CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF TIMISHEV v. RUSSIA

(Applications nos. 55762/00 and 55974/00)

JUDGMENT

STRASBOURG

13 December 2005

FINAL

13/03/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Timishev v. Russia,

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

Mr A.B. BAKA, *President*,
MR I. CABRAL-BARRETO,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mr A. KOVLER,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 22 November 2005,

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

PROCEDURE

1. The case originated in two applications (nos. 55762/00 and 55974/00) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Ilyas Yakubovich Timishev, on 25 February and 9 March 2000.

2. The Russian Government ("the Government") were represented by their Agent, Mr P. Laptev, representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, a violation of Article 2 of Protocol No. 4, taken alone or in conjunction with Article 14 of the Convention, in that on 19 June 1999 he had not been permitted to enter Kabardino-Balkaria because of his Chechen ethnic origin, and a violation of his children's right to education under Article 2 of Protocol No. 1.

4. The applications were allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 8 July 2003 the Court joined the applications and adopted a partial inadmissibility decision.

6. By a decision of 30 March 2004 the Court declared the applications partly admissible.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1950 and lives in the town of Nalchik, in the Kabardino-Balkaria Republic of the Russian Federation. He is a lawyer.

10. The applicant is an ethnic Chechen; he was born in the Chechen Republic and lived there. On 31 December 1994 his property in the town of Grozny was destroyed as a result of a military operation. Since 15 August 1996 the applicant has been living in Nalchik as a forced migrant.

11. In 1997 the applicant applied for registration of his permanent residence in Nalchik. His application was refused by reference to the local laws of Kabardino-Balkaria prohibiting former residents of the Chechen Republic from obtaining permanent residence in Kabardino-Balkaria. The refusal of the local authorities was upheld by the Nalchik Town Court on 19 September 1997 and by the Supreme Court of the Kabardino-Balkaria Republic on 23 October 1997.

A. Refusal of entry to Kabardino-Balkaria

12. On 19 June 1999 the applicant and his driver travelled by car from Nazran in the Ingushetia Republic to Nalchik in the Kabardino-Balkaria Republic. The parties submitted different versions of the subsequent events.

13. According to the applicant, at about 3 p.m. their car was stopped at the Urukh checkpoint on the administrative border between Ingushetia and Kabardino-Balkaria. Officers of the Kabardino-Balkaria State Inspectorate for Road Safety (*ГИБДД МВД КБР*) refused him entry, referring to an oral instruction from the Ministry of the Interior of Kabardino-Balkaria not to admit persons of Chechen ethnic origin. He had to turn round and make a detour of 300 kilometres to reach Nalchik through a different checkpoint.

According to the Government, the applicant attempted to jump the queue of cars waiting for their turn at the checkpoint, but he was refused priority treatment and had to leave.

14. The applicant complained to a court about the allegedly unlawful actions of the police officers; he also claimed compensation for non-pecuniary damage.

15. On 25 August 1999 the Nalchik Town Court dismissed the applicant's claim, finding as follows:

> "By an order of the head of the State Inspectorate for Road Safety of the Kabardino-Balkaria Republic (no. 68 of 21 June 1999), because of the complicated operational situation at the [administrative] border with the Chechen Republic... with a view to preventing and putting an end to the penetration into towns and villages of persons having terrorist or antisocial aspirations... the road safety police were ordered to

reinforce security measures from 2 p.m. on 19 June 1999 until further notice. The police were also instructed to perform stricter controls of vehicles and passengers at checkpoints.

[The police officers M., Kh. and Me.] testified before the court that, on that day, the Urukh checkpoint had a long queue of vehicles, cargoes and passengers waiting for passage and registration. The car in which Mr Timishev was the passenger attempted to jump the queue, but was refused priority treatment and told to wait for its turn. Not one single officer refused anyone entry into Kabardino-Balkaria on account of their ethnicity, including Mr Timishev. On that day more than seventy buses of Chechens gained entry. However, Mr Timishev accused them of deliberately refusing him entry because he was a Chechen. He showed his advocate's card and said that he worked in Nalchik.

