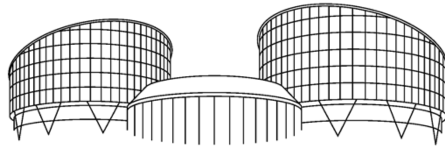

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF CORLEY AND OTHERS v. RUSSIA

(Applications nos. 292/06 and 43490/06)

JUDGMENT

Art 1 P7 • Expulsion of foreign nationals without basis in substantive law and without providing the applicants a realistic possibility to exercise their rights
Art 2 P4 • Freedom of movement • Sanction for failure to register a change of place of stay within three-day time-limit not in accordance with the law
Art 9 • Freedom of religion • Unjustified interference through singling out applicants for special treatment paving the way for their precipitated departure, for reasons connected to their religious work
Art 8 • Interference with family life of family members being expelled as well as those who stayed behind in Russia, in breach of domestic law
Art 3 • Degrading treatment • Placement in cell without provision for meeting basic needs
Art 5 § 1 • Unlawful detention carried out for the purpose of leveraging release in order to obtain applicant’s consent to leave Russia without appealing
Art 5 § 5 • No enforceable right to compensation for Art 5 § 1 violation

STRASBOURG

23 November 2021

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Corley and Others v. Russia,

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

Georges Ravarani, *President,*
Dmitry Dedov,
María Elósegui,
Darian Pavli,
Peeter Roosma,
Andreas Zünd,
Frédéric Krenc, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the applications (nos. 292/06 and 43490/06) 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 the Corley and Igarashi families ("the applicants"), on 4 January and 23 October 2006, respectively;

the decision to give notice of part of the applications to the Russian Government ("the Government");

the parties' observations;

Having deliberated in private on 5 and 19 October 2021,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns the enforced departure of foreign religious workers who had been compelled to leave Russia before exercising their procedural rights. It also addresses the questions of whether the measures compelling their departure were connected with their exercise of the right to freedom of religion and whether they unduly interfered with the right to respect for family life of the principal applicants and their family members.

THE FACTS

2. The applicants were represented before the Court by Mr D. Holiner and Ms G. Krylova, lawyers practising in London and Moscow respectively.

3. The Government were initially represented by Mr G. Matyushkin and M. Galperin, former Representatives of the Russian Federation to the European Court of Human Rights, and later by their successor in this office, Mr M. Vinogradov.

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

I. THE APPLICANTS

A. The Corley family (application no. 292/06)

5. The applicants – Mr John Alphonsus Corley, his wife Renée Michele Corley, and their son Nikolai Soo Il Corley – are citizens of the United States of America. They were born in 1953, 1952 and 1995 respectively and now live in Irvington, NY, USA.

6. Mr Corley had lived in Moscow since August 1990. He was the head of the Russian branch of the International Education Foundation USA, Inc., an American non-profit organisation and part of the Unification Church, a religious movement founded by Rev. Sun Myung Moon in 1954. He was responsible for coordinating legal and public affairs in the Unification Church of Eurasia, which oversees the Church's activities in Russia and the former Soviet Union. Within the canonical structure of the Unification Church of Eurasia, he was the direct supervisor of Mr Patrick Nolan, who was also an applicant before the Court (see *Nolan and K. v. Russia*, no. 2512/04, 12 February 2009).

7. In June 1991 Ms Corley joined her husband in Moscow, where their son Nikolai was born.

B. The Igarashi family (application no. 43490/06)

8. The applicants – Mr Shuji Igarashi, his wife Toshiko Igarashi, and their daughter Hanae Igarashi – are Japanese nationals. They were born in 1946, 1947 and 1982 respectively and now live in Kawasaki, Japan.

9. The Igarashi family had lived in Russia since 1993. Mr Igarashi was a missionary of the Unification Church. At the time of his expulsion, he was the highest-ranking official in the canonical structure of the Unification Church of Eurasia, and the supervisor of Mr Nolan and Mr Corley.

C. Legal status of the Unification Church in Russia

10. On 21 May 1991 the Unification Church was registered as a religious association in the Russian Socialist Federative Soviet Republic.

11. On 29 December 2000 the Ministry of Justice of the Russian Federation granted State re-registration to the Unification Church at federal level as a centralised religious organisation. It did so on the basis of an expert opinion from the Expert Council for conducting State expert studies in religious matters, which stated in particular as follows:

> "In the Russian Federation, neither the Unification Church nor its leaders have ever been held criminally liable. No violations of the federal law on freedom of conscience and religious associations on the part of the Unification Church or its representatives have been established. Thus, (1) the Unification Church is a religious, non-commercial organisation and, accordingly, has the characteristics of a religious

> association within the meaning of section 6(1) of the Religions Act; and (2) no indication of unlawful activities has been uncovered in its religious teachings and corresponding practice.”

II. THE EVENTS LEADING UP TO Mr CORLEY’S DEPARTURE

12. Mr Corley’s leave to stay in Russia was renewed on an annual basis through invitations issued by organisations associated with the Unification Church.

13. On 22 June 2005 the police fined Mr Corley for residing at an address in Moscow which was different from his registered residence. No fine was issued to his family members.

14. On 5 September 2005 his leave to stay was extended until 12 June 2006 and he registered his stay with the Passport and Visa Department.

15. On 27 October 2005 the police issued Mr Corley with a new fine for the same offence.

16. On 26 December 2005 a police officer in uniform and two persons in plain clothes who did not introduce themselves, showed up at the Corley family’s home and demanded that Mr Corley surrender his identity documents to “check the validity” of his registration with the Passport and Visa Department. He was told that he would later retrieve his documents from the police office. On 29 December 2005 Mr Corley arrived at the Department offices, where he received his passport and a new leave to stay dated 27 December 2005 with an expiry date of 6 January 2006. No explanation was provided, apart from a verbal warning to leave Russia voluntarily by 6 January 2006 or be expelled. A clerk made him sign a statement acknowledging that he had received the warning.

17. Mr Corley immediately left for the Basmanniy District Court in Moscow, which has territorial jurisdiction over the Department’s offices. He wished to lodge an application for judicial review of the legality of the decision revoking his previous leave to stay and requiring him to leave the country, along with an urgent application for suspensive relief pending a full examination of his complaint. Upon arrival at the District Court, Mr Corley learnt that the Moscow courts had been closed for the New Year’s holidays on 26 December 2005 and that judges were not accepting any new applications from the public until 12 January 2006.

18. On 30 December 2005 Mr Corley sent his application for judicial review and suspensive relief to the District Court by courier, and it was stamped by the registry as received on the same day. In the following days Mr Corley’s assistants called thirteen courts in Moscow in unsuccessful attempts to find a judge who would consider an application for suspensive relief. On 6 January 2006 Mr Corley delivered additional applications for suspensive relief to the Zamoskvoretskiy and Lyublinskiy District Courts, which had territorial jurisdiction over the place of his residence. He also sent complaints by registered post to the Passport and Visa Department, the

Federal Migration Service and the Moscow Prosecutor's office, in which he pointed out that he had lodged a judicial challenge against the revocation which, in accordance with Article 1 of Protocol No. 7 to the Convention, ought to be examined before any attempted expulsion.

19. On Saturday, 7 January 2006, at about 9 a.m., a group of at least eight uniformed officers, headed by Police Inspector Y., came to Mr Corley's office, looking for him. The group included officers of the municipal police, the Federal Migration Service and the Federal Security Service (FSB). Mr Corley was not in the office. On the officers' insistence, his interpreter contacted him by phone and a meeting was arranged at the police station. When Mr Corley arrived, Inspector Y. informed him that he was being charged with overstaying his leave and presented a report on an administrative offence and a judgment finding him guilty as charged and imposing a fine on him. Inspector Y. also told him that he must leave the country immediately under the officers' supervision.

