from the Russian authorities. The Government submitted that, according to information in the Migration Department's possession, "some other Chechen persons had successfully availed themselves of this opportunity" and had obtained travel documents from the Russian authorities, whereas the applicant had not even attempted to do so.

78. Lastly, the Government submitted that, as a permanent resident of Lithuania, the applicant had the right to move freely within the territory of EU Member States for 90 days in any 180-day period without a travel document. They therefore considered that the restriction on his freedom of movement had not been disproportionate.

2. *The Court's assessment*

(a) General principles

79. The Court reiterates that the right to freedom of movement implies a right to leave for any country of the person's choice to which he or she may be admitted. Any measure by means of which an individual is denied the use of a document which, had he or she so wished, would have permitted him or her to leave the country, amounts to an interference with the rights guaranteed by Article 2 of Protocol No. 4 to the Convention (see *Berkovich and Others v. Russia*, nos. 5871/07 and 9 others, § 78, 27 March 2018, and the cases cited therein).

80. An interference with a person's right to leave any country must be "in accordance with law", pursue one or more of the legitimate aims set out in Article 2 § 3 of Protocol No. 4 and be "necessary in a democratic society" to achieve such an aim (see *Mursaliyev and Others v. Azerbaijan*, nos. 66650/13 and 10 others, § 30, 13 December 2018, and the cases cited therein).

(b) Application of the above principles in the present case

(i) Existence of an interference

81. In the present case, the Government acknowledged that there had been an interference with the applicant's right to freedom of movement (see paragraph 70 above). The Court notes that, according to the relevant EU law, the applicant, being a permanent resident of Lithuania, had the right to cross the borders between EU Member States without a travel document. However, it also takes note of the fact that a travel document may, under certain circumstances, be necessary even when travelling within the Schengen zone (see paragraphs 52 and 53 above). Moreover, not having a valid travel document precluded him from going to countries outside the Schengen zone and outside the EU, including the United Kingdom where his children lived (see paragraph 66 above). Accordingly, the Court has no reason to doubt that the refusal by the Lithuanian authorities to issue the applicant with an alien's passport constituted an interference with his right to freedom of movement (see, *mutatis mutandis*, *Kerimli v. Azerbaijan*, no. 3967/09, § 47, 16 July 2015, and *De Tommaso v. Italy* [GC], no. 43395/09, § 104, 23 February 2017, and the cases cited therein).

(ii) Whether the interference was in accordance with the law

82. Under Article 37 § 1 of the Law on the Legal Status of Aliens, a foreign national may be issued an alien's passport if he or she meets all the following conditions: (i) he or she has a temporary or permanent residence permit in Lithuania; (ii) he or she does not have a valid passport or an equivalent travel document issued by another country; and (iii) he or she is unable, for objective reasons, to obtain such a document from the authorities of his or her country of origin (see paragraph 38 above).

83. The Migration Department and the administrative courts held that the third condition had not been met in the applicant's case (see paragraphs 20, 24 and 26 above). Although the applicant disputed those decisions and argued that the reasons which he had provided to the domestic authorities had to be regarded as "objective" within the meaning of the law (see paragraph 67 above), the Court considers that it is more appropriate to address that issue when assessing the necessity of the impugned measure. It therefore accepts that the interference was in accordance with the law.

(iii) Whether the interference pursued a legitimate aim

84. The Government submitted that the aim of the interference had been "related to the maintenance of public order", without giving any further details (see paragraph 72 above).

85. The Court observes that the cases in which it accepted that interference with the freedom of movement pursued the legitimate aim of the maintenance of public order concerned, for example, restrictions on travelling abroad imposed on persons who had been charged with criminal offences, pending their prosecution (see *A.E. v. Poland*, no. 14480/04, § 47, 31 March 2009; *Pfeifer v. Bulgaria*, no. 24733/04, § 54, 17 February 2011; and *Kerimli*, cited above, § 49); travel bans on convicted and not yet rehabilitated offenders (see *Nalbantski v. Bulgaria*, no. 30943/04, § 63, 10 February 2011); preventive measures, including special supervision, taken against suspected members of the Mafia (see *Labita v. Italy* [GC], no. 26772/95, § 194, ECHR 2000-IV); or measures which sought to restrict individuals' right to leave the country for the purpose of securing the payment of taxes (see *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, nos. 74288/14 and 64568/16, § 92, 14 October 2021, and the case-law cited therein).

86. However, the Court notes that the applicant's situation cannot be compared to any of the aforementioned cases, and the Government did not provide any explanation as to how the refusal to issue him with an alien's passport contributed to the maintenance of public order (see the applicant's submissions in paragraph 69 above).

87. Be that as it may, the Court considers that in the present case it is not necessary to decide whether the impugned interference pursued a legitimate aim, because in any event it could not be considered "necessary in a democratic society", for the reasons provided below (for a similar approach, see *Stamose v. Bulgaria*, no. 29713/05, § 32, ECHR 2012).

(iv) Whether the interference was necessary in a democratic society

88. At the outset, the Court observes that, to date, the cases in which it examined alleged violations of Article 2 § 2 of Protocol No. 4 to the Convention concerned various measures aimed at precluding the applicants from leaving the country (see, for example, *Baumann*; *Berkovich and Others*; and *Mursaliyev and Others*, all cited above). By contrast, in the present case, the Lithuanian authorities did not seek to restrict the applicant from going abroad – their refusal to issue him with an alien's passport was based on the fact that he could obtain a travel document from the Russian authorities.