The court considers that the actions of the police officers complied with the Police Act. Although Mr Timishev produced his advocate's card, it indicated that he was a lawyer in Grozny and not in Nalchik; he did not show his passport or a mission order or migrant's card to the police officer. Mr Timishev did not contest this fact. In the court's opinion, even if Mr Timishev and his driver had had these documents, they should have waited for their turn in accordance with the above-mentioned order.

In these circumstances, the court has no reason to find, and Mr Timishev did not produce evidence, that his right to liberty of movement within the Russian territory was violated. Moreover, on that day he reached Nalchik through the Nizhniy Kurp checkpoint."

16. On 21 September 1999 the Supreme Court of the Kabardino-Balkaria Republic, on an appeal by the applicant, upheld the judgment of 25 August 1999. The court pointed out that the burden of proof was on the applicant, who had failed to show that he had been denied entry because of his Chechen origin.

17. The applicant also complained to the Russian Ombudsman and to the Prosecutor General of the Russian Federation.

18. On 1 February 2000 a prosecutor from the Principal Directorate for the Northern Caucasus of the Prosecutor General's Office (*прокурор отдела Главного Управления Генеральной прокуратуры РФ на Северном Кавказе*) informed the applicant that, following an inquiry into the facts, the prosecutor's office had ordered the Ministry of the Interior of Kabardino-Balkaria to rectify the violation of Article 27 of the Russian Constitution (*представление об устранении нарушений статьи 27 Конституции РФ*) committed by officers of the State Inspectorate for Road Safety, and to take measures to avoid similar violations in the future. The relevant part of the report on the violation, attached to the order and dated 19 August 1999, reads as follows:

"The Prosecutor General's Office has inquired into [the applicant's] complaint about unlawful actions by [police officers]... It has been established that on 19 June 1999 [the applicant] and his driver V., travelling from the town of Nazran in a VAZ-2106 car, were stopped by police officer Kh. at the Urukh checkpoint for an inspection

of the car and an identity check; following the identity check they were denied entry into Kabardino-Balkaria.

Junior Sergeant Kh., questioned during the inquiry, explained that at a staff meeting before taking over his duties, he had received an oral instruction from the shift commander Warrant Officer M. not to allow persons of Chechen ethnic origin travelling by private car from the Chechen Republic to enter Kabardino-Balkaria. From the explanation given by Warrant Officer M., it follows that he himself had received a similar oral instruction from the operations officer on duty at the Ministry of the Interior of Kabardino-Balkaria... On the basis of the foregoing, [the applicant and his driver] were refused entry into Kabardino-Balkaria, although they did not engage in any unlawful activity...

Thus, the actions of [police officers] M. and Kh... have grossly violated the constitutional rights of Russian nationals of Chechen ethnic origin, who may move freely within the territory of the Russian Federation... These encroachments on the rule of law were caused as a result of the irresponsible approach of traffic police officers to their professional duties and poor supervision [of their actions] on the part of the management of the traffic police department of the Ministry of the Interior of Kabardino-Balkaria..."

19. On 3 March 2000 Lieutenant-General Shogenov, the Minister of the Interior of the Kabardino-Balkaria Republic, forwarded a summary of the findings of an internal inquiry to a human-rights activist who had lodged complaints on behalf of the applicant. The summary bore no date and was signed by Colonel Temirzhanov, deputy head of the internal security department of the Ministry of the Interior, confirmed by Colonel Kerefov, head of the internal security department, and approved by the Minister of the Interior himself. The summary stated:

"When questioned... by employees of the prosecutor's office of the Kabardino-Balkaria Republic, Kh. [the officer who stopped the applicant] explained that at a staff meeting, before taking over his duties, he had received an oral instruction from the shift commander M. not to allow persons of Chechen ethnic origin travelling by private cars from the Chechen Republic to enter the territory of the Kabardino-Balkaria Republic. M. justified giving such an instruction by reference to a similar oral instruction that he had received from the deputy head of the public safety police of the Ministry of the Interior, Colonel Efendiyev...

On 25 August 1999 ... the Nalchik Town Court decided to dismiss [the applicant's] complaint because the [police] officers, who had initially maintained that they had not let the said persons enter the Kabardino-Balkaria Republic, pursuant to an oral instruction by Colonel Efendiyev, had insisted before the court that [the applicant and his driver] had wanted to pass through the checkpoint without waiting in the queue, had been refused and had left..."