20. Mr Corley submitted a written statement, noting that he was insisting on a judicial review of the decision revoking his leave to stay in accordance with Article 1 of Protocol No. 7, and also requested the presence of his counsel in any administrative proceedings against him. His interpreter drove him to the airport, and the officers followed in a separate car. Mr Corley chose to fly to Latvia, to remain close to his family, who stayed behind. The officers accompanied him right up to the passport control booth.

21. On 17 January 2006 counsel for Mr Corley lodged an appeal against the judgment of 7 January 2006 with the Lyublinskiy District Court. He submitted that, in breach of the procedural requirements, the case had not been heard by the police chief or a court, that he had been denied the opportunity to be represented by a lawyer and that the judgment had not been signed and had not contained any reasons.

22. On 25 January 2006 the Zamoskvoretskiy District Court rejected the application for suspensive relief as not founded on "sufficient evidence". It listed the hearing on the substantive issue for 16 February 2006.

23. On 16 February 2006 a representative of the Passport and Visa Department submitted a written defence to the Zamoskvoretskiy District Court, stating that the decision revoking Mr Corley's visa had been lawful in the light of his previous convictions for violating residence regulations. According to the internal records submitted as evidence by the Department, Mr Corley's leave to stay had been terminated, and the new one issued, at the request of an organisation identified by the number 28. The representative of the Department told Mr Corley's counsel that code 28 stood for the FSB and that the FSB had already banned Mr Corley's entry into Russia since 6 December 2005.

24. On 7 March 2006 the Zamoskvoretskiy District Court heard oral submissions by Mr Corley's representatives and dismissed his claim, holding that the decision to revoke the visa and order his departure from

Russia had been lawful because he had twice been previously convicted of violations of residence regulations. It noted that the decisions of 22 June and 27 October 2005, by which Mr Corley had been found guilty of administrative offences, had not been challenged or quashed. As regards Mr Corley's claim that his expulsion had amounted to unjustified interference with the right to respect for his private and family life, the District Court held that the contested decision did not affect the rights of his wife and son, who had come to Russia together with him and had a foreign nationality.

25. On 18 May 2006 the Moscow City Court dismissed an appeal against the District Court's judgment.

26. In the meantime, on 2 March 2006 the Lyublinskiy District Court quashed the judgment of 7 January 2006 because Mr Corley's request for a lawyer had been ignored and because it had not been signed by the official competent to issue it. It sent the matter back for a new hearing by the head of the Lyublino police station in Moscow on 6 March 2006.

27. When counsel for Mr Corley arrived at the Lyublino police station on 6 March 2006, neither the chief nor Inspector Y. were present. On 10 April 2006 the Lyublino police informed counsel that there would be no hearing in respect of the offence established on 7 January 2006 because the proceedings had been discontinued following the expiry of the two-month statute of limitations.

28. On 30 May 2006, after Mr Nikolai Corley had completed the school year, Ms Corley and Mr Nikolai Corley left Russia to join Mr Corley in the United States of America.

III. Mr IGARASHI'S ARREST, CONVICTION AND DEPARTURE

29. On 28 January 2006 Mr Igarashi travelled from Moscow to Yekaterinburg, where he had his residence registered at a friend's home until 10 February 2006.

30. On 2 February 2006 Mr Igarashi came to the settlement of Polevskoy in the Sverdlovsk Region – the region surrounding the city of Yekaterinburg – to participate in a religious seminar held at the Skazy Bazhova sanatorium.

31. On the morning of 5 February 2006, a Sunday, six officers from the local police and the FSB arrived at the sanatorium to "check Mr Igarashi's passport". They noted that he had not had his residence registered with the Polevskoy police. Mr Igarashi replied that he had arrived only on 2 February 2006 – that is, less than three days previously. The officers told Mr Igarashi to sign a document in Russian – a language Mr Igarashi did not speak – and to follow them to the Polevskoy Town Court.

32. It being a Sunday, a non-working day for courts in Russia, the Town Court was specially opened for Mr Igarashi upon his arrival and a judge was

present. The judge commenced consideration of the police charge that Mr Igarashi had committed a violation of residence regulations. Mr Igarashi did not have a lawyer present, nor was he provided with one. A member of his congregation, Mr Ch., who spoke some English, was appointed as interpreter for Mr Igarashi.

33. The Polevskoy Town Court immediately issued a judgment, which read as follows:

> "At noon on 5 February 2006, a passport check at the address ... Bazhova Street uncovered the Japanese national Shuji Igarashi, who had lived in the territory of the Polevskoy settlement since 2 February 2006 without having his residence registered.
>
> This is confirmed by the materials submitted [to the court] and the explanations by Shuji Igarashi...
>
> Shuji Igarashi committed an administrative offence under Article 18.8 of the Code of Administrative Offences, that is a violation by a foreign national of the rules on residence in the Russian Federation, in that he did not comply with the established procedure for residence registration.
>
> Taking into account the fact that Shuji Igarashi has not taken, and is not taking, any steps to have his residence in the settlement of Polevskoy registered, that he has no work permit and is not doing any socially useful work, that he has a registered residence in another Russian town and that he did not inform the [police] of his intention to change his place of residence, the judge decides that he must be expelled from Russia."

34. The Town Court additionally fined Mr Igarashi 1,000 Russian roubles (RUB) and ordered his detention pending expulsion. Mr Igarashi was immediately taken to a cell at the Yekaterinburg detention centre for asylum seekers and people awaiting extradition.

35. The parties provided partly divergent accounts of the conditions in which Mr Igarashi had been detained. They concurred that the cell where Mr Igarashi had been held had had an area of fifteen square metres. According to Mr Igarashi, he had shared it with twenty other detainees, including children; the Government relied on statements by the detention centre officers, who claimed that only four persons had been held in the cell. The Government indicated that the cell had been "equipped", without specifying the elements making up that equipment. Mr Igarashi stated that there had been no beds, sheets or blankets, and that detainees had been forced to sleep on a cold wooden floor. The in-cell toilet was separated from the rest of the cell by a one-metre-high partition. As there was no toilet paper, detainees were forced to wipe themselves with their bare hands and wash them in the sole washbasin in the cell, which supplied only cold water. The case file contains the lists of items that Mr Ch. had passed to Mr Igarashi, which included various food items, rolls of toilet paper, a sleeping bag, a winter jacket and mittens.

36. On 8 February 2006, officers of the local Passport and Visa Department visited Mr Igarashi in his cell and offered him release in exchange for his signature on the following pre-printed text:

> "I, Shuji Igarashi ... affirm that I have committed an administrative offence in Russian territory, that I have received a copy of the judgment, and that I have no intention to lodge an appeal."

37. Mr Igarashi signed the text and was taken out of the cell. He learned from Mr Ch. that two days previously an official of the Passport and Visa Department, Mr B., had made him sign a letter of guarantee, which was a precondition for Mr Igarashi's release. The letter read as follows:

> "In connection with the expulsion of the Japanese national Shuji Igarashi, I undertake to pay his air fare for the route Yekaterinburg-Moscow-Tokyo, as well as the air fare for two accompanying officers of the Federal Migration Service from Yekaterinburg to Moscow and their return train tickets from Moscow to Yekaterinburg.
>
> I undertake to pay the food and lodging expenses of the Federal Migration Service officials. Should there be a delay ... I agree to cover their accommodation expenses."

38. Mr Igarashi was taken from the detention facility directly to the airport and left Russia the same day, 8 February 2006. He was allowed a brief pre-departure meeting with his wife. The letter of guarantee bears a handwritten note: "The undertaking has been executed. Senior Inspector of the Federal Migration Service [name and signature]."

