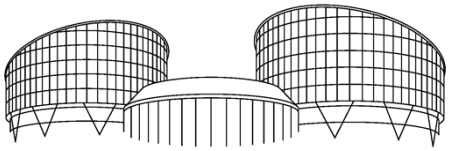

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF S.E. v. SERBIA

(Application no. 61365/16)

JUDGMENT

Art 2 P4 • Freedom to leave a country • Refusal to issue a recognised Syrian refugee a travel document for seven years due to absence of regulations implementing domestic asylum law • Authorities' systemic failure to act in accordance with domestic law • Very essence of right to leave the country impaired
Art 46 • Execution of judgment • Respondent State required to take both individual and general measures to address structural problem • Need for statutory and operational measures to complete legislative framework and implementing regulations providing effective right to leave the country

STRASBOURG

11 July 2023

FINAL

11/10/2023

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

In the case of S.E. v. Serbia,

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

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Faris Vehabović,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ana Maria Guerra Martins*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 61365/16) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Syrian national, Mr S.E. ("the applicant"), on 19 October 2016;

the decision of 23 February 2018 to give notice of the application to the Serbian Government ("the Government");

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Office of the United Nations High Commissioner for Refugees (UNHCR), which was granted leave to intervene by the President of the Section, and the respondent Government's comments in reply;

the decision not to have the applicant's name disclosed (Rule 47 § 4 of the Rules of Court) and to grant confidentiality (Rule 33 of the Rules of the Court);

Having deliberated in private on 4 April and 20 June 2023,

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

INTRODUCTION

1. The present case concerns the refusal of the Serbian authorities to issue a travel document to the refugee applicant in Serbia, owing to a failure by the respective Ministers of the Interior to enact, since 2008, any regulations, as subsidiary legislation, governing the content and design of the travel document for refugees, despite being required to do so by the Asylum Act. The case raises issues under Article 2 of Protocol No. 4 to the Convention given that the refusal prevented the applicant from travelling outside Serbia for many years.

THE FACTS

2. The applicant was born in 1987 and lived in Belgrade from 2014 until 2022. He was represented by the Belgrade Centre for Human Rights, a non-governmental organisation based in Belgrade, and its lawyers, Ms L. Petrović and Ms. S. Škero Koprivica.

3. The Government were represented by Ms N. Plavšić, their Agent at the relevant time.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE APPLICANT'S ATTEMPT TO OBTAIN A TRAVEL DOCUMENT FOR REFUGEES IN SERBIA

5. The applicant was granted refugee status in Serbia on 28 April 2015 on the grounds of his political activities in Syria and the general state of insecurity in that country. From then on, he lawfully resided in Serbia and was employed by various IT companies. He also married a Serbian national on 3 June 2018.

6. On 25 May 2015 the applicant, represented by the Belgrade Centre for Human Rights, applied to the Asylum Office to be issued with a travel document for refugees (*putna isprava za izbeglice*). His Syrian national passport expired sometime during that year.

7. On 11 June 2015 the Border Police Unit (a department of the Ministry of the Interior) notified the applicant (no. 03/10 no. 26-1342/14) that he could not be issued with a travel document for the following reasons:

> "Following your request of 25 May 2015 to issue a travel document for refugees to the Syrian national S.E.M.M. given that he has obtained refugee status in Serbia, we inform you that we are currently unable to process your request and issue such a document to the above-mentioned individual.
>
> Article 58 § 1 (4) of the Asylum Act provides that the Ministry of the Interior shall issue a travel document for refugees to an individual who has been granted asylum, and [paragraph] 4 [provides] that the form and content of that document will be prescribed by the Minister. Given that this has not yet been done, i.e. no subsidiary regulations (*podzakonski akti*) governing the content and design of the travel document for refugees have been enacted, the Asylum Office is unable to issue this type of document to the above-mentioned individual. Should the formal conditions be fulfilled in the coming period (adoption of the appropriate regulation (*donošenje odgovarajućeg pravilnika*)), the Asylum Office will issue a travel document for refugees to the above-mentioned Syrian national without delay."

This "notification" did not contain any instructions on a legal avenue that could be pursued further in this regard.

8. On 25 August 2015 the applicant's representative alerted the Minister of the Interior to the fact that individuals who had been granted asylum in Serbia could not be issued with a travel document and asked him to enact

regulations enabling the issuance of such a document. The Minister's office did not respond to this letter.

9. In the meantime, on 29 June 2015 the applicant lodged a constitutional appeal against the document dated 11 June 2015 (see paragraph 7 above). Relying on Article 39 of the Constitution (see paragraph 14 below), Article 2 of Protocol No. 4 to the Convention and Article 28 of the 1951 Refugee Convention (see paragraph 30 below), he complained that the Minister of the Interior had failed to adopt the relevant regulations and that the Border Police Unit had been unable to issue him with a travel document which would allow him to travel outside Serbia. He also requested that the Constitutional Court, *inter alia*, order the Minister to urgently adopt regulations regarding the content and design of the travel document for refugees.

10. On 20 June 2016, a panel of three judges of the Constitutional Court refused the applicant's constitutional appeal, stating in a brief inadmissibility decision that such an appeal could only be lodged against individual actions or decisions, as prescribed by Article 170 of the Constitution (see paragraph 14 below), and could not be lodged against inaction and the non-adoption of a general legal act, specifically a failure to adopt subsidiary regulations.

11. On 29 August 2016 the applicant's legal representative enquired with the Ministry of the Interior about its general position on whether the issuance of travel documents by the Syrian authorities would lead to cessation of the refugee status granted to Syrian nationals in asylum proceedings in Serbia. The Ministry responded that each case had to be assessed individually and that it did not have a general position on the matter.

II. RELEVANT DEVELOPMENTS SUBSEQUENT TO NOTICE OF THE APPLICATION BEING GIVEN TO THE SERBIAN GOVERNMENT

12. In their additional submissions of December 2022, the Government informed the Court of the following developments. On 30 May 2022 the applicant obtained a Syrian national passport from the Syrian embassy in Belgrade. He subsequently obtained a working visa from the German embassy in Belgrade for the purpose of moving to Germany to start working as an IT frontend developer for a leading German company.

13. On 11 October 2022 the applicant left Serbian territory by crossing the border at Belgrade Nikola Tesla Airport and flew to Germany using his new Syrian passport.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. The Constitution of the Republic of Serbia (*Ustav Republike Srbije*, published in the Official Gazette of the Republic of Serbia – OG RS no. 98/06)

14. The relevant provisions of the Constitution read as follows:

Article 18 (Direct implementation of guaranteed rights)

"Human and minority rights guaranteed by the Constitution shall be implemented directly.

The Constitution shall guarantee ... the direct implementation of human and minority rights secured by the generally accepted rules of international law ... [and] ... ratified international treaties ... Legislation may prescribe the manner of exercising these rights only if explicitly stated in the Constitution or necessary for the enjoyment of a specific right owing to its nature, it being understood that such legislation may not under any circumstances influence the substance of the guaranteed right in question.

Provisions on human and minority rights shall be interpreted ... pursuant to valid international standards on human and minority rights, as well as the practice of international institutions which supervise their implementation."

Article 39 (Freedom of movement)

"Everyone shall have the right to free movement and residence in the Republic of Serbia, as well as the right to leave and return.

Freedom of movement and residence, as well as the right to leave the Republic of Serbia, may be restricted by law, if this is necessary for the purposes of conducting criminal proceedings, protection of public order, prevention of the spread of contagious diseases or defense of the Republic of Serbia.