The summary then went on to praise the achievements of local police officers on duty at checkpoints, who had seized large quantities of weapons, drugs, counterfeit currency, and so on, and had detained many fugitives from justice. Colonel Temirzhanov concluded:

> "1. Information on the prohibition by officers at the Urukh checkpoint on the entry into the Kabardino-Balkaria Republic of [the applicant and his driver] on the ground of their ethnicity ... may be considered untrue on the basis of the legally binding court judgments in the matter.
>
> 2. Because of their poor morale and professional qualities, which became apparent when they gave contradictory statements to the Ombudsman, the prosecutor's office and the Town and Supreme Courts of the Kabardino-Balkaria Republic concerning the circumstances surrounding the prohibition on the entry of [the applicant and his driver], officers M. and Kh. of the State Inspectorate for Road Safety should be subject to disciplinary proceedings. However, having regard to the fact that the [applicant's] complaint was dismissed as unsubstantiated by the Nalchik Town Court and the Supreme Court, M. and Kh. are to be discussed at a meeting of the heads of the State Inspectorate for Road Safety and the measures taken shall be reported to the internal security department."

The summary concluded with a recommendation to avoid similar situations impairing the constitutional rights of citizens in future.

20. It appears that the summary was prepared in late August to early September 1999 because, on 29 September 1999, Mr Shogenov reported to the Prosecutor General's Office that the order to rectify the violation could not be implemented. He referred to the conclusions of the summary and the court decisions, alleging that the applicant and his driver had attempted "to pass through the checkpoint without waiting their turn in the queue", and that they had "failed to produce passports, mission orders or migrants' cards". The Minister concluded as follows:

> "Having regard to these court decisions and bearing in mind the specific conditions of service at checkpoints [on the border] adjacent to crime-generating regions that are often under fire, which leaves a certain impact on the regime and nature of the service of police officers... it has been suggested that these events be discussed at an operational meeting in the division."

21. Finally, on 12 July 2000 Mr Volodin, head of a department in the office of the Russian Ombudsman, responded thus to the applicant's complaint:

> "As follows from the response of the Prosecutor General's Office, the restriction on the constitutional rights of citizens to freedom of movement on the border of the Kabardino-Balkaria Republic was imposed in connection with the threat of penetration by subversive groups of armed bandits into its territory and was only effective for a short period of time. Pursuant to Article 56 of the Constitution of the Russian Federation, the said restriction was legitimate."

B. Refusal of access to school

22. Between September 1998 and May 2000, the applicant's nine-year-old son and seven-year-old daughter attended School no. 8 in the town of Nalchik in Kabardino-Balkaria.

23. On 24 December 1999 the applicant received compensation for the property he had lost in the Chechen Republic. In exchange for compensation, the applicant had to surrender his migrant's card (*миграционная карта*), a local document confirming his residence in Nalchik and his status as a forced migrant from Chechnya.

24. On 1 September 2000[1] the applicant's son and daughter went to school, but were refused admission because the applicant could not produce his migrant's card. The headmaster agreed to admit the children informally, but advised the applicant that the children would be immediately suspended if the education department discovered this arrangement.

25. On 4 September 2000 the applicant complained to a court about the refusal of the Nalchik Education and Science Department (*Департамент образования и науки Администрации г. Нальчик* – "the Department") to admit his children to school. The Department replied that, after 24 December 1999, the applicant had had no lawful grounds for remaining in Nalchik and that his requests amounted to an encroachment on the lawful rights of other children because School no. 8 had been severely overcrowded even without his children.

26. On 1 November 2000 the Nalchik Town Court dismissed the applicant's complaint as unsubstantiated. It found as follows:

> "[The applicant] and his family members reside in the town of Nalchik without [appropriate registration of their residence]. In these circumstances his requests to admit his children to School no. 8 are unsubstantiated...
>
> According to a certificate produced by the headmaster of School no. 8, on 11 October 2000 the school had 459 pupils, whereas it was designed to accommodate 230..."