39. On 15 February 2006 Mr Igarashi lodged an appeal, sent by express mail from Japan, against the Town Court's judgment of 5 February 2006.

40. On 22 February 2006 the *Rossiyskaya Gazeta* newspaper, a publication founded and funded by the Government, which also appoints and dismisses its chief editor, published the article "ComMoonism has come to the Urals". The article, which cited unnamed "law-enforcement bodies" as its source, referred to the expulsion of Mr Corley and Mr Igarashi in the context of a State campaign against the Unification Church.

41. On 21 April 2006 the Sverdlovsk Regional Court examined Mr Igarashi's appeal and heard oral submissions by his counsel. It found that Mr Igarashi had not committed any administrative offence. By the time of his arrest and conviction on 5 February 2006 the three-day time-limit for having a new residence registered had not yet expired, since he had arrived at Polevskoy on 2 February 2006. The Regional Court quashed the judgment of 5 February 2006 as unlawful, and discontinued the proceedings against Mr Igarashi.

42. Ms Hanae Igarashi, who was a student at Ulyanovsk University, continued her education in Russia until at least February 2007.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. Concept of National Security of the Russian Federation (President's Decree no. 1300 of 17 December 1997)

43. On 10 January 2000 the acting President of the Russian Federation, by Decree no. 24, amended the Concept of National Security of the Russian Federation. The relevant paragraph of Chapter IV, "Ensuring the National Security of the Russian Federation", was amended to read:

> "Ensuring the national security of the Russian Federation also includes the protection of its ... spiritual and moral heritage ... the forming of a State policy in the field of spiritual and moral education of the population ... and also includes opposing the negative influence of foreign religious organisations and missionaries ..."

B. Foreign Nationals Act (Law no. 115-FZ of 25 July 2002)

44. A foreign national must be registered within three working days of his or her arrival in Russia (section 20(1)). Registration of foreign nationals is processed at their place of stay in the Russian Federation. Should the place of stay change, the foreign national is required to be registered within three working days from the date of arrival at the new place of stay (section 21(3)).

45. As worded in 2006, section 5(3) provided that an authorised period of stay in Russia could be reduced "if the conditions on which the foreign national was allowed entry into Russia have changed or ceased to exist". Law no. 224-FZ of 23 July 2013 amended section 5(3) by adding that the period of stay could also be reduced if a decision banning the foreign national's entry into Russia was adopted.

C. Entry and Exit Procedures Act (Law no. 114-FZ of 15 August 1996)

46. A foreign national may be denied admission to Russia if he or she has been convicted of administrative offences two or more times in the past three years (Section 26(4), as worded at the material time).

D. Code of Administrative Offences

47. A foreign national who violates the registration requirements, including by non-compliance with the established registration procedure or by evading exit from Russia upon expiry of the authorised period of stay, is liable to an administrative fine of up to RUB 1,000 and optional expulsion from Russia (Article 18.8, as worded at the material time). A report of the

offence described in Article 18.8 may be drawn up by officials of the State migration authorities (Article 28.3 § 2 (15)). This report must be forwarded within one day to a judge or an officer competent to adjudicate administrative matters (Article 28.8). The determination of an administrative charge that may result in expulsion from Russia is to be made by a judge of a court of general jurisdiction (Article 23.1 § 3). A right of appeal against a decision on an administrative offence lies to a court or to a higher court (Article 30.1 § 1).

II. EXPLANATORY REPORT TO PROTOCOL No. 7

48. The Explanatory Report to Protocol No. 7 (ETS No. 117) defines the scope of application of Article 1 of Protocol No. 7 as follows:

> "10. The concept of expulsion is used in a generic sense as meaning any measure compelling the departure of an alien from the territory but does not include extradition. Expulsion in this sense is an autonomous concept which is independent of any definition contained in domestic legislation ..."

THE LAW

I. MATTERS OF PROCEDURE

A. Joinder of the applications

49. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

B. Order of examination of the complaints

50. The Court will first examine the alleged violations of Article 1 of Protocol No. 7 and Article 2 of Protocol No. 4 to the Convention in the proceedings leading to Mr Corley's and Mr Igarashi's departure from Russia, before embarking on an assessment of the complaints of violations of the right to freedom of religion and the right to respect for their family life. It will conclude with complaints relating to matters which are the subject of the Court's well-established case-law and inadmissible complaints.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 7 IN RESPECT OF Mr CORLEY AND Mr IGARASHI

51. The applicants Mr Corley and Mr Igarashi complained that the measures to shorten the authorised period of Mr Corley's stay in Russia and to expel Mr Igarashi had not been carried out "in pursuance of a decision reached in accordance with law" and that they had not been afforded the

procedural safeguards required under Article 1 of Protocol No. 7, which reads:

> “1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
>
> (a) to submit reasons against his expulsion,
>
> (b) to have his case reviewed, and
>
> (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.
>
> 2. An alien may be expelled before the exercise of his rights under paragraph 1 (a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.”

A. Admissibility

52. The Government submitted that the replacement of Mr Corley’s leave to stay with a new one of a shorter duration had not constituted an “expulsion” for the purposes of Article 1 of Protocol No. 7. He had also failed to exhaust the effective domestic remedies. The decision to shorten his stay in Russia had been taken in connection with his repeated violations of residence regulations and had not involved his administrative removal. Mr Corley had had sufficient time to apply for judicial review of the decisions of 22 June and 27 October 2005 but instead he had sought to exercise his procedural rights over the period of the New Year’s holidays.

53. The Court finds that the conditions for applicability of Article 1 of Protocol No. 7 have been met in respect of both Mr Corley and Mr Igarashi. It was not disputed that both of them had been “lawfully resident” in the Russian territory. The decision to reduce the authorised period of Mr Corley’s stay by means of replacing his valid leave to stay with a new one of a shorter duration had the effect of terminating his residence in Russia, which he had continuously enjoyed for more than sixteen years, since 1990. The decision was accompanied by an express warning compelling him to leave Russia within the specified time-limit or face expulsion (see paragraph 16 above). It was therefore a “measure compelling [his] departure” which amounted to “expulsion” in the autonomous sense of this term, independent of any classification of that measure in Russian law (see point 10 of the Explanatory Report to Protocol No. 7 in paragraph 48 above, and also *Ljatifi v. the former Yugoslav Republic of Macedonia*, no. 19017/16, § 22, 17 May 2018; *Nolan and K. v. Russia*, no. 2512/04, § 112, 12 February 2009; and *Bolat v. Russia*, no. 14139/03, § 79, ECHR 2006-XI). As to Mr Igarashi, the Court notes that his expulsion was ordered by the Town Court. It cannot be described as a voluntary departure, given that he was taken to the airport and onwards to Moscow under police

escort and placed on board a Tokyo-bound aircraft (compare *Bolat*, cited above).

54. In so far as the Government contended that Mr Corley had not challenged the decisions of 22 June and 27 October 2005 before a court, the Court notes that the present complaint concerns the decision to reduce the authorised period of his stay by means of issuing a new leave to stay. This was a separate and discrete measure rather than an automatic or mandatory consequence of any previous conviction (see, by contrast, *Gablishvili v. Russia*, no. 39428/12, § 49, 26 June 2014), and it was also amenable to a judicial review, which took place only after Mr Corley's enforced departure. The Government's argument as to the non-exhaustion of domestic remedies is therefore misconceived and must be rejected.

55. The Court considers that this complaint 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 any other grounds. It must therefore be declared admissible.