The entry and stay of foreign nationals in the Republic of Serbia shall be regulated by law ..."

Article 57 (Right to asylum)

"Any foreign national with reasonable fear of persecution based on his race, gender, language, religion, national origin or association with some other group, or political opinions, shall have the right to asylum in the Republic of Serbia."

Article 170 (Constitutional appeal)

"A constitutional appeal may be lodged against individual decisions or actions of State bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been exhausted or not prescribed."

B. The 2008 Asylum Act (*Zakon o azilu*, published in OG RS no. 97/2008)

15. At the time the applicant's application for a travel document was assessed, the legal framework which regulated the issuing of travel documents to refugees was established by the 2008 Asylum Act. It was passed on 26 November 2007 and entered into force on 1 April 2008, when Serbia assumed full responsibility for refugee status determination, which had previously been carried out by UNHCR under its mandate for asylum applicants within the territory of Serbia and their further repatriation.

16. Article 58 of the Act provided that a person who had expressed an intention to seek asylum, or filed an asylum application, or who had been granted asylum, had to be issued with one of the following personal documents, as appropriate: (i) a certificate confirming the intention to seek asylum; (ii) an identity card for asylum-seekers; or (iii) an identity card and a travel document for refugees. It further provided, in conjunction with Article 67, that the form and content of these documents were to be prescribed by the Minister of the Interior within sixty days of the Act coming into effect.

17. Article 62 provided that at the request of anyone over 18 years of age who had been granted refugee status ("right to refuge" (*pravo na utočište*) in the original text) in the Republic of Serbia, the Asylum Office had to issue a travel document in the prescribed form, valid for a period of two years, in accordance with the law. In exceptional circumstances of a humanitarian nature, this type of document could be issued to a beneficiary of subsidiary protection not in possession of a national travel document, valid for up to one year.

18. Article 54 § 1 (1) and (2) provided that refugee status would cease, *inter alia*, if the person in question had voluntarily re-availed him or herself of the protection of his or her country of nationality, or, if having previously lost his or her nationality, had voluntarily reacquired it.

C. The 2018 Asylum and Temporary Protection Act (*Zakon o azilu i privremenoj zaštiti*, published in OG RS no. 24/18)

19. The 2008 Asylum Act was repealed and replaced by the new Asylum and Temporary Protection Act ("the 2018 Asylum Act"). It was passed on 22 March 2018 and came into force on 4 April 2018, but its implementation was delayed until 4 June 2018.

20. Article 87 of the Act corresponds in principle to Article 58 of the 2008 Asylum Act (see paragraph 16 above). Under this Article, in conjunction with Article 101 § 1 in the transitional and final provisions, the Minister of the Interior was required to issue regulations on, *inter alia*, the

format and content of the above-mentioned personal documents within sixty days of the Act coming into effect.

21. Article 91 provides that at the request of anyone who has been granted refugee status in the Republic of Serbia, the Asylum Office must issue a travel document in the prescribed form, valid for five years.

D. Practice of the Ministry of the Interior concerning applications for travel documents by refugees recognised in Serbia

22. In the applicant's submissions to the Court, which were not challenged by the Government, it was asserted that seventy-seven individuals had been granted asylum in Serbia between 2008 and 2016 and that none had been issued with a travel document for refugees or for persons with subsidiary protection. To the applicant's knowledge, three refugees had applied for a travel document before him and two after him. None of them had been issued with a decision, but they had received a "notification" identical or very similar in form and content to that which he had received (see paragraph 7 above).

E. General requirements for crossing the Serbian border

23. The security and control of State borders, which involves the control of flow of persons, vehicles and goods, are regulated by the State Border Control Act (*Zakon o graničnoj kontroli*, published in OG RS no. 24/18, which repealed, in 2018, the previously relevant State Border Protection Act (*Zakon o zaštiti državne granice*, published in OG RS nos. 97/08 and 20/15). A person who intends to cross the State border has a duty, *inter alia*, to present to the border police a valid travel document or other document entitling him or her to do so, at the identified border crossing points for land, air, rail or water transport, during the fixed opening hours and in accordance with the relevant international treaties (Articles 12, 15 and 47). The border police carry out systematic checks, on entry and exit, of all passengers who intend to cross the State border, both nationals and aliens, and their travel documents, including whether they fulfil the requirements to enter or exit the Republic of Serbia (Articles 36 and 40 to 42). During the checks, travel documents are systematically stamped on entry and exit, as appropriate, with a stamp specifying the date and place of entry to and exit from the territory or indicating the refusal of entry (Articles 36 and 47).

24. Under the 2018 Aliens Act currently in force (*Zakon o strancima*, OG RS nos. 24/18 and 31/19, which repealed the earlier 2008 Aliens Act, OG RS no. 97/08, which was in force until October 2018), border checks of aliens are carried out on entry and exit, in accordance with the law (Article 11). An alien, that is to say every individual who is not a national of the Republic of Serbia, may enter and stay in Serbia using a valid travel

document with a valid visa or permission to stay, which may be required for passport holders of a respective country unless the law or international or bilateral agreements provide otherwise (Article 6). An alien is free to leave the Republic of Serbia, but the border police may exceptionally temporarily prohibit him or her from leaving the country if he or she is not in possession of a valid travel document or other document authorising him or her to cross the State border (Article 17).

F. On naturalisation and travel documents for national and non-nationals

25. The Travel Documents Act (*Zakon o putnim ispravama*, published in OG RS, nos. 90/07, 116/08, 104/09, 76/10, 62/14 and 81/19) governs travel documents of nationals of the Republic of Serbia for travelling abroad and determines the types of travel documents, eligibility criteria and procedure for their issuing. Article 2 provides that a travel document is a public document used by a national for crossing the State border, for travelling and staying abroad, and returning the country. Article 7 defines travel documents as: (i) passport (*pasoš*), (ii) diplomatic passport (*diplomatski pasoš*), (iii) professional passport (*službeni pasoš*), (iv) emergency travel document or laissez-passer (*putni list*), as well as (v) other travel documents issued on the basis of an international agreement.

26. In March 2008 the Serbian authorities started issuing new Serbian biometric passports with the highest protection characteristics for nationals.

27. In addition to the travel document for persons who have been granted refugee status and subsidiary protection (see paragraph 21 above), the Serbian authorities may also issue a travel document to a stateless person, or an emergency travel document to an alien who does not have a valid travel document, to enable him or her to leave, if (i) his or her Serbian nationality has meanwhile expired and he or she wishes to leave the country; (ii) if he or she has lost his or her regular travel document or is otherwise without it and his or her country of origin does not have its own diplomatic representation in Serbia or have its interests represented by any other country, or (iii) in the event of forced expulsion (Article 97 of the 2018 Aliens Act).

28. A foreign national who has been married to a national of the Republic of Serbia for at least three years and who has been granted a permanent residence permit in the country may acquire Serbian nationality by naturalisation if he or she submits a written statement that he or she considers the Republic of Serbia to be his or her own country (Article 17 of the Serbian Nationality Act (*Zakon o državljanstvu Republike Srbije*), published in OG RS nos. 135/04, 90/07 and 24/18).

II. RELEVANT INTERNATIONAL TEXT AND DOCUMENTS

A. Principles of international refugee law regarding the right to travel documents and the freedom of movement of recognised refugees

1. United Nations Convention of 28 July 1951 relating to the Status of Refugees ("the 1951 Refugee Convention"), as supplemented by the New York Protocol of 31 January 1967

29. Serbia has ratified the 1951 Refugee Convention and its 1967 Protocol. The 1951 Refugee Convention is a status and rights-based treaty. It provides basic minimum standards for the treatment of refugees, without prejudice to States granting more favourable treatment, including the provisions of documentation and, in particular, a refugee travel document in passport form.