27. On 21 November 2000, on an appeal by the applicant, the Supreme Court of the Kabardino-Balkaria Republic upheld the judgment of 1 November 2000.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Russian Federation of 12 December 1993

28. Article 19 provides for the equality of all before the law and courts of law, and equality of rights and liberties.

29. Article 27 provides that everyone lawfully within the territory of the Russian Federation has the right to move freely and choose his or her place of stay or residence.

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1. After the summer break in all Russian schools the classes start uniformly on 1 September.

30. Article 43 provides that everyone has the right to education. Elementary education in State and municipal educational institutions is accessible to all and free. Parents must ensure that their children receive education.

31. Article 56 provides that, in a state of emergency, rights and freedoms may be restricted for the protection of national security and the constitutional foundations. A state of emergency may only be declared in accordance with a federal constitutional law.

B. The Police Act (no. 1026-I of 18 April 1991)

32. Section 11(22) provides that the police may temporarily restrict or prohibit the circulation of vehicles or pedestrians on the streets or roads, or refuse access to specific areas or places, or require people to remain in or leave specific areas or places, for the protection of citizens' health, life or property or for carrying out investigative or search operations.

III. RELEVANT INTERNATIONAL INSTRUMENTS

33. On 4 January 1969 the United Nations' International Convention on the Elimination of All Forms of Racial Discrimination entered into force. The relevant part of Article 1 of this Convention provides:

> "In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

34. On 13 December 2002 the Council of Europe's European Commission against Racism and Intolerance (ECRI) adopted General Policy Recommendation no. 7 on national legislation to combat racism and racial discrimination. It defines "racial discrimination" as follows:

> "1. For the purposes of this Recommendation, the following definitions shall apply:
> ...
>
> (b) 'direct racial discrimination' shall mean any differential treatment based on a ground such as race, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification...
>
> (c) 'indirect racial discrimination' shall mean cases where an apparently neutral factor such as a provision, criterion or practice cannot be as easily complied with by, or disadvantages, persons belonging to a group designated by a ground such as race, colour, language, religion, nationality or national or ethnic origin, unless this factor has an objective and reasonable justification..."

THE LAW

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

35. The applicant complained that he had been refused admission to Kabardino-Balkaria through the Urukh checkpoint. He relied on Article 2 of Protocol No. 4, the relevant part of which reads as follows:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. ...
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
>
> 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

A. The parties' submissions

1. The applicant

36. The applicant submitted that the fact of refusing him admission to Kabardino-Balkaria had been confirmed in the letter of 1 February 2000 from the Prosecutor General's Office. The undated summary approved by the Minister of the Interior of Kabardino-Balkaria (forwarded to the applicant's representative on 3 March 2000) also referred to the fact that rank-and-file police officers had received from their superiors an oral instruction not to admit Chechens. However, the summary suggested that the officers be reprimanded not for carrying out unlawful orders but for presenting contradictory versions of the events to various authorities. The thrust of this reprimand demonstrated, in the applicant's opinion, that the Minister was not concerned about a violation of human rights, but rather about the police officers' "inability to lie consistently".

37. The applicant contended that liberty of movement was impaired by the indiscriminate checks of all vehicles and passengers organised by the Russian police on a normal motorway despite the fact that no state of emergency had been declared. In his opinion, section 11(22) of the Police Act did not authorise the police to set up barriers on a motorway on the pretext that "putative criminals might supposedly use the motorway for transit". The Government had not identified any actual threat to the health,

life or property of the population or claimed that the police had carried out specific investigative or search operations at the Urukh checkpoint.

2. The Government

38. Referring to the "complicated operational situation" in the Southern Federal Region of Russia on or about 19 June 1999, the Government claimed that police officers had temporarily restricted the circulation of vehicles and pedestrians, in accordance with section 11(22) of the Police Act, seeking to avert potential offences and guarantee public safety. The applicant's right to liberty of movement had not been impaired because the police would not have prevented him from entering Kabardino-Balkaria had he waited his turn in the queue, and because he had eventually gained admission through a different checkpoint. Finally, they submitted that the letter from the prosecutor's office was not admissible in evidence because it had not been considered by the Russian courts.