B. Merits

56. Mr Corley submitted that the decision to reduce the authorised period of his stay had breached both the procedural rules and the provisions of substantive law. The only provision of the Foreign Nationals Act which authorised the police to reduce the period of stay was section 5(3), but it had never been invoked in the domestic proceedings and, in any event, did not apply to his situation since he had been expelled allegedly for violations of residence regulations rather than on account of any change in circumstances. Prior to his enforced departure on 7 January 2006, he had applied to many officials and courts seeking a review of his expulsion but all of them had either been unavailable or had refused to consider his complaint. While a judicial review had ultimately been granted, that had only occurred after he had been expelled in breach of Article 1 of Protocol No. 7. Mr Igarashi pointed out that a decision on his expulsion had not been reached in accordance with substantive law, as acknowledged by the Regional Court. It had also been in breach of the procedural rules in that he had been expelled before the appeal period had expired and that the alleged waiver of the right to appeal had been obtained under duress and had also been invalid under domestic law. Notwithstanding any formal notification of his right to a lawyer, the process had been performed as a formality by the police and the court, which had manifested their resolve to convict and imprison him that same day. He had been assisted by Mr Ch., who had been neither a qualified interpreter nor a Japanese speaker.

57. The Government submitted that the decision to replace Mr Corley's leave to stay with a new one had been based on section 26 of the Entry and Exit Procedures Act. In their view, the Russian authorities could not be held

responsible for Mr Corley's decision to take judicial proceedings during a holiday period, just six days before the expiry of his leave to stay. On 7 January 2006 the police had found a third violation of residence regulations, which, in the Government's view, meant that Mr Corley had not drawn any lessons from his previous convictions or made any attempt to regularise his stay but had gone on "committing gross and explicit violations of the Russian migration law". Mr Corley's complaint had been considered and rejected by the Moscow courts at two levels of jurisdiction. As to Mr Igarashi, the Government submitted that he had been present at the hearing before the Town Court and had been able to make submissions and requests. However, he had not asked for a lawyer to be appointed to represent him, while the Code of Administrative Offences did not require the court to appoint one in the absence of a request to that effect. Mr Igarashi had voluntarily decided to leave Russia before the expiry of the time-limit for lodging an appeal against the Town Court's decision and had given a written statement to that effect.

58. The Court reiterates that the High Contracting Parties have a discretionary power to decide whether to expel an alien present in their territory. This power, however, must be exercised in such a way as not to infringe the rights under the Convention of the person concerned (see *Nolan and K.*, § 114, and *Bolat*, § 81, both cited above). In addition to the protection afforded by Articles 3 and 8 of the Convention taken in conjunction with Article 13, aliens benefit from the specific guarantees provided for in Article 1 of Protocol No. 7 (see *Lupsa v. Romania*, no. 10337/04, § 51, ECHR 2006-VII). Paragraph 1 of this Article establishes as the basic guarantee that the person concerned may be expelled only "in pursuance of a decision reached in accordance with law". The decision must be taken by the competent authority in accordance with the provisions of substantive law and with the relevant procedural rules (see *Sharma v. Latvia*, no. 28026/05, § 80, 24 March 2016, and *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, §§ 117-19, 15 October 2020).

59. As regards compliance with substantive law, neither the Migration Service's decision replacing Mr Corley's leave to stay with a shorter one nor the subsequent judicial acts cited a specific legal basis for that measure. The Government referred to section 26 of the Entry and Exit Procedures Act, which, however, provides for a different type of sanction: a foreign national convicted of multiple breaches of registration requirements would be denied admission to Russia (see paragraph 46 above). A reduction in the authorised period of stay could have taken place on the basis of section 5(3) of the Foreign Nationals Act but only if there had been a change in the conditions on which the alien's entry had been originally approved (see paragraph 45 above). As it happened, the domestic authorities did not refer to that provision or identify any changes in Mr Corley's situation. Even if the FSB had indeed issued a decision banning Mr Corley's entry into Russia

(see paragraph 23 above) – the existence of which the Government neither confirmed nor denied – it did not constitute at the material time a legal basis for reducing his stay. The Foreign National Act was amended to provide for that course of action many years after the events (see paragraph 45 above). It follows that replacing Mr Corley's leave to stay with one of a shorter duration did not have a basis in substantive law. In the case of Mr Igarashi, a breach of the substantive law was ultimately acknowledged at domestic level (see paragraph 41 above).

60. Turning to the safeguards which an alien must be afforded prior to his or her expulsion, the Court notes that the domestic authorities used a stratagem to gain possession of Mr Corley's valid leave to stay. His identity documents had been taken away from him on the pretence of their inspection (see paragraph 16 above); he was not given advance warning of the decision to replace his leave to stay and was unable to ascertain the reasons for that decision or to submit reasons against it. In fact, the authorities gave every appearance of having wanted to ensure that Mr Corley did not find out about the action they were preparing to take against him, so that they could the more effectively face him with a *fait accompli* thereafter (see, in a factually similar situation, *Bozano v. France*, 18 December 1986, § 59, Series A no. 111).

61. Mr Corley's new leave to stay was issued one day after the Russian courts had closed for the winter holidays. It was set to expire before they would reopen for business after the holidays. Mr Corley unsuccessfully attempted to find an open court or a duty judge available to consider his application for suspensive relief or carry out a judicial review of the measure reducing the period of his stay (see paragraphs 17 and 18 above). The Court reiterates that the Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective, which implies, in particular, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy (see *Čonka v. Belgium*, no. 51564/99, § 46, ECHR 2002-I). By timing the new leave to stay to coincide with a period of holidays, the Russian authorities consciously created a situation in which Mr Corley's application for review could not be considered before his expulsion. He was therefore denied a realistic possibility of exercising his rights under Article 1 § 1 of Protocol No. 7. The Court also notes that the judgment of 7 January 2006 was eventually set aside on the grounds that he had not been represented in the proceedings (see paragraph 26 above).

62. Mr Igarashi was likewise induced into believing that the police merely intended to check his documents (see paragraph 31 above). He could not reasonably have anticipated that he would be charged with a breach of residence regulations before the grace period for registering a new residence had expired. The findings by the Sverdlovsk Regional Court that he had not committed any offence confirmed that his assessment had been correct (see

paragraph 41 above). The unusually fast pace of events and the suddenness with which Mr Igarashi was charged, tried, convicted, served with an expulsion order and placed in detention pending expulsion in the course of just one Sunday morning indicate that the authorities were seeking to prevent him from making any effective use of the remedies theoretically available to him (see *Bozano*, cited above, § 59). He was told to sign a document in a language he did not understand and was brought before a court in circumstances which prevented him from being represented or submitting any reasons against his expulsion (see, in a factually similar situation, *Nowak v. Ukraine*, no. 60846/10, § 82, 31 March 2011). The Court also reiterates its finding that Russian law makes no provision for any form of legal assistance or representation in administrative proceedings (see *Mikhaylova v. Russia*, no. 46998/08, §§ 85-102, 19 November 2015).

63. The Court cannot accept the Government's contention that Mr Igarashi had voluntarily waived his rights under Article 1 of Protocol No. 7 or consented to his departure. The authorities must have been aware that he had not committed any offence and that his conviction would not stand on appeal. State officials made him sign a waiver in exchange for his release. His colleague was compelled to agree to pay the travel and lodging expenses of two police officers who would accompany Mr Igarashi until his departure from Russia (see paragraphs 36 and 37 above). Mr Igarashi was forced to travel to Moscow flanked by two policemen, who signed for the successful completion of their mission (see paragraph 38 above, and compare *Bozano*, cited above, § 59). The waiver of the right to appeal was invalid under Russian law and was not once mentioned in the ensuing appeal proceedings. The extraordinary circumstances in which a court convicted and imprisoned Mr Igarashi for an offence he had not committed and in which his liberty was leveraged in order to expedite his departure disclose the authorities' determination to make him leave Russia by all means possible with little concern for legal formalities. As with Mr Corley, the authorities deliberately created a situation in which Mr Igarashi was denied the possibility of exercising his rights under Article 1 § 1 of Protocol No. 7 prior to his expulsion.