30. The relevant parts of the 1951 Refugee Convention read as follows:

Article 1

Article 1 - Definition of the term 'refugee'

"A. For the purposes of the present Convention, the term 'refugee' shall apply to any person who:

...

(2) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

Article 25
Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

...

5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 27
Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28
Travel documents

"1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this Article."

31. A refugee travel document (also known as a 1951 Convention travel document – "CTD", nowadays "MRCTD" or "machine-readable travel document") is a travel document issued to a refugee by the State in which she or he resides, allowing him or her to travel outside that State and return there, or issued by another country if she or he was unable to obtain it from the country of his or her lawful residence.

32. Article 28 (see paragraph 30 above) obliges Contracting States to issue travel documents to persons recognised as refugees lawfully staying in their territory, as long as "compelling reasons of national security or public order" do not require otherwise. They are obliged to issue CTDs to refugees in accordance with the rules governing the form, conditions for issue, duration and renewal of CTDs contained in the Schedule to the 1951 Refugee Convention. The Schedule comprises sixteen paragraphs with more detailed provisions on the responsibility of States in this regard, as well as an Annex containing the text and format of the Convention travel document. The Schedule provides that a refugee is entitled to apply for a travel document from the authorities of the country in whose territory he or she has lawfully taken up residence (Paragraph 11). The Convention established a unified travel document system for refugees, and Contracting States are required to recognise the validity of CTDs issued by another Contracting State in accordance with Article 28 (Paragraph 7 of the Schedule). The Specimen CTD, contained in the Annex, clarifies, under point 1, that it is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. The *travaux préparatoires* to Article 28 indicate that a refugee is not required to "justify" the proposed

travel in order to receive a travel document to which he or she is entitled "for travel purposes"[1].

2. Conclusions on International Protection adopted by the Executive Committee of the UNHCR Programme (1975-2017)

33. The Executive Committee, established in 1958 (Resolution 672 (XXV)) by the United Nations Economic and Social Council (ECOSOC) to have executive and advisory functions, has given guidelines to States on Convention travel documents for refugees in several of its conclusions, in particular nos. 13 (XXIX) 1978, 18 (XXXI) 1980, 49 (XXXVIII) 1987, 112 (LXVII) 2016 and 114 (LXVIII) 2017.

34. In its most recent Conclusion 114 (LXVIII) 2017 (Guide for Issuing Machine Readable Convention Travel Documents for Refugees and Stateless Persons, Jointly published by UNHCR and the ICAO, October 2013, https://www.refworld.org/docid/52b166a34.html), the Committee recognised the importance of travel documents for refugees and stateless persons to facilitate their travel and the requirement for the host States to issue them, while noting that international standards and specifications in this domain have undergone significant developments since 1951. The Committee called upon States Parties to the 1951 Refugee Convention to take all necessary legislative, administrative and technical measures to effect realisation of the right set out in Article 28 and to amend their relevant national law, if this had not yet been done, to provide refugees lawfully staying in the country with an individual right to be issued with travel documents in machine-readable form, in conformity with the modern international standards defined by the International Civil Aviation Organization (ICAO) in Annex 9 to the 1944 Convention on International Civil Aviation (Chicago Convention). The new ICAO standards became mandatory for all travel documents in 2016.

B. International human rights law

1. Universal Declaration of Human Rights

35. Article 13(2) of the Universal Declaration of Human Rights (UDHR) provides as follows:

Article 13(2)

"Everyone has the right to leave any country, including his own, and to return to his country."

[1] UNHCR, Opinion: The 1951 Convention relating to the Status of Refugees and the Obligations of States under Articles 25, 27 and 28, with particular reference to refugees without identity or travel documents, May 2000, http://www.refworld.org/docid/51af00184.html, at 46, p. 13.

2. UN International Covenant on Civil and Political Rights (ICCPR) and practice of the United Nations Human Rights Committee

36. Article 12 of the UN International Covenant on Civil and Political Rights (ICCPR), to which the Republic of Serbia is a party, and which served as the basis for drafting Article 2 of Protocol No. 4 to the Convention, enshrines the right to be free to leave any country and defines it in the following terms:

> "...
>
> 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.
>
> ..."

37. The UN Human Rights Committee, in its General Comment No. 27 on Article 12 (Freedom of Movement) of the ICCPR, adopted under Article 40(4) of the ICCPR on 2 November 1999 (CCPR/C/21/Rev.1/Add.9), provided guidance for the interpretation of Article 12(2). It must be interpreted to include, *inter alia*, a right to obtain the necessary travel documents. The relevant parts read as follows:

> "9. In order to enable the individual to enjoy the rights guaranteed by article 12, paragraph 2, obligations are imposed both on the State of residence and on the State of nationality. 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. It is no justification for the State to claim that its national would be able to return to its territory without a passport.
>
> ...
>
> 11. Article 12, paragraph 3, provides for exceptional circumstances in which rights under paragraphs 1 and 2 may be restricted. This provision authorises the State to restrict these rights only to protect national security, public order (*ordre public*), public health or morals and the rights and freedoms of others. To be permissible, restrictions must be provided by law, must be necessary in a democratic society for the protection of these purposes and must be consistent with all other rights recognized in the Covenant (see paragraph 18 below)."

C. Relevant Council of Europe Material (Commissioner for Human Rights of the Council of Europe)

38. The Commissioner for Human Rights of the Council of Europe, in the Issue Paper (2013) entitled "The right to leave a country", concluded as follows:

"... all Council of Europe States must examine or re-examine their laws, policies and practices in order to fully align them with the Convention and the Court's case law, in particular:- the issue of travel documents and the legitimacy of any obstacles to such issue;

- the validity of their laws, policies and practices regarding the withdrawal or refusal of travel documents to citizens to ensure that they are fully consistent with the Convention right to leave a country;

- those [S]tates which have a record of failure to respect the right to leave must take particular care to ensure that their legislation and its application is brought into line with their human rights obligations ..."

D. European Union Law material

39. Serbia is not a member State of the European Union. It was granted candidate country status in March 2012 and started accession negotiations in January 2014.

40. Article 25(1) 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 (recast) enshrines the obligation of member States to issue "to beneficiaries of refugee status travel documents, in the form set out in the Schedule to the Geneva Convention[2], for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require". It also provides in Article 25(2) that member States must issue to beneficiaries of subsidiary protection who are unable to obtain a national passport documents which enable them to travel outside their territory, subject to the same restrictions.

THE LAW

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

41. The applicant complained that the Serbian authorities' failure to issue him with a travel document for refugees had prevented him from leaving Serbian territory, travelling abroad and returning there. He relied on Article 2 of Protocol No. 4, the relevant part of which reads as follows:

---

[2] Pursuant to Article 2(c) of the Directive 'Geneva Convention' means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967.

"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."

42. The Government contested the applicant's arguments, arguing that the application was incompatible *ratione materia*e with the provisions of the Convention, that the applicant did not have "victim" status and that he had failed to exhaust effective domestic remedies.

A. Admissibility

1. *The Government's preliminary objection concerning compatibility* ratione materiae *with the provisions of the Convention*

(a) The parties' submissions

43. The Government firstly invited the Court to declare the application inadmissible as being incompatible *ratione materiae* with the provisions of the Convention, given that the applicant's complaint did not concern the violation of any right enshrined in the Convention or its Protocols. According to the Government, the reasons behind a refusal to issue a travel document and the manner in which they were manifested determined whether the issue in question concerned an alleged violation of the right to liberty of movement guaranteed by the Convention or an alleged violation of the right to a travel document for refugees guaranteed by Article 28 of the 1951 Refugee Convention. Given that the respondent State had not been in a position to issue a travel document to the applicant for technical reasons, without any intention of restricting his liberty of movement, the disputed inaction might have arguably caused only a breach of the right to a travel document under the 1951 Refugee Convention, which was not as such guaranteed by the Convention.