89. In order to determine whether that refusal was "necessary in a democratic society", the Court will assess whether the domestic authorities provided relevant and sufficient reasons to justify their decision and whether

they adequately examined the applicant's individual situation (see *Khlyustov v. Russia*, no. 28975/05, § 84, 11 July 2013, and *Stamose*, cited above, § 35).

90. It is not disputed that the applicant left his country of origin with the intention of seeking asylum abroad (see paragraph 4 above) and was granted subsidiary protection in Lithuania on several occasions, in view of the ongoing war and widespread human rights violations in the Chechen Republic (see paragraphs 7 and 9 above). The last such occasion was in 2008, and after that he obtained a permanent residence permit, on the grounds of his uninterrupted lawful residence in Lithuania (see paragraph 11 above), after which he did not lodge any further applications for asylum.

91. In his submissions to the Court, the applicant argued that the domestic authorities had incorrectly assessed his claims regarding the risk of persecution and had erred in finding that he was no longer a beneficiary of subsidiary protection (see paragraphs 64 and 65 above). The Government contested those arguments, referring to domestic law and court decisions (see paragraphs 73 and 75 above).

92. In this connection, the Court observes that the asylum proceedings, which ended well over six months before the applicant lodged his application, are not the subject matter of the present case. It is therefore unable to examine whether in those proceedings the authorities correctly assessed the risks allegedly faced by the applicant in his country of origin. Moreover, the Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, among many other authorities, *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 110, 3 October 2014). Therefore, it is not for this Court to decide on the correct interpretation or application of the domestic asylum law, assess its compatibility with the relevant EU directives or determine the status to which the applicant should be entitled under domestic law.

93. Be that as it may, the Court notes that, during a certain period of time, the Lithuanian authorities acknowledged, on a number of occasions, that the applicant could not safely return to his country of origin (see paragraphs 7 and 9 above). The last such decision was taken in 2008 and, after that date, the applicant availed himself of the opportunity provided by law to obtain a more favourable residence permit (see paragraph 11 above). Therefore, the interruption in the regular granting of subsidiary protection to the applicant resulted from circumstances unrelated to the situation in his country of origin or the reasons for which he had previously sought that status. Indeed, the Court emphasises that at no point did the domestic authorities make a decision, taken after assessing the situation in the applicant's country of origin and his individual circumstances, that he was no longer in need of subsidiary protection and could approach the Russian authorities without fear.

94. The Court further observes that the Migration Department and the administrative courts accorded significant importance to the fact that the applicant's requests to grant him refugee status had been rejected and that he

had not demonstrated any persecution directed at him personally (see paragraphs 13, 22 and 24 above). Although the applicant argued that he was nonetheless afraid to contact the Russian authorities, owing to the reasons for which he had previously been granted subsidiary protection (see paragraphs 14, 16 and 25 above), those arguments were not adequately addressed in the domestic proceedings. The Court also notes that, according to a legal instrument adopted in 2019, a foreign national who has been granted subsidiary protection and who states that he or she is afraid to contact the authorities of his or her country of origin is considered to have an objective reason for not being able to obtain a travel document from those authorities (see paragraph 49 above). Thus, the fact that beneficiaries of subsidiary protection may have a well-founded fear to contact their national authorities has eventually been acknowledged in Lithuanian law – albeit at a time when it no longer availed the applicant.

95. Furthermore, for nearly ten years the Lithuanian authorities accepted that the applicant was unable to obtain a passport from the Russian authorities (see paragraphs 8 and 12 above). According to the Government, the refusal to issue him with a travel document in 2018 had been based on the changed practice of the Russian authorities regarding the issuance of passports to Russian nationals residing abroad (see paragraphs 76 and 77 above). However, there is no indication that the Lithuanian authorities assessed whether that possibility was accessible in practice to the applicant in the light of his individual circumstances, including the fact that he had lived in Lithuania for almost twenty years and had not had any valid Russian identity documents during that entire time (see paragraphs 19, 20, 25 and 26 above). Although the Government submitted that certain other persons of Chechen origin had obtained travel documents from the Russian embassy (see paragraph 77 above), the Court has not been provided with any information regarding those persons and whether their situation was comparable to that of the applicant. It is therefore unable to draw any conclusions from this statement.

96. Accordingly, the Court finds that the refusal to issue the applicant with an alien’s passport was taken without carrying out a balancing exercise and without ensuring that such a measure was justified and proportionate in his individual situation (see, *mutatis mutandis*, *Pfeifer*, cited above, § 57). That refusal was based on formalistic grounds, namely that he had not demonstrated that he was personally at risk of persecution and that he was not considered a beneficiary of asylum at that time, without adequate examination of the situation in his country of origin, as well as on the purported possibility of obtaining a Russian passport, without any assessment of whether that possibility was accessible to him in practice in view of his particular circumstances.

97. In the light of the foregoing, the Court concludes that it has not been demonstrated that the interference with the applicant's right to freedom of movement was necessary in a democratic society.

98. There has accordingly been a violation of Article 2 of Protocol No. 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

100. The applicant claimed compensation in respect of non-pecuniary damage for the inconvenience and distress suffered as a result of the violation of his rights, leaving the amount to the Court's discretion.

101. The Government submitted that any compensation should be made on an equitable basis and should not exceed the amounts awarded in similar cases.

102. The Court considers it appropriate to award the applicant 5,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

103. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 14 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Jon Fridrik Kjølbro
President