64. There has therefore been a violation of Article 1 of Protocol No. 7 in respect of the applicants Mr Corley and Mr Igarashi.

III. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 IN RESPECT OF Mr IGARASHI

65. Mr Igarashi complained under Article 2 of Protocol No. 4 that he had been convicted and punished by means of a fine and expulsion for the lawful exercise of his right to freedom of movement within Russia. The relevant parts of Article 2 of Protocol No. 4 read 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 ..."

A. Admissibility

66. The Government submitted that, after the Regional Court had set aside the "erroneous" judgment of the Town Court, the infringement of Mr Igarashi's rights had been fully redressed. The Sverdlovsk Regional migration authority had asked the Federal Migration Service to authorise Mr Igarashi's entry into Russia. Mr Igarashi had also had an enforceable right to compensation under Article 1070 of the Civil Code, which he had not used. The Government contended that he had lost the status of a "victim" of the alleged violation.

67. Mr Igarashi submitted that his position was no different from that of Mr Bolat in a similar case (cited above): the Russian authorities had offered no apology, no compensation and no new visa. Simply acknowledging that he was no longer considered an offender banned from re-entering Russia did not amount to sufficient redress. Contrary to the Government's assertion, he did not have an effective right to compensation because Article 1070 § 2 of the Civil Code required that a judge's guilt be established by means of a final conviction.

68. In so far as the Government claimed that Mr Igarashi was no longer the "victim" of the alleged violation, the Court reiterates that it examined a similar objection in the *Bolat* case, in which the applicant's conviction for an administrative offence had been quashed after his expulsion and the administrative proceedings had been discontinued. The Court found that the applicant could not be regarded as having been afforded adequate redress since the Russian authorities had not ordered payment of any compensation, provided for his travel expenses to return to Russia or issued a document authorising his return (see *Bolat v. Russia* (dec.), no. 14139/03, 8 July 2004). Similar considerations of insufficient redress apply in the circumstances of the present case, where Mr Igarashi was not offered compensation or the reimbursement of his travel expenses or the return fare. The Government did not demonstrate that the Federal Migration Service had given effect to the request to authorise Mr Igarashi's re-entry and issued a visa or travel document for him (compare *Ustinova v. Russia*, no. 7994/14, § 36, 8 November 2016).

69. Furthermore, as regards Mr Igarashi's eligibility for compensation under Article 1070 of the Civil Code, the Court has previously found that

the Russian law of tort limits liability for unlawful detention to specific exhaustively listed forms of deprivation of liberty which do not include detention pending expulsion, requiring in all other cases that the judge who issued the impugned decision be criminally convicted of a wrongful judicial act (see *Abashev v. Russia*, no. 9096/09, § 41, 27 June 2013, and *Makhmudov v. Russia*, no. 35082/04, § 104, 26 July 2007). That restrictive formulation of the tort provisions prevented Mr Igarashi from obtaining compensation for his wrongful detention and enforced departure and rendered that remedy ineffective.

70. The Court therefore dismisses the Government's objections relating to Mr Igarashi's victim status and the alleged non-exhaustion of domestic remedies. It further considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

71. Article 2 of Protocol No. 4 guarantees the right to liberty of movement and freedom to choose their residence to everyone who is "lawfully within the territory of a State". As noted in paragraph 53 above, Mr Igarashi was lawfully resident in Russia at the material time.

72. Sanctioning the individual for failure to comply with the requirement to report to the police within three days of changing a place of stay or residence has been found to disclose interference with the right to liberty of movement (see *Tatishvili v. Russia*, no. 1509/02, §§ 45-46, ECHR 2007-I, and *Bolat*, cited above, § 65, with further references).

73. The Court notes that the Regional Court quashed Mr Igarashi's conviction on the grounds that he could not have been sanctioned for failing to register a change of his place of stay prior to the expiry of the three-day time-limit. It has thus been acknowledged that the impugned measure was not "in accordance with the law". This finding makes it unnecessary to consider whether it pursued a legitimate aim and was "necessary in a democratic society" (see *Gartukayev v. Russia*, no. 71933/01, § 21, 13 December 2005).

74. There has therefore been a violation of Article 2 of Protocol No. 4 in respect of Mr Igarashi.

IV. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION IN RESPECT OF Mr CORLEY AND Mr IGARASHI

75. The applicants Mr Corley and Mr Igarashi complained under Article 9 of the Convention that their enforced departure from Russia had been part of a pattern of expulsions of the Unification Church's missionaries

with the true aim of stifling the spreading of the religion of the Unification Church in Russia. Article 9 reads as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

76. The Court considers that this complaint 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 any other grounds. It must therefore be declared admissible.

B. Merits

77. The applicants pointed to the circumstances giving rise to strong and concordant indications that the enforced departure of Mr Corley and Mr Igarashi had been designed to stifle the spreading of the religion of the Unification Church in Russia and to put an end to their religious activities. The Russian Concept of National Security called for effective opposition to the influence of foreign missionaries, and officers of the FSB – the authority in charge of the implementation of the Concept – had been involved in both of their cases, as they had been in the case concerning the exclusion of their co-worker Mr Nolan (here they referred to *Nolan and K.*, cited above). Their expulsion from Russia had been carried out shortly after the Court had given notice of the application by Mr Nolan, whose direct supervisors the applicants had been. Their expulsion had been followed by an article published in the official *Rossiyskaya Gazeta* newspaper, which had cited unnamed law-enforcement authorities as its source (see paragraph 40 above). Mr Igarashi submitted that the Government had failed to give a convincing reason for the FSB's presence at the religious seminar, whereas it had been acknowledged that the Unification Church had not committed any violations of the law. His case had been hastily considered just one working day after his arrival and by a court that had extraordinarily been open on a Sunday to process the charges against him. Lastly, the applicants maintained that their expulsion from Russia had sought to put an end to their religious activities there and that the Government had not offered any justification for that interference with their right to freedom of religion.

78. The Government denied that either the reduction of Mr Corley's period of stay or Mr Igarashi's enforced departure had been intended to

interfere with their right to freedom of religion or to impede the activities of the Unification Church in Russia. They also denied that officers of the FSB had taken part in revoking Mr Corley's leave to stay, checking Mr Igarashi's passport, compiling the police report or bringing Mr Igarashi to the courthouse. Their presence at the religious seminar at the Skazy Bazhova sanatorium had been lawful because they had been tasked with the "anti-terrorist protection of places where masses of people congregate". Both Mr Corley and Mr Igarashi had been sanctioned for administrative offences, not for their religious convictions. The expedited examination of the charges against Mr Igarashi had been in full compliance with Russian law, which required a same-day examination of an administrative charge, and a duty judge had been present on a Sunday to adjudicate the matter.

79. The Court reiterates that freedom of thought, conscience and religion, as enshrined in Article 9, is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion". Bearing witness in words and deeds is bound up with the existence of religious convictions. The Court has held on many occasions that the imposition of administrative or criminal sanctions for manifestation of religious belief or exercise of the right to freedom of religion amounted to interference with the rights guaranteed under Article 9 of the Convention (see *Serif v. Greece*, no. 38178/97, § 39, ECHR 1999-IX, and *Larissis and Others v. Greece*, 24 February 1998, § 38, *Reports of Judgments and Decisions* 1998-I).