44. In addition, in the Government's view, the right to a travel document for refugees, of which the applicant had complained, was an ancillary right to the right to asylum. Given that the Court was not competent to review the decisions of State authorities on who would obtain asylum and under which conditions (the Government quoted, in this respect, *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 102, Series A no. 215, and *Ahmed v. Austria*, 17 December 1996, § 38, *Reports of Judgments and Decisions* 1996-VI), it could not be expected to be competent to decide on the right to a travel document for refugees.

45. The applicant pleaded that he had not requested the Court to interpret Article 28 of the 1951 Refugee Convention, but had claimed that the inability of the State authorities to issue him with a travel document and

therefore ensure his freedom of movement, namely the right to be free to leave its territory in a lawful manner, clearly fell within the ordinary meaning of the wording of Article 2 § 2 to Protocol No. 4, which had been breached. Reference to the 1951 Refugee Convention, as well as to his refugee status, had in these specific circumstances only an interpretative effect with regard to the application of that Article.

(b) The Court's assessment

46. In so far as the Government pleaded that the inapplicability of Article 2 § 2 of Protocol No. 4 on the grounds that the right to political asylum and the right to a travel document for refugees as its ancillary right were not as such guaranteed by either the Convention or its Protocols, the Court emphasises that these rights as such are not the subject matter of the present case. The Serbian authorities already granted refugee status to the applicant and legally recognised the right of a recognised refugee in Serbia to obtain a travel document (see paragraphs 5, 16, 17, 20 and 21 above).

47. The Contracting States have the right, as a matter of well-established case-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). The Court emphasises, however, that Article 2 of Protocol No. 4 is intended to secure to "everyone", regardless of his or her nationality, the freedom to leave any country, including his or her own, and that the corresponding obligations to respect this right are incumbent on the Contracting States (see, with respect to nationals, *Rotaru v. the Republic of Moldova*, no. 26764/12, § 22, 8 December 2020; with respect to aliens, *Baumann v. France*, no. 33592/96, § 61, ECHR 2001-V (extracts); *Miażdżyk v. Poland*, no. 23592/07, § 39, 24 January 2012; and *L.B. v. Lithuania*, no. 38121/20, § 59, 14 June 2022; and, with respect to persons who may be considered stateless, *Mogoş and Others v. Romania* (dec.), no. 20420/02, 6 May 2004; compare, in the context of Article 3 § 2 of Protocol No. 4, on which only nationals of a respondent State may rely, *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, §§ 244-245, 14 September 2022, with further references). Nevertheless, this right does not confer on any individual an absolute right to leave the territory. It may be restricted and also conditional upon compliance with formal requirements such as being in possession of a valid travel document or a visa (see, *mutatis mutandis*, *Iovita v. Romania* (dec.), no. 25698/10, §§ 67-77, 7 March 2017, and *Mogoş and Others*, cited above). Article 2 § 2 of Protocol No. 4 cannot be considered to impose on Contracting States a general obligation to issue aliens residing on their territory with any particular document permitting them to travel abroad (see *L.B. v. Lithuania*, cited above, § 59). However, the Convention requires that its provisions be interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory (ibid., see also *H.F. and*

Others, cited above, §§ 208 and 252, with further references). Hence, the right to leave any country would not be practical and effective, in certain circumstances, without an individual being able to obtain some type of travel document (see *L.B. v. Lithuania*, cited above, §§ 56-62, concerning the refusal of the Lithuanian authorities to reissue an alien's passport to a Russian national of Chechen origin, still afraid of contacting the Russian authorities, who was a long-term resident and former beneficiary of subsidiary protection in Lithuania).

48. Furthermore, in the Court's view, both intentional or unintentional actions or omissions of a public authority liable to infringe that right or to restrict its exercise, and which therefore have the effect of excluding certain persons from the exercise of the right to leave any country, guaranteed by Article 2 of Protocol No. 4, may fall within its scope (see, for example, *Peltonen v. Finland* (dec.), no. 19583/92, Commission decision of 20 February 1995, and *Berkovich and Others v. Russia*, nos. 5871/07 and 9 others, § 71, 27 March 2018; compare, in the context of the authorities' inactivity, *Napijalo v. Croatia*, no. 66485/01, §§ 62 and 73, 13 November 2003, concerning the confiscation of the applicant's passport for refusal to pay a customs fine and the lack of co-ordination between different authorities resulting in a failure to return it for two years). Therefore, the argument that the State's refusal to issue a travel document to the applicant was not a consequence of restrictive measures with the aim of prohibiting him from leaving Serbia does not render this Article inapplicable, as long as the consequences produced by the State's actions or omissions may have precluded him from doing so.

49. The Court observes that the applicant's right to leave Serbian territory appears to be, in view of the relevant domestic law, connected to the possession of a valid travel document (see paragraphs 23-24 above). There is no indication, nor did the Government claim, that the applicant could have left Serbia or travelled to any other State, including a neighbouring one (see paragraph 23 above), without holding a valid travel document (compare *Aristimuño Mendizabal v. France* (dec.), no. 51431/99, 21 June 2005, in which the Court found that the long-term failure to issue a foreign national with a residence permit had not affected her freedom of movement in any concrete terms). The Court notes that the applicant's national passport expired in 2015 (see paragraph 6 above). Therefore, his right to leave Serbia could not be practical and effective without him having the possibility of obtaining a travel document (see, *mutatis mutandis*, *L.B. v. Lithuania*, cited above, § 60). Despite the applicant's statutory entitlement, the Serbian authorities rejected his request for a travel document for refugees because the relevant implementing regulations had not yet been enacted (see paragraph 7 above). For the purposes of the application of Article 2 § 2 of Protocol No. 4 to the present case, the Court has no reason to doubt that the applicant could not have left Serbia without holding a valid travel document.

50. Accordingly, the applicant's complaint about the authorities' failure to issue him with a travel document for refugees is compatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and the Court therefore rejects the Government's preliminary objection, without any prejudice to the principles that govern the State's responsibility under the Convention in a situation like that of the applicant under Article 2 § 2 of Protocol No. 4, which fall to be examined below under the merits.

2. The applicant's alleged lack of victim status

a) The parties' submissions

51. The Government challenged the applicant's victim status, arguing that his application to the Court had an *actio popularis* nature because he had failed to show that he had been affected by any specific measure of the respondent State, bearing in mind that he had given up completing the administrative proceedings and had instead directly filed a constitutional appeal. The mere fact that certain regulations had not been adopted by the authorities was not sufficient for the application to trigger the safeguards mechanism established by the Convention. It was also obvious from the fact that the applicant had eventually obtained a Syrian passport in 2022 and could leave the country that the application represented an *actio popularis*. In their view, the application therefore had to be dismissed as incompatible *ratione personae* with the provisions of Article 34 of the Convention.

52. The applicant stated that the Government was wrongfully trying to deprive him of victim status by claiming that his was an *actio popularis* application. On the contrary, he had been a direct victim of human rights violations, and his freedom of movement had been restricted *in concreto* as he could not leave and return to the Republic of Serbia for many years.

b) The Court's assessment

53. The Court has consistently held in its case-law that the system of individual petition provided for in Article 34 of the Convention excludes applications by way of *actio popularis.* Specifically*,* its task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 101, ECHR 2014, and *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015).