B. The Court's assessment

1. Whether there has been a restriction on the applicant's right to liberty of movement

39. The Court observes that it is confronted with a dispute over the exact sequence of the events on 19 June 1999. It must therefore reach its decision on the basis of the evidence submitted by the parties. In the proceedings before it, there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-...).

40. The applicant maintained that he and his driver, both being of Chechen ethnic origin, had been denied access to Kabardino-Balkaria through the Urukh checkpoint because the traffic police had acted on an oral instruction to refuse entry to Chechens travelling by private car.

41. The applicant's submissions were corroborated by the report on a violation of constitutional rights, enclosed with the prosecutor's letter of 1 February 2000, and the summary of the findings of an internal inquiry,

approved by the head and deputy head of the internal security police department and the Minister of the Interior. It was established that the instruction in question had originated from the deputy head of the public safety police of the Kabardino-Balkaria Ministry of the Interior and had been transmitted down to rank-and-file traffic police officers.

42. The Government insisted that the applicant had attempted to jump the queue of vehicles but, having been refused priority treatment, had left the checkpoint of his own will. They prayed in aid the judgment of the Nalchik Town Court of 25 August 1999, upheld on appeal by the Supreme Court of Kabardino-Balkaria on 21 September 1999.

43. The Court, however, is not persuaded that the Town Court's judgment laid down a reliable factual basis for this assessment because its findings of fact appear inconsistent and fraught with contradictions. For example, the Town Court found that reinforced controls of vehicles on 19 June 1999 had been introduced by a police order (no. 68) which had only been issued two days later, on 21 June 1999. It also found that the applicant had refused to show his passport or some other identity document. However, if the applicant did not wait in the queue for his turn and left of his own will, then the failure to produce documents could not be held against him. Alternatively, if the police asked for his documents, that suggests, by converse implication, that it was his turn in the queue or else that he was granted priority treatment. Furthermore, the Town Court established that the applicant had shown his advocate's card but failed to explain the relevance of its finding that the card had been issued in Grozny rather than in Nalchik (a finding which is, moreover, refuted by a copy of the card produced by the applicant in evidence). The judgment of the Supreme Court of Kabardino-Balkaria of 21 September 1999 did nothing to eliminate these discrepancies.

44. In these circumstances, the Court gives credence to the applicant's version of events, which has been corroborated by independent inquiries carried out by the prosecution and police authorities. It finds that the traffic police at the Urukh checkpoint prevented the applicant from crossing the administrative border between two Russian regions, Ingushetia and Kabardino-Balkaria. There has therefore been a restriction on the applicant's right to liberty of movement within the territory of the respondent State, within the meaning of Article 2 § 1 of Protocol No. 4.

2. Whether the restriction was justified

45. The Court notes that the structure of Article 2 of Protocol No. 4 is similar to that of Articles 8-11 of the Convention. In order to be compatible with the guarantees of Article 2 of Protocol No. 4 the impugned restriction should be "in accordance with the law", pursue one or more of the legitimate aims contemplated in paragraph 3 and be "necessary in a democratic society" (see *Raimondo v. Italy*, judgment of 22 February 1994,

Series A no. 281-A, p. 19, § 39) or, where the restriction applies to particular areas only, be "justified by the public interest in a democratic society" as established in paragraph 4.

46. The Government argued that the restriction was imposed in accordance with section 11(22) of the Police Act with a view to deterring criminal offences and guaranteeing public safety. The applicant retorted that the restriction had been unnecessarily broad and the aim thereby pursued too abstract.

47. The Court is not required to rule on the general question whether the political and social situation in Ingushetia or the Kabardino-Balkaria Republic at the material time called for the introduction of checkpoints on a federal motorway and thorough identity checks. The issue for the Court to determine is limited to the specific circumstances of the present case, namely whether the refusal to let the applicant cross the administrative border into Kabardino-Balkaria had a lawful basis.