80. The gist of the applicants' complaint was not that they were not allowed to stay or work in Russia but rather that their religious beliefs or activities had prompted the Russian authorities to enforce their departure. The Court reiterates that, whereas the right of a foreigner to enter or remain in a country is not as such guaranteed by the Convention, immigration controls have to be exercised consistently with Convention obligations (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, §§ 59-60, Series A no. 94). As regards specifically Article 9, it emphasises that "deportation does not ... as such constitute an interference with the rights guaranteed by Article 9, unless it can be established that the measure was designed to repress the exercise of such rights and stifle the spreading of the religion or philosophy of the followers" (see *Omkarananda and the Divine Light Zentrum v. Switzerland*, no. 8118/77, Commission decision of 19 March 1981, Decisions and Reports 25, p. 118). More recently, the Court has examined cases against Bulgaria in which the State's use of immigration controls as an instrument for putting an end to an applicant's religious activities within its jurisdiction was found to have given rise to an

admissible complaint of an interference with rights under Article 9 (see *Al-Nashif v. Bulgaria* (dec.), no. 50963/99, 25 January 2001, and *Lotter and Lotter v. Bulgaria* (dec.), no. 39015/97, 6 February 2003). In a Latvian case the Court held that the refusal to issue an Evangelical pastor with a permanent residence permit "for religious activities", a decision which had been grounded on national-security considerations, disclosed interference with the applicant's right to freedom of religion (see *Perry v. Latvia*, no. 30273/03, § 53, 8 November 2007). It follows that, to the extent that a measure relating to the continuation of the applicant's residence in a given State was imposed in connection with the exercise of the right to freedom of religion, such measure may disclose interference with that right (see *Nolan and K.*, cited above, § 62).

81. Accordingly, the Court's task in the present case is to establish whether the applicants' exclusion from Russia was connected with their exercise of the right to freedom of religion. Mr Corley and Mr Igarashi had come to Russia in 1990 and 1993, respectively, at the invitation of the Unification Church, a religious association officially registered in Russia (see paragraphs 6 and 9 above). A State-conducted religious study concluded that its teachings were religious in nature and the competent authorities registered it as a religious organisation (see paragraph 11 above, and also *Church of Scientology of St Petersburg and Others v. Russia*, no. 47191/06, § 32, 2 October 2014). There is no indication in the case file, and it was not argued by the Government, that the Unification Church or its branches had engaged in activities other than spreading of their doctrine and guiding their followers in the precepts of Rev. Moon's spiritual movement. Mr Igarashi was the most senior Church official in the region, while Mr Corley was responsible for the Church's legal and public affairs. They also supervised Mr Patrick Nolan, a member of the Unification Church, who was responsible for the operations of the branches of the Unification Church in Southern Russia (see *Nolan and K.*, cited above, § 9).

82. In 2002, on returning from a trip abroad, Mr Nolan was denied re-entry to Russia. As it later transpired, the Department for the Protection of the Constitutional Order and the Fight against Terrorism of the FSB had declared his presence in Russia undesirable on the grounds that he had engaged in destructive activities representing a threat to national security (ibid., §§ 32-43). Mr Nolan complained to the Court, relying in particular on Article 9 of the Convention. He submitted that his exclusion from Russia had been aimed at penalising him for manifesting and spreading his religion. The Court found it established that his banning from Russia had interfered with his right to freedom of religion:

> "64. ... [N]othing indicates that the applicant held any employment or position outside the Unification Church and its organisations or that he had exercised any activities other than religious and social work as a missionary of the Unification Church...

> 65. ... [T]he Court cannot overlook the applicant's submission that the Concept of National Security of the Russian Federation, as amended in January 2000, declared that the national security of Russia should be ensured in particular through opposing 'the negative influence of foreign religious organisations and missionaries'. The unqualified description of any activities of foreign religious missionaries as harmful to the national security lends support to his argument that his religious beliefs, combined with his status as a foreign missionary of a foreign religious organisation, may have been at the heart of the Russian authorities' decision to prevent him from returning to Russia.
>
> 66. ... Having regard to the fact that the applicant was not shown to have engaged in any other, non-religious, activities and also to the general policy, as set out in the Concept of National Security of the Russian Federation, that foreign missionaries posed a threat to national security, the Court considers it established that the applicant's banning from Russia was designed to repress the exercise of his right to freedom of religion and stifle the spreading of the teaching of the Unification Church ..."

83. In the instant case, both Mr Corley and Mr Igarashi were compelled to leave Russia on allegedly formal grounds which ostensibly were not related to their religious work. Nevertheless, there are concordant indications that their enforced departure was connected with the exercise of their right to freedom of religion and pursued the objective of preventing the spreading of the teaching of the Unification Church in Russia.

84. The first indication is the involvement of security services in the proceedings against Mr Corley and Mr Igarashi. Both men were held liable for violating the regulations on the residence of foreign nationals, a regulatory offence that would have normally come within the jurisdiction of local police. In contrast, the mandate of security services includes all matters relating to national security, including the implementation of the Concept of National Security of the Russian Federation which laid down the policy objective of opposing "the negative influence of foreign religious organisations and missionaries" (see paragraph 43 above, and *Nolan and K.*, cited above, § 37). In the instant case, Mr Corley was told that the security service had issued a decision banning his admission to Russia, similar to one that had been used in Mr Nolan's case (see paragraph 23 above). A security-service officer came looking for him – alongside police officers – at his office on a Saturday and then followed his movements for as long as it was necessary to make sure that he had actually left Russia (see paragraphs 19 and 20 above). In Mr Igarashi's case, the police and security-service officers showed up in large numbers in the sanatorium where he was taking part in a religious seminar (see paragraph 31 above). They stated that they had come to check his passport. The reason they gave for their presence in an out-of-town recreational facility on a Sunday morning was however different from the Government's version that the security services had sought to avert a terrorist threat in a place of mass gathering (see paragraph 78 above).

85. The Court further notes indications of the authorities' arbitrariness in seeking to enforce the departure of Mr Corley and Mr Igarashi. Mr Corley's valid leave to stay was taken away from him on the pretence of an inspection but was never returned; he was not given advance warning of the decision to replace it. He was notified of that decision one day after the Russian courts had closed for the winter holidays. He was issued with a new leave to stay of shorter validity which ended before the end of the holidays, with the effect that he was denied any possibility of seeking judicial review of the measure shortening his stay in Russia. By contrast, a court in Mr Igarashi's case was expressly opened on a Sunday to convict him of a breach of residence regulations and place him in custody pending expulsion. A situation where a duty judge in a small town made himself available on a Sunday to convict one applicant but no judges at all were available in the capital city of Moscow over a period of ten days to consider another applicant's request for suspensive relief and judicial review calls for an explanation, but none has been furnished by the Government.

86. The authorities expedited the proceedings against the applicants to the point of dispensing with the legal formalities. The charges against Mr Igarashi were laid just one day after his arrival; the authorities did not wait for the expiry of the statutory three-day time-limit for regularising his residence (see paragraph 41 above). The proceedings against him were conducted summarily, and the court did not adjourn them to allow him to be properly represented or assisted by a qualified Japanese-speaking interpreter (see paragraph 32 above). As to Mr Corley, he was not allowed to take part in any proceedings at all. Instead, he was presented with a printed and signed judgment finding him guilty as charged (see paragraph 19 above). After Mr Igarashi was placed in detention, his interpreter and co-worker was told by the officers of the Federal Migration Service that he would be released if he agreed to waive his right to appeal, to leave immediately for Japan and also to pay for the travel and lodging expenses of two Federal Migration Service officers who would accompany him up to the departure gate at a Moscow airport (see paragraphs 36-38 above).