54. Following the refusal of his application for a travel document, the applicant lodged a constitutional appeal, complaining of legislative inaction and the inability for the relevant authority to issue him with one. However,

the fact that the absence of regulations on the matter affected all recognised refugees in the Republic of Serbia, not just the applicant, does not *per se* make his application to the Court *actio popularis*. Notably, he did not challenge the state of the law and the practice of the domestic authorities simply because they appeared to contravene the Convention in general, nor did he ask the Court to undertake an abstract review of the relevant legislation. He complained about the failure to adopt the relevant regulations, claiming that he had already been directly affected by the alleged omissions in concrete terms as could not be issued with a travel document (see paragraph 7 above). In particular, the authorities' refusal and inability to issue a travel document to him undoubtedly had direct, practical and considerable consequences on his freedom of movement (see paragraph 49 above; compare *Lolova and Popova v. Bulgaria* (dec.), no. 68053/10, § 47, 20 January 2015, in which the Court found that the police's repeated refusals to issue a passport to a minor had not affected the child's ability to leave the country, given that the domestic proceedings seeking court authorisation for her travel in the absence of the father's consent had in any event been pending throughout the period in question).

55. The Court therefore dismisses the Government's objection concerning the lack of victim status of the applicant.

3. Exhaustion of domestic remedies

a) The parties' submissions

56. The Government further argued that the Court was precluded by Article 35 § 1 of the Convention from examining the present application as the applicant had failed to properly use domestic legal remedies, which had ultimately led to the improper use of a constitutional appeal and the inability of the Constitutional Court to rule on the merits of the alleged violation of his rights. The Government endorsed the reasoning of the Constitutional Court that the Ministry of the Interior's "notification" was not a formal administrative decision against which it was possible to pursue further domestic remedies, such as a constitutional appeal. According to the Government, however, following the Ministry's refusal to the applicant's request by an informal decision, he should, in the first place, have insisted on the adoption of a "formal" individual administrative decision, which would have enabled him to pursue the applicable domestic remedies under the General Administrative Procedure Act (*Zakon o opštem upravnom postupku*, OG RS nos. 33/97 and 31/01) and the Administrative Disputes Act (*Zakon o upravnim sporovima*, OG RS no. 111/09). If even after the new request the Ministry had not issued an individual decision, the applicant should have lodged a complaint with the Administrative Court for "silence of the administration", which could have resulted in that court ordering the Ministry to adopt an appropriate administrative decision. If he

had not been satisfied with the outcome of the new decision, he would have been free to further challenge it using ordinary administrative remedies, namely an appeal and judicial review. However, the applicant had failed to do so.

57. According to the applicant, there had been no legal remedy that could have been used to oblige the executive authorities to enact regulations to allow him to acquire a valid travel document.

b) The Court's assessment

58. The Court refers to the relevant principles set out in its case-law in respect of the exhaustion of domestic remedies (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). As regards the present case, the Court notes that this kind of response in the form of a "notification" instead of a decision (*rešenje*) on the applicant's eligibility for a travel document actually stems from the Ministry's practice regarding all applications for a travel document for refugees given the unavailability of the implementing regulations and travel document booklets (see paragraph 22 above). The Court is not convinced that the applicant would have had a reasonable prospect of success had he filed a request to obtain a formal individual administrative decision at first instance or pursued any of the other administrative avenues outlined by the Government. In particular, while the Government referred extensively to provisions of administrative laws on possible legal remedies within administrative proceedings and provided numerous examples of how they operated in practice in general, they failed to refer to any legal avenue or submit any examples of case-law to demonstrate that the administrative remedies referred to, even assuming that they were available to the applicant, could have resulted in issuing a travel document to him.

59. Therefore, without prejudging the merits of the applicant's complaint, the Court considers that there is in fact no indication or evidence of any available legal remedy which would have addressed the root cause of the applicant's complaint and might have had any effect on the consequences of the violation alleged, which concerns the state of the law (see, *mutatis mutandis*, *Valasinas v. Lithuania* (dec.), no. 44558/98, 14 March 2000, *L. v. Lithuania*, no. 27527/03, § 36, ECHR 2007-IV; *Rodić and Others v. Bosnia and Herzegovina*, no. 22893/05, §§ 59-60, 27 May 2008; and *Stojanović v. Serbia*, no. 34425/04, § 62, 19 May 2009). The Court accordingly dismisses the Government's preliminary objection.

4. Conclusion on admissibility

60. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

61. According to the applicant, Article 2 of Protocol No. 4 to the Convention legally obliged the Republic of Serbia to ensure that he could leave and return to Serbia. While acknowledging that he could not obtain a travel document for technical reasons and not because of a restrictive measure, he argued that the Contracting State's compliance with the negative obligation to "respect" did not nullify the effect of non-compliance with its positive obligation to ensure freedom of movement. In this connection, he referred to General Comment No. 27 of the UN Human Rights Committee (see paragraph 37 above). He submitted that the State had disregarded its obligation to protect him and ensure him freedom of movement, despite him being under its jurisdiction as a recognised refugee. In his initial submissions, he stated that he had been unable to travel or leave Serbia since 2015 as his Syrian passport had expired and he could not acquire a travel document for refugees from the Serbian authorities.

62. The applicant submitted that the Government's argument that he had not been precluded from leaving Serbia by any restrictive measure and could have obtained a Syrian passport in order to leave was incompatible with Serbia's international obligations. According to him, no one could be expected to lawfully leave a country in the absence of a travel document, and the Government had failed to explain how he would have done so without acting illegally. Moreover, a refugee could not be directed to the country of origin to have a passport issued, as he or she no longer enjoyed its protection. He had even contacted the Ministry of the Interior in that regard with the intention of proving that requesting a Syrian travel document could have potentially led to the cessation of his refugee status in Serbia (see paragraph 11 above).

63. In his additional written observations of January 2023 relating to the fact that he had eventually obtained a Syrian passport in the course of the proceedings before the Court, the applicant stated that he had been living in a legal limbo for seven years, which had affected various aspects of his life and taken a toll on his mental health. For example, he could not travel with his wife or meet his family, and he had missed several serious business opportunities abroad, as mentioned in his earlier submissions. After receiving the last exceptional offer to work for a leading German company, he had decided to approach the Syrian embassy in Belgrade, "unwillingly putting himself in danger by approaching the authorities of the country from

which he [had] fled persecution" and "risking the revocation of his refugee status and [being] strip[ped] of international protection". After obtaining a passport and visa, he had immediately left for Germany. The job had been important for him to pursue his professional career, and he had had no other choice after seven years but to take the risk in view of the legal lacunae in Serbia and long-lasting legal disputes. Lastly, the applicant repeated his earlier arguments regarding the responsibility of the Serbian authorities.

(b) The Government

64. The Government firstly disputed that there had been an interference with the applicant's right to leave Serbia. While not denying the existence of positive obligations in order to secure the rights under the Convention, they reiterated that the nature of the reasons behind the refusal to issue travel documents determined whether the issue in question concerned an alleged violation of the right to freedom of movement or an alleged violation of the right to a travel document for refugees guaranteed by the 1951 Refugee Convention. They pointed out that, unlike the measures for the confiscation of a travel document, the authorities' inability to issue a travel document in the applicant's case could not be based on any grounds which could be assessed through the prism of the principle of proportionality within the meaning of Article 2 § 3 of Protocol No. 4. In this connection, they argued that the respondent State had not confiscated the applicant's passport, like in the case of *Napijalo v. Croatia* (cited above), or taken any other measure to restrict his freedom of movement in the interests of national security, public order or for other reasons, or with the aim of "detaining" him on Serbian territory. Travel documents to "foreigners" had not been issued for a reason essentially technical in nature – the absence of regulations by the Ministry of the Interior on the content and design of the travel document for refugees – owing to the need to find a comprehensive technical and software solution for all travel documents issued by the Republic of Serbia, which required certain financial resources. The Government maintained that liberty of movement was not in issue, solely a possible violation of the right to a travel document for refugees guaranteed by Article 28 of the 1951 Refugee Convention.