48. The inquiries carried out by the prosecutor's office and by the Kabardino-Balkaria Ministry of the Interior established that the restriction at issue had been imposed by an oral order given by the deputy head of the public safety police of the Kabardino-Balkaria Ministry of the Interior, Colonel Efendiyev. It appears that the order was not properly formalised or recorded in some other traceable way, enabling the Court to carry out an assessment of its contents, scope and legal basis. Indeed, the reference to section 11(22) of the Police Act appeared for the first time in the Government's submissions in the proceedings before the Court. In any event, in the opinion of the prosecutor's office, the order amounted to a violation of the constitutional right to liberty of movement enshrined in Article 27 of the Russian Constitution.

49. Accordingly, the Court finds that the restriction on the applicant's liberty of movement was not in accordance with the law. This finding makes it unnecessary to examine whether it was necessary in a democratic society.

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

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLE 2 OF PROTOCOL NO. 4

50. The applicant submitted that the restriction on his right to liberty of movement had operated against him in a discriminatory manner because it had been conditional on his ethnic origin. He relied on Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language,

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' submissions

51. The applicant indicated that he would have had unhindered passage through the checkpoint had he concealed his Chechen ethnicity. Thus, on 24 June 1999, that is five days later, he said at the same checkpoint that he was an Avar[1] and had no problems passing through. However, on 19 June 1999 he could not have hidden his ethnicity because his travelling companion spoke Russian with a Chechen accent and their car had licence plates from the Chechen Republic.

52. The Government rejected the applicant's complaint about discrimination as unsubstantiated because the Russian Constitution did not require citizens to make known their ethnic origin and it was not indicated in a person's identity documents.

B. The Court's assessment

53. The Court reiterates that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and the Protocols, since it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions. Where a substantive Article of the Convention or its Protocols has been invoked both on its own and together with Article 14 and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14 also, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 89, ECHR 1999-III, and *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45, § 67).

54. Turning to the circumstances of the present case, the Court notes that the Kabardino-Balkarian senior police officer ordered traffic police officers not to admit "Chechens". As, in the Government's submission, a person's ethnic origin is not listed anywhere in Russian identity documents, the order barred the passage not only of any person who actually was of Chechen ethnicity, but also of those who were merely perceived as belonging to that ethnic group. It has not been claimed that representatives of other ethnic groups were subject to similar restrictions (see, in particular, paragraph 51 above). In the Court's view, this represented a clear inequality of treatment

1. Avars are a major ethnic group in Dagestan, a Russian region adjacent to Chechnya.

in the enjoyment of the right to liberty of movement on account of one's ethnic origin.

55. Ethnicity and race are related and overlapping concepts. Whereas the notion of race is rooted in the idea of biological classification of human beings into subspecies according to morphological features such as skin colour or facial characteristics, ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds.

56. A differential treatment of persons in relevant, similar situations, without an objective and reasonable justification, constitutes discrimination (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). Discrimination on account of one's actual or perceived ethnicity is a form of racial discrimination (see the definitions adopted by the United Nations and the European Commission against Racism and Intolerance, paragraphs 33 and 34 above). Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment (see *Nachova and Others*, cited above, § 145).

57. Once the applicant has shown that there has been a difference in treatment, it is then for the respondent Government to show that the difference in treatment could be justified (see, for example, *Chassagnou*, cited above, §§ 91-92). The Court has already established that the Government's allegation that the applicant had attempted to obtain priority treatment was not sustainable on the facts of the case (see paragraphs 42-43 above). Accordingly, the applicant was in the same situation as other persons wishing to cross the administrative border into Kabardino-Balkaria.

58. The Government did not offer any justification for the difference in treatment between persons of Chechen and non-Chechen ethnic origin in the enjoyment of their right to liberty of movement. In any event, the Court considers that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.

59. In conclusion, since the applicant's right to liberty of movement was restricted solely on the ground of his ethnic origin, that difference in treatment constituted racial discrimination within the meaning of Article 14 of the Convention.

There has therefore been a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 4.

III. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 1

60. The applicant complains under Article 2 of Protocol No. 1 about the domestic authorities' refusal to secure his children's right to education on the ground that he had no registered residence in Nalchik and did not have a migrant's card. The relevant part of Article 2 of Protocol No. 1 reads as follows:

> "No person shall be denied the right to education..."

A. The parties' submissions

61. The applicant pointed out that the refusal to admit his children to school after the summer break had been founded solely on the fact that he had had no registered residence and no "migrant's card", which only former Chechen residents were required to have. The argument about the overcrowding of the school had only surfaced later, after he had complained to a court.