87. In the light of the above elements, the Court finds that the Russian authorities singled out Mr Corley and Mr Igarashi for special treatment, paving the way for their precipitated departure. As there is nothing to indicate that they held any employment or position outside the Unification Church or engaged in any activities other than religious work, it concludes that the reasons for that treatment were connected with their religious work. Seen against the State policy objective of countering the influence of foreign missionaries in Russia, the pattern of involvement of the security services in the enforced departures of members of the Unification Church from Russia suggests that those measures were taken for the purpose of repressing the exercise of their right to freedom of religion and stifling the spreading of its teaching in Russia. The measures amounted to interference

with Mr Corley's and Mr Igarashi's rights guaranteed under Article 9 of the Convention (see *Nolan and K.*, cited above, § 66, with further references).

88. The Government did not provide any justification for the interference, by reason of their position that there had been none in the first place. It can nevertheless be deduced, as the plausible explanation in the circumstances of the case, that Mr Corley and Mr Igarashi were compelled to leave Russia on national security grounds in accordance with Russia's Concept of National Security calling for opposing of the influence of foreign missionaries, just as their fellow member of the Unification Church Mr Nolan had been (see *Nolan and K.*, cited above, § 70). The Court reiterates, however, its constant position that unlike the second paragraphs of Articles 8, 10, and 11, paragraph 2 of Article 9 of the Convention does not allow any restrictions on the ground of national security which reflects the fundamental importance of religious pluralism as "one of the foundations of a 'democratic society' within the meaning of the Convention" (see *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, § 132, 14 June 2007; *Nolan and K.*, cited above, § 73; and *S.A.S. v. France* [GC], no. 43835/11, § 113, ECHR 2014 (extracts)). It follows that the interests of national security cannot serve as a justification for any measures interfering with the right to freedom of religion.

89. Having regard to the fact that the Government have not put forward any justification for the involvement of security services in what was claimed to be an ordinary breach of residence regulations and the arbitrary conduct of the proceedings leading to the exclusion of Mr Corley and Mr Igarashi from Russia in connection with their religious work, the Court finds that there has been a violation of Article 9 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION IN RESPECT OF ALL THE APPLICANTS

90. The applicants complained under Article 8 of the Convention that Mr Corley's and Mr Igarashi's enforced departure from Russia had removed them from their home of many years and forced their wives and children to choose between living separately from their husbands and fathers or leaving their home. Article 8 reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

91. The Court considers that this complaint 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 any other grounds. It must therefore be declared admissible.

B. Merits

92. The applicants submitted that Mr Corley and his wife had lived continuously in Russia for fifteen years, that their son had been born there and had lived there his entire life, and that Mr Igarashi and his family had lived in Russia for fourteen years. The expulsion of Mr Corley and Mr Igarashi had forced their families to choose between their "family life" with them and their "private life" in Russia, where they had their community ties. The decisions compelling their separations had been both unlawful and unnecessary in a democratic society. The applicants referred here to Resolution 1277(2002) of the Parliamentary Assembly of the Council of Europe, in which the Assembly had expressed concern over the restrictive system of registration in Russia (the text is cited in *Tatishvili*, cited above, § 33).

93. The Government submitted that Mr Corley had come to Russia as an adult and had lived there since 1990. He had had multiple addresses in Moscow and had not specified which one was to be considered his "home". As a missionary, he was expected to change his place of residence with greater ease because of the nature of that itinerant occupation. There had been no violation of Article 8 because he had accepted a new position with the Unification Church in New York and his wife and son had joined him in the United States just five months after his departure. As regards Mr Igarashi, his wife and daughter had been free to apply for residence permits in their own right or to leave Russia to follow him. After the Town Court's judgment had been set aside on appeal, Mr Igarashi had no longer been banned from re-entering Russia.

94. The Court reaffirms that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there. Where immigration is concerned, Article 8 cannot be construed as imposing a general obligation on a State to respect the choice of married couples of the country of their matrimonial residence and to authorise family reunion on its territory. However, the removal of a person from a country where close family members are living may amount to an infringement of the right to respect for family life, as guaranteed by Article 8 § 1 of the Convention. Where children are involved, their best interests must be taken into account and national decision-making bodies have a duty to assess evidence in respect of

the practicality, feasibility and proportionality of any removal of a parent in order to give effective protection and sufficient weight to the best interests of the children directly affected by it (see *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 109, 3 October 2014; *X v. Latvia* [GC], no. 27853/09, § 96, ECHR 2013; and *Ustinova*, cited above, § 42).

95. Mr Corley had arrived in Russia in 1990 and his wife joined him there one year later. Their son was born in Russia and had spent his entire life there; he was fourteen years old at the time of Mr Corley's enforced departure (see paragraphs 6 and 7 above). Mr Igarashi had come to Russia with his wife and nine-year-old daughter in 1993 and they had stayed there until his expulsion in 2006 (see paragraph 9 above). The close relationship uniting the members of the respective families constituted "family life" within the meaning of Article 8 § 1 of the Convention (see *Baltaji v. Bulgaria*, no. 12919/04, § 29, 12 July 2011). Following Mr Corley's and Mr Igarashi's compelled departure from Russia in early 2006, they were separated from their wives and children, who stayed behind in Russia, unable to follow their husbands and fathers immediately (see paragraphs 28 and 42 above). The Court reiterates that even where the family remained separated for a short period of time and could later reunite in another State, this situation amounts to interference with their right to respect for family life (see *Baltaji*, cited above, § 32). Expulsion affects the rights of the person who is being expelled and those of family members who stay behind (see *Gablishvili*, cited above, §§ 43 and 61; *Kaushal and Others v. Bulgaria*, no. 1537/08, § 24, 2 September 2010; and *Bashir and Others v. Bulgaria*, no. 65028/01, § 37, 14 June 2007). It follows that the measures compelling the departure of Mr Corley and Mr Igarashi amounted to interference not just with their right to respect for family life but also that of their family members, the other applicants.

96. As regards the justification for the interference, the Court has found above that the expulsion of Mr Corley and Mr Igarashi was carried out in breach of domestic law (see paragraph 73 above). It is therefore not necessary to examine whether it pursued a legitimate aim and was also "necessary in a democratic society".

97. There has therefore been a violation of Article 8 of the Convention in respect of all the applicants.

VI. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF Mr IGARASHI'S DETENTION

98. Mr Igarashi complained under Article 3 of the Convention that the circumstances of his arrest, the conditions of his detention at the Yekaterinburg detention facility, and the pressure put on him with a view to

compelling his departure amounted to inhuman and degrading treatment. Article 3 of the Convention reads in the relevant part as follows:

> "No one shall be subjected to ... inhuman or degrading treatment ..."

A. Admissibility

99. The Court considers that this complaint 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 any other grounds. It must therefore be declared admissible.

B. Merits

100. Mr Igarashi submitted that his complaint was not limited to the conditions of his detention but included his heavy-handed arrest, the unseemly haste of his same-day conviction and imprisonment and the use of the degrading conditions of his detention to bargain for his agreement to drop any appeal and immediately leave Russia. He pointed out that the records supplied by the Government had not refuted his claim of overcrowding as they had not contained any indication of how detainees had been distributed among cells or the number or size of those cells. The statements by wardens had to be viewed critically as they had been based on a recollection of events that had taken place more than three years ago, whereas hundreds of foreign nationals had passed through the detention facility during that period. By contrast, the lists of items Mr Ch. had passed to him corroborated the lack of sleeping amenities, toilet paper and personal hygiene items, and the inadequate provision of meals.