65. Fundamentally, as the applicant had not been legally prohibited by the authorities from leaving Serbian territory, he could also legally leave using a Syrian passport. By obtaining refugee status in Serbia the applicant had not lost or severed his legal link with the Syrian Arab Republic. The applicant was still a Syrian national with all rights and obligations and when he had learned that he could not obtain a travel document for refugees in Serbia, he had had an opportunity to apply to the Syrian diplomatic and consular missions there to renew his passport or to have a new one issued if he had intended to leave Serbian territory. The Government cited several newspaper links, suggesting that the Syrian authorities had apparently

amended their rules for issuing passports to their nationals abroad in April 2015, without any checks being carried out by the Syrian intelligence service. This fact is of particular importance as the applicant had been a political opponent of the government in Damascus and had received refugee status in that regard.

66. The Government contested the applicant's claims that he would have been exposed to a risk if he had requested or used a passport issued by the Syrian diplomatic and consular missions, being 2000 km away from Syria. Without referring to any source, the Government claimed that there were thousands of refugees who obtained travel documents from their country of nationality in the country of new residence. The applicant's representative was aware of this issue, as he had contacted the Ministry in 2016 enquiring about its general position on whether the issuance of travel documents by the Syrian authorities would affect the refugee status granted to Syrian nationals (see paragraph 11 above).

67. In their additional observations of December 2022 and February 2023, the Government referred to new facts (see paragraphs 12-13 above) as proof that the applicant's freedom of movement had not been restricted and that he could have freely applied to the Syrian authorities to obtain a travel document and leave Serbian territory with a passport of the country of which he was a citizen, without any risk of political persecution by them or a risk of cessation of his refugee status by the Serbian authorities by obtaining a renewed or new passport from the Syrian authorities. Alternatively, bearing in mind that the applicant had married a Serbian national in 2018 and the simple conditions for acquiring the nationality of the respondent State in such circumstances after they had been married for three years, the applicant could have applied for Serbian nationality, which could have further enabled him to apply for a Serbian passport. It was therefore the applicant's own failure to act that had prevented him from leaving Serbian territory, and his allegations that there had been a violation of Article 2 of Protocol No. 4 had to be considered unfounded.

(c) The third-party intervener

68. UNHCR submitted that the States parties to the 1951 Refugee Convention had a "mandatory obligation" to issue travel documents to refugees lawfully staying in their territory, specifically those who had been granted status and had been authorised to reside in the country. The wording of Article 28 of that Convention, using the imperative verb "shall", was unequivocal and implied that a Contracting State could not refuse to issue a travel document to a refugee if, for example, it regarded the proposed travel as unnecessary. The only lawful exception to the requirement for Contracting States to issue a travel document to refugees lawfully staying in their territory is to be found in the words "unless compelling reasons of national security or public order otherwise require". In this context, the

terms "compelling reasons", "national security" and "public order" should be interpreted and applied restrictively, and only concern grave and exceptional circumstances. The *travaux préparatoires* to Article 28 stress that the word "compelling" is to be understood as a restriction on the words "reasons of national security or public order". Thus, not any reason of national security or public order may be invoked, only compelling reasons. The exception must be interpreted narrowly.

69. According to UNHCR, having a travel document was an essential means for the exercise of the fundamental human right of refugees to freedom of movement, including the right to be free to leave any country, which was guaranteed by Article 12(2) of the ICCPR and Article 2 § 2 of Protocol No. 4 to the European Convention on Human Rights.

70. The object and purpose of Article 28 was to facilitate the international freedom of movement of refugees. This was particularly important for a refugee, who, unlike an ordinary alien, did not enjoy the protection of the country of his nationality and could not therefore avail himself of a national passport for international travel purposes. Furthermore, freedom of movement of refugees outside their country of residence could be an essential prerequisite for a durable solution as it enabled them to take advantage of opportunities for education, training or employment. When the international community, after World War I, had approached the task of establishing an internationally recognised status for refugees, one of the first measures taken had therefore been to ensure that refugees were provided with documentation to enable them to travel.

71. Having regard to the Serbian legislative framework and practice regarding the granting of travel documents to recognised refugees, UNHCR's view was that Serbia's failure to grant travel documents to recognised refugees within its territory was at variance with the relevant principles and obligations of international refugee law and human rights. The continuing problem of their inability to issue travel documents had not been resolved despite numerous interventions by UNHCR and NGOs providing legal assistance to asylum-seekers and refugees.

2. The Court's assessment

72. The Court observes at the outset that the applicant in the present case is a recognised refugee who was compelled to leave his country of origin to seek refuge in Serbia for fear of persecution or threats for his safety (see paragraph 5 above). In this regard, it notes the existence of a broad consensus at international and European level on the need for special protection of refugees, including the obligation to issue an appropriate travel document which is necessary, in principle, for the exercise of their fundamental human right to freedom of movement (see paragraphs 29, 30, 32, 34, 40 and 68-70 above).

73. However, in the instant case, the Court is neither called upon nor competent to interpret the content and scope of Article 28 of the 1951 Refugee Convention and verify how States honour their obligations under that Convention. The present application concerns an alleged violation of the freedom of movement which, *inter alia*, guarantees that the applicant, regardless of his nationality, enjoys the right to "be free to leave any country, including his own". Without entering into considerations of whether Serbia should be observed as "any" or the applicant's "own" country in view of his status, the Court will confine itself to ascertaining whether the effects of the respondent State's actions and/or omissions resulted in a breach of its obligations under Article 2 of Protocol No. 4. Therefore, it is only with regard to the application of that provision that reference is made to the 1951 Refugee Convention in the present case.

(a) General principles

74. Article 2 of Protocol No. 4 guarantees to any person a right to liberty of movement within a given territory and the right to leave that territory, which implies the right to travel to a country of the person's choice to which he or she may be admitted (see *Baumann*, § 61, and *Berkovich and Others*, § 78, both cited above).