62. The Government accepted that the right of the applicant's children to education had been unlawfully restricted. Under Russian law, rights and freedoms could not be restricted on account of a person's registered place of residence, and the Education Act guaranteed the right to education irrespective of the place of residence (section 5).

B. The Court's assessment

63. The Court reiterates that, by binding themselves not to "deny the right to education" under Article 2 of Protocol No. 1, the Contracting States guarantee to anyone within their jurisdiction a right of access to educational institutions existing at a given time and the possibility of drawing, by official recognition of the studies which he has completed, profit from the education received (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, § 52; *Belgian linguistic case* (merits), judgment of 23 July 1968, Series A no. 6, pp. 30-32, §§ 3-5).

64. Article 2 of Protocol No. 1 prohibits the denial of the right to education. This provision has no stated exceptions and its structure is similar to that of Articles 2 and 3, Article 4 § 1 and Article 7 of the Convention ("No one shall..."), which together enshrine the most fundamental values of the democratic societies making up the Council of Europe. In a democratic society, the right to education, which is indispensable to the furtherance of human rights, plays such a fundamental role that a restrictive interpretation of the first sentence of Article 2 of Protocol No. 1 would not be consistent with the aim or purpose of that provision (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 137, ECHR

2005-...). This right is also to be found in similar terms in other international instruments such as the Universal Declaration of Human Rights (Article 26), the International Covenant on Economic, Social and Cultural Rights (Article 13), the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e)(v)), and the Convention on the Rights of the Child (Article 28). There is no doubt that the right to education guarantees access to elementary education which is of primordial importance for a child's development.

65. The Court observes that the applicant's children were refused admission to the school which they had attended for the previous two years. The Government did not contest the applicant's submission that the true reason for the refusal had been that the applicant had surrendered his migrant's card and had thereby forfeited his registration as a resident in the town of Nalchik.

66. As noted above, the Convention and its Protocols do not tolerate a denial of the right to education. The Government confirmed that Russian law did not allow the exercise of that right by children to be made conditional on the registration of their parents' residence. It follows that the applicant's children were denied the right to education provided for by domestic law. Their exclusion from school was therefore incompatible with the requirements of Article 2 of Protocol No. 1.

67. There has therefore been a violation of Article 2 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicant claimed 300,000 euros (EUR) in compensation for the non-pecuniary damage incurred through the violation of his right to liberty of movement and EUR 500,000 in respect of the violation of his children's right to education.

70. The Government submitted that the applicant's claim in respect of non-pecuniary damage was excessive and unreasonable and that a token amount would be equitable in the circumstances of the case.

71. The Court considers that the applicant has suffered non-pecuniary damage – such as distress and frustration resulting from the actions and decisions of the domestic authorities that have been found to be

incompatible with the Convention and its Protocols – which is not sufficiently compensated by the finding of violations. However, it considers that the particular amounts claimed by the applicant are excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 under this head.

B. Costs and expenses

72. Relying on time-sheets, the applicant claimed 90,000 Russian roubles (RUR – approximately EUR 2,600) in compensation for the sixty days he had spent on litigation before the domestic courts and the preparation of materials for the Strasbourg proceedings. He further claimed EUR 40 for postal and secretarial expenses.

73. The Government submitted that the applicant had failed to substantiate his claim for costs with appropriate documents.

74. The Court observes that the applicant's claim for costs also extends to the complaints which have been withdrawn or declared inadmissible. As to the remaining complaints, it transpires from the applicant's submissions that he spent eleven days on the domestic proceedings and ten days drafting documents in the Strasbourg proceedings. The sum of RUR 1,500 (approximately EUR 44) claimed as the average value of a lawyer's working day does not appear excessive. Accordingly, having regard to the materials in its possession, the Court awards the applicant EUR 950 in respect of costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that there has been a violation of Article 14, taken in conjunction with Article 2 of Protocol No. 4;

3. *Holds* that there has been a violation of Article 2 of Protocol No. 1;

4. *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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;

(ii) EUR 950 (nine hundred and fifty euros) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A.B. BAKA
President