101. The Government submitted that there had been no violation of Article 3 of the Convention in connection with the conditions of Mr Igarashi's detention. His cell had not been overcrowded, the toilet had been separated from the living area, three daily meals had been distributed and Mr Igarashi had additionally received food and clothes from Mr Ch. The average temperature in the cell had been 20°C.

102. The Court is unable to establish to the required standard of proof under Article 3 of the Convention that Mr Igarashi's cell was filled beyond capacity or excessively cramped. On the other hand, the Court has been presented with documentary evidence which shows that his colleague had delivered warm clothes, a sleeping bag and personal hygiene items to his cell. That evidence corroborates Mr Igarashi's claim that the cell was not adequately heated or equipped for an overnight stay.

103. Mr Igarashi spent three nights in those conditions before accepting the terms of his release on 8 February 2006 (see paragraphs 36 and 37 above). The Court reiterates that the relative brevity of a period of detention does not automatically exclude the treatment complained of from the scope

of Article 3 of the Convention (see *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 249, 27 January 2015). It is the Court's well-established case-law that overnight detention in police cells, which have been designed for short stays only and lack the amenities indispensable for prolonged detention, discloses a violation of Article 3 of the Convention (see *Fedotov v. Russia*, no. 5140/02, §§ 66-70, 25 October 2005; *Kaja v. Greece*, no. 32927/03, §§ 49-50, 27 July 2006; and *Shchebet v. Russia*, no. 16074/07, §§ 86-96, 12 June 2008). Following a summary trial, Mr Igarashi was placed in conditions in which no provision was made for meeting his basic needs. The cell was cold, sleeping arrangements were rudimentary, and basic personal hygiene items were lacking. The Court finds that he was subjected to "degrading treatment" in breach of Article 3 of the Convention.

104. There has accordingly been a violation of that provision.

VII. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION IN RESPECT OF Mr IGARASHI

105. Mr Igarashi complained under Article 5 §§ 1 (f) and 5 of the Convention that his detention had not had any basis in law or fact and that Russian law had not provided him with an enforceable right to compensation for wrongful imprisonment. The relevant parts of Article 5 read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention ... of a person against whom action is being taken with a view to deportation or extradition.
>
> ...
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

106. The Government submitted that the report on the administrative offence had been compiled by the police, and the charge had been adjudicated by the Town Court, in strict compliance with Russian law. Mr Igarashi had had a right to compensation for wrongful imprisonment, in accordance with Article 1070 of the Civil Code and the case-law of the Constitutional Court. He had not brought a claim for compensation and had therefore failed to exhaust the domestic remedies.

107. The applicant Mr Igarashi submitted that the Town Court had not been competent to impose a detention order until such time as the decision

on his expulsion had become final and enforceable, which had never occurred. None of the legal provisions or the Constitutional Court decisions identified by the Government had conferred upon Mr Igarashi an enforceable right to compensation because they all related to compensation for unlawful acts of State authorities, whereas the unlawfulness of his detention had never been established by any court.

108. The Court has already considered and dismissed the Government's plea of non-exhaustion based on Article 1070 of the Civil Code (see paragraph 69 above). It considers that this complaint 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 any other grounds. It must therefore be declared admissible.

B. Merits

109. The submissions by the parties are summarised above.

110. The Court reiterates that deprivation of liberty under Article 5 § 1 (f) of the Convention must be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1, and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that deprivation of liberty may be lawful in terms of domestic law but still arbitrary, and thus contrary to the Convention. To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith and remain closely connected to the ground of detention relied on by the Government (see *Suso Musa v. Malta*, no. 42337/12, § 93, 23 July 2013).

111. In the instant case, the Town Court ordered Mr Igarashi's detention pending expulsion even though it ought to have been aware that no offence had been committed because the three-day grace period for registering a change of residence had not yet expired. The authorities had subsequently leveraged Mr Igarashi's release in order to obtain his consent to leaving Russia without lodging an appeal (see paragraph 62 above). The Court has previously found that a conscious decision by the authorities to facilitate or improve the effectiveness of a planned operation for the expulsion of an alien by misleading him or her about their intentions so as to make it easier to deprive the alien of his or her liberty is not compatible with Article 5 (see

Čonka, cited above, § 42). It has also held that where a judge exercises his or her authority in manifest opposition to the procedural guarantees provided for by the Convention, the ensuing detention order is inconsistent with the general protection from arbitrariness guaranteed by Article 5 of the Convention (see *Menesheva v. Russia*, no. 59261/00, § 92, ECHR 2006-III). Having regard to its well-established case-law and its findings under Article 1 of Protocol No. 7 above, the Court considers that Mr Igarashi's detention was not carried out in good faith. It was therefore arbitrary and disclosed a violation of the lawfulness requirement under Article 5 § 1 of the Convention. As to a claim for compensation for wrongful detention under Article 1070 of the Civil Code, the Court has recently found that a person who had been convicted of an administrative offence in connection with which he had been arrested had no prospect of success in bringing a claim under that provision (see *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, § 97, 10 April 2018). It follows that Mr Igarashi did not have an enforceable right to compensation for that type of detention because of the restrictive wording of the relevant provisions of the Civil Code.

112. There has therefore been a violation of Article 5 §§ 1 and 5 of the Convention in respect of Mr Igarashi.

VIII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

113. The Court has examined the remaining complaints concerning Mr Corley's convictions for breaches of residence regulations, a lack of judicial review of Mr Igarashi's detention, and the allegations of discriminatory and ulterior motives of the Russian authorities. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, this part of the case is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. 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

115. The applicant Mr Igarashi claimed 1,270 euros (EUR) in respect of pecuniary damage, representing the amount of the fine he had paid, the Yekaterinburg-Moscow-Tokyo plane fare and the food, travel and accommodation expenses of his police escort. Mr Corley and Mr Igarashi also claimed EUR 15,000 and EUR 20,000 respectively in respect of non-pecuniary damage.

116. The Government submitted that no compensation should be awarded because there had been no violation of the applicants' rights. In any event, the amounts claimed had been excessive.

117. The Court awards Mr Igarashi the amount claimed in respect of pecuniary damage and EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable. It awards Mr Corley EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

118. The applicants claimed a combined total of EUR 8,150 for the costs and expenses incurred in the domestic proceedings, representing approximately eighty-five hours' work by their representative.

119. The Government pointed out that the payment order had been signed by a representative in the domestic proceedings rather than by the applicants themselves.

120. The Court considers it reasonable to award the sum of EUR 4,000 to the applicants jointly, plus any tax that may be chargeable to the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints concerning interference with the applicants' family life, interference with Mr Corley's and Mr Igarashi's right to freedom of religion, and the substantive and procedural aspects of the proceedings leading to their enforced departure admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 7 to the Convention in respect of Mr Corley and Mr Igarashi;

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

5. *Holds* that there has been a violation of Article 9 of the Convention in respect of Mr Corley and Mr Igarashi ;

6. *Holds* that there has been a violation of Article 8 of the Convention in respect of all the applicants;

7. *Holds* that there has been a violation of Article 3 of the Convention on account of the degrading conditions of Mr Igarashi's detention;

8. *Holds* that there has been a violation of Article 5 §§ 1 and 5 of the Convention in respect of Mr Igarashi;

9. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 1,270 (one thousand two hundred and seventy euros) to Mr Igarashi in respect of pecuniary damage, plus any tax that may be chargeable;
      (ii) EUR 10,000 (ten thousand euros) to Mr Corley and EUR 15,000 (fifteen thousand euros) to Mr Igarashi in respect of non-pecuniary damage, plus any tax that may be chargeable;
      (iii) EUR 4,000 (four thousand euros) to the applicants jointly, plus any tax that may be chargeable to them, in respect of costs and expenses;
   (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;

10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Georges Ravarani
Registrar	President