75. The Court reiterates that Article 2 § 2 of Protocol No. 4 cannot be considered to impose on Contracting States a general obligation to issue aliens residing on their territory with any particular document permitting them to travel abroad (see, for example, the case-law quoted in paragraph 47 above). However, the Court and the Commission have previously been called upon to examine situations in which an applicant had already acquired a travel document which was subsequently seized, which he or she was arbitrarily denied the use of, or which was not reissued merely as a result of a decision by the State authorities to restrict or deny his or her right to leave a country on account of a travel ban/sanction or because of his or her failure to comply with the relevant legal or factual requirements prescribed by law (see, among many authorities, *Peltonen*, cited above, concerning a refusal to issue a passport to a Finnish national to ensure the performance of military service; *Baumann*, cited above, § 63, and *A.E. v. Poland*, no. 14480/04, §§ 47-50, 31 March 2009, in the context of a pending criminal prosecution; *Riener v. Bulgaria*, no. 46343/99, § 110, 23 May 2006, and *Stamose v. Bulgaria*, no. 29713/05, § 30, ECHR 2012, concerning a travel ban and passport retention on the basis of a nine-year tax dispute and breaches of immigration laws respectively; *Soltysyak v. Russia*, no. 4663/05, §§ 37-38, 10 February 2011, and *Bartik v. Russia*, no. 55565/00, §§ 35-36, ECHR 2006-XV, in the context of refusal to issue a travel document to nationals because of knowledge of "State secrets"; *Battista v. Italy*, no. 43978/09, §§ 26 and 37, ECHR 2014, concerning an inability, owing to a failure to pay child maintenance, to obtain a new identity document valid for travel

abroad; *Roldan Texeira and Others v. Italy* (dec.), no. 40655/98, 26 October 2000, and *Diamante and Pelliccioni v. San Marino*, no. 32250/08, §§ 212-215, 27 September 2011, in the context of restrictions imposed by court orders or the police on minor children travelling abroad to protect their interests or those of their parents). According to the Court's case law, any measure, including a refusal to issue or reissue a travel document, by means of which a national or an alien is denied the use of a document 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 regardless of whether it stems from intentional restrictions by the respondent State on the applicant's right to leave or there was no such intention on the part of the authorities (see, for example, with respect to nationals, *Rotaru*, § 22, and *Berkovich and Others*, § 78, both cited above; see, with respect to aliens with permanent residence in the respondent State, *L.B. v. Lithuania*, § 81, cited above, in which the applicant's request for the renewal of a travel document for aliens was refused because he allegedly failed to comply with legal requirements prescribed by law, without any intention to preclude him from leaving the country).

76. In any event, for State interference with a person's right to leave any country to be justified, the strict conditions set out in Article 2 § 3 of Protocol No. 4 must be met, that is to say, the interference must be "in accordance with law", pursue one or more of the legitimate aims set out in that provision and be "necessary in a democratic society" to achieve such an aim (see, for example, *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

77. In the present case, the Government are of the opinion that they had not interfered with the applicant's right to leave Serbia. They argued, in principle, that, unlike in the other cases, the applicant had not been precluded by the State authorities from leaving Serbia by any restrictive measure and that he could lawfully leave its territory at any time, for example by obtaining a Syrian passport, as proven in October 2022, or, alternatively, by applying for Serbian nationality and then a Serbian national passport. Therefore, only the applicant's own failure to act and obtain an accessible travel document for himself had prevented him from leaving Serbia (see the Government's arguments summarised in paragraphs 64-67 above).

78. In the light of the above-mentioned general principles (see, in particular, paragraph 75 above), the Court considers that, irrespective of the lack of intention on the part of Serbian authorities to restrict the applicant's

right to leave Serbia, that right has been interfered with. In this respect, it notes that the Government did not claim that the applicant had failed to comply with any relevant domestic legal or factual requirements preventing him from leaving the country or relying on Article 2 of Protocol No. 4. Following the granting of his refugee status, he could have freely moved within the territory of the Republic of Serbia. He would also have been able to leave the country and travel to other countries of his choice to which he could have been admitted had he been able to comply with one of the essential prerequisites for that, namely to be in possession of a valid travel document. Despite his statutory entitlement, the Serbian authorities were unable to issue him with a travel document for refugees, because the relevant implementing regulations had not yet been enacted. Having regard to its finding above on the compatibility ratione materiae of the application (see paragraphs 47-50 above), the Court considers that the refusal of the Serbian authorities to issue the applicant with a travel document for refugees was an obstacle to the effective enjoyment of his right to leave that country for an extended period of seven years, it being acknowledged that his national passport had expired and that he had no ability to obtain any other travel document (see paragraphs 6, 25, 27 and 28 above).

79. As regards the latter, the Court is not convinced by the Government's argument that from the outset the applicant had the option of applying to his State of nationality, Syria, to obtain a national passport and legally leave Serbia with it at any time (see paragraphs 65-67 above), as he eventually did in 2022 (see paragraphs 12-13 above). It would be in defiance of the State's international obligations and hard to reconcile with the principle of the rule of law to refuse issuing a travel document for refugees by referring the applicant to his country of nationality, which in the present case is, moreover, the State from which he fled persecution. In particular, the Serbian authorities, by granting the applicant refugee status in May 2015 (see paragraph 5 above), also recognised the credibility of his assertion that he had a well-founded fear of persecution, as well as the fact that he "[was] unable or, owing to such fear, [was] unwilling to avail himself" of the protection of his own State of nationality (see paragraph 30 above), firstly on account of the general state of insecurity and secondly because of his own political activities. The Serbian authorities never claimed that the applicant was no longer in need of protection. When his representative asked the Ministry of the Interior whether the issuance of travel documents by the Syrian authorities would lead to the cessation of refugee status, its answer was that this depended on an assessment of the individual case (see paragraphs 11 and 18 above). That means that obtaining a Syrian passport put the applicant at risk of losing his refugee status in Serbia, a risk that the authorities could not expect him to take. The fact that in 2022, after seven years of being in a state of uncertainty and a legal limbo on Serbian territory, the applicant decided "unwillingly" to take the risk of

asking the Syrian authorities to issue him with a national passport (see paragraphs 12 and 63 above) cannot absolve the respondent State from its obligations under Article 2 § 2 of Protocol No. 4 and does not affect the finding that the Serbian authorities interfered with the applicant's right to leave its territory.

80. The Court cannot endorse the Government's further argument about the applicant's failure to obtain Serbian nationality and then apply for a Serbian passport (see paragraph 67 above). Leaving aside the relevant time-limit prescribed by law (see paragraph 28 above), the State cannot circumvent its own accepted obligations and impose an obligation of "naturalisation" on the applicant in order to be able to leave its territory.

81. Therefore, the Serbian authorities, by notifying the applicant in June 2015 of their inability to issue him with a travel document for refugees, due to the lack of "formal conditions" (see paragraph 7 above), regardless of the informal nature of the notification (see, *mutatis mutandis*, *Kerimli v. Azerbaijan*, no. 3967/09, § 47, 16 July 2015), deprived his right to leave the country of any effectiveness for an extended period of seven years in a manner undoubtedly amounting to an interference within the meaning of Article 2 of Protocol No. 4 to the Convention for the purposes of the three-limb merits test under this Article.

(ii) Justification for the interference

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

82. For the purposes of Article 2 of Protocol No. 4, application of restrictions in any individual case must be based on clear legal grounds and only reasons relating to the permissible aims referred to in the third paragraph constitute, where applicable, lawful grounds for the application of any restriction. However, the Court reiterates that the expression "in accordance with law" not only requires that the impugned measure should have some basis in domestic law, but also that the domestic law be compatible with the rule of law (see *Khlyustov v. Russia*, no. 28975/05, §§ 68-70, 11 July 2013), it being one of the fundamental principles of a democratic society inherent in all the Articles of the Convention (see, among many other authorities, *Lekić v. Slovenia* [GC], no. 36480/07, § 94 *in fine*, 11 December 2018, and, in the context of Article 2 of Protocol No. 4, *Rotaru*, cited above, § 23). The principle of legality, which is one of the principles stemming from the rule of law, requires the State authorities, at all levels of public power, to adopt any subsidiary regulations as required by primary legislation, by the set deadline or in a timely manner, as appropriate.[3]

[3] European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist, May 2016, p. 17, available at: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e

83. Both the former 2008 and current 2018 Asylum Act recognise the individual right of a recognised refugee to obtain a travel document (see paragraphs 17 and 21 above; see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 250-251, ECHR 2011 and contrast *Müslim v. Turkey*, no. 53566/99, §§ 43-44 and 83-87, 26 April 2005). Both the 2008 and 2018 Asylum Acts empowered and required the Minister of the Interior within sixty days to enact subsidiary legislation to ensure their implementation, specifically to regulate the matter and have more detailed provisions on standards in this regard (see paragraphs 16 and 20 above).

84. Therefore, the applicant's entitlement to a CTD emanates from the domestic legislation, which gives effect to the obligations stemming from the 1951 Refugee Convention (see paragraph 31 above). The corresponding obligations incumbent on the Serbian authorities to provide a travel document for refugees were triggered by the expression of the State's decision to grant refugee status and after the acquisition of lawful residence by the applicant, in order to enable him to exercise his fundamental freedom of movement. However, the applicant's legitimate request to obtain a CTD could not have even been processed since 2015. The relevant provisions of the Asylum Act concerning the issuing of a refugee travel document have not been completed with the enactment of subsidiary legislation by the competent Ministers of the Interior, despite it being almost fifteen years since the former Asylum Act came into force, and almost five years since the current legislation came into force (see paragraphs 16 and 20 above). No implementing regulations appear to have been adopted on the matter, either with respect to the designation of the organisational structure responsible and procedure for the issuing of a refugee travel document or its design and production, let alone with respect to the MRCTD, unlike in the case of the travel document for nationals (see paragraphs 25-26 above).

85. Moreover, the Court observes that the legislative inaction lasted for a considerable period of time (see paragraph 71 above). No effective possibility of obtaining a travel document, despite the statutory entitlement, was available to the applicant. The authorities did not demonstrate that they had made any effort to act in accordance with the rule of law and take the appropriate regulatory and operational measures to implement the domestic law to provide the possibility for the applicant – and any individual in a similar situation – to access the procedure to apply for and obtain a travel document for refugees. Such a systemic failure on the part of the authorities to act in accordance with the domestic law resulted in the entire notion of the effective right of refugees to leave Serbian territory being rendered illusory. In spite of the seriousness of the inaction complained of, the authorities remained totally passive in the face of at least five requests for a CTD (see paragraph 22 above), even following notification by the Court of the present application to the Government in 2018. This state of affairs put the applicant in a state of uncertainty, pushing him to eventually take the

risk to address a passport request to the Syrian authorities (see paragraphs 12 and 79 above), which is hard to reconcile with the principles stemming from the rule of law.

86. As regards the Government's contention that it was not the State who denied the applicant of his freedom of movement, but the competent Ministers of the Interior who had failed to enact implementing regulations for purely technical reasons (see paragraph 64 above), the Court notes that the Minister of the Interior is also a State organ for whose omissions the State is responsible under the Convention. For the purposes of the Convention, the sole issue of relevance is the State's international responsibility, regardless of whether acting in relation to a national or foreign individual and irrespective of the national authority to which the breach of the Convention in the domestic system is imputable (see, *mutatis mutandis*, *Assanidze v. Georgia* [GC], no. 71503/01, § 146, ECHR 2004-II, with further references therein).

87. Lastly, as to the Government's argument that the Ministry of the Interior was confronted with the need to find a comprehensive technical and software solution for all travel documents issued by the Republic of Serbia requiring certain financial resources (see paragraph 64 above), the Court observes that the 2008 Asylum Act entrusted the Minister to enact subsidiary legislation within sixty days in order to implement the primary legislation (see paragraph 16 above). The same time-limit was reiterated by the 2018 Asylum and Temporary Protection Act (see paragraph 20 above), thus showing that the legislature did not consider it excessively short or otherwise difficult to meet. Under these circumstances, the Court considers that the Government cannot justify the State's inaction in this regard by relying on a lack of available resources or technical solutions, as the competent authorities should have overseen national budget allocations and ensured timely and adequate technical support in managing this task. The Court further reiterates that the "economic wellbeing of the country" and related financial considerations are not even among the legitimate aims enlisted in Article 2 § 3 of Protocol No. 4 and therefore cannot justify restrictions on the right to leave one's country (see, *mutatis mutandis*, the report of the Committee of Experts to the Committee of Ministers, Report H (65) 16, 18 October 1965, §§ 15 and 18; Explanatory Report to Protocol No. 4, § 15[4]). In addition, the Court stresses that this case is clearly distinguishable from other cases where it has examined the insufficiency of resources in the context of States' prolonged confrontation with a sudden and quantitatively significant influx of refugees and disproportionate pressure on their asylum systems (see, for example, *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 179-185,

[4] Explanatory Report to Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (ETS no. 46), 16 September 1963, available at https://rm.coe.int/16800c92c0.

15 December 2016; M.*S.S. v. Belgium and Greece*, cited above, § 223, and *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 179, ECHR 2012).

(β) Conclusion

88. The Court considers that the State authorities, by their refusal to issue the applicant with a travel document for refugees for seven years due to the absence of appropriate regulations to implement the Asylum Act, curtailed his right to leave Serbia freely to such an extent as to impair its very essence and deprive it of its effectiveness. The finding that the interference with the applicant's right to leave the country was not "in accordance with law" makes it unnecessary to examine whether it pursued any legitimate aim in terms of paragraph 3 or was necessary in a democratic society to achieve that aim (see *Mursaliyev and Others v. Azerbaijan*, cited above, § 76, and the authorities cited therein).

89. There has therefore been a violation of Article 2 § 2 of Protocol No. 4 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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."

91. The applicant claimed 8,980 euros (EUR) in respect of pecuniary damage as, being an IT engineer at three companies, one of which was Japanese, he could not attend meetings and training courses abroad and acquire relevant certificates to advance his career and obtain a higher income. He also alleged to have missed out on some more lucrative job offers abroad.

92. The applicant further claimed EUR 5,000 in respect of non-pecuniary damage caused by the suffering and helplessness he had felt as a result of being prevented from leaving Serbia, including for celebrating his wedding in Turkey with his closest family or going on honeymoon. He had started seeing a psychotherapist to deal with his deteriorated psychological state and feelings of confinement that had resulted in his depression.

93. The applicant made no claim in respect of costs and expenses.

94. The Government submitted that the applicant's claim in respect of pecuniary damage was unjustified and speculative, and that his claim for non-pecuniary damage was excessive.

95. The Court rejects the claim in respect of pecuniary damage, as it does not refer to any actual loss that the applicant proved to have incurred. As regards his claim for non-pecuniary damage, the Court considers that the applicant must have suffered non-pecuniary damage that cannot be

sufficiently compensated for by the mere finding of a violation of Article 2 of Protocol No. 4 to the Convention. Accordingly, making its assessment on an equitable basis, the Court awards the applicant EUR 3,500, plus any tax that may be chargeable.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

96. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
>
> ..."

97. Given these provisions, it follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned any sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress, in so far as possible, the effects thereof (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII).

98. The Court observes that the State's prolonged failure to implement its own domestic law allowing a travel document to be issued to recognised refugees and to persons eligible for subsidiary protection, and adopt regulations as a precondition for it, amounts to a structural problem. Having regard to paragraphs 83-89 above, it is incumbent on the Committee of Ministers, acting under Article 46 of the Convention, to address the issue of what may be required of the respondent Government by way of compliance, through both individual and general measures, given that this judgment should have effects extending beyond the confines of this particular case. In the Court's view, the respondent State has to take all appropriate statutory and operational measures to complete the pertinent legislative framework and implementing regulations to provide the effective right to leave the territory, and the possibility for any individual in a similar situation to that in which the applicant found himself to access the procedure to apply for and obtain a travel document.

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 3,500 (three thousand five hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President