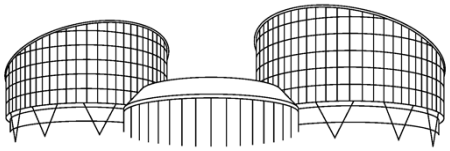

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF USMANOV v. RUSSIA

(Application no. 43936/18)

JUDGMENT

Art 8 • Expulsion • Respect for family life • Disproportionate and arbitrary annulment of applicant's citizenship for omission of information about siblings, when applying ten years earlier • Two-pronged approach for examining deprivation of citizenship • 1. Measure constituting an interference with Art 8, in light of *consequences* of the annulment for the applicant • 2. Measure *arbitrary*, given lack of clarity of domestic law, its excessively formalistic approach, and inadequate procedural safeguards • Absence of a balancing exercise carried out by authorities
Art 8 • Respect for private life • Unjustified expulsion of applicant from Russian territory • No explanation for why the applicant was considered a national security threat • Failure in domestic proceedings to balance the interests at stake, taking into account Court general principles

STRASBOURG

22 December 2020

FINAL

22/03/2021

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

In the case of Usmanov v. Russia,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Dmitry Dedov,
Georges Ravarani,
María Elósegui,
Darian Pavli,
Anja Seibert-Fohr, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 43936/18) 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 national of Tajikistan, Mr Bakhtiyer Kasymzhanovich Usmanov ("the applicant"), on 11 September 2018;

the decision to give notice to the Russian Government ("the Government") of the complaints under Article 8 of the Convention concerning the annulment of the applicant's Russian citizenship and his administrative removal from Russia and the decision to declare inadmissible the other complaints then introduced by the applicant;

the decision to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court and to grant the application priority treatment under Rule 41 of the Rules of Court;

the parties' observations;

Having deliberated in private on 17 November 2020,

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

INTRODUCTION

1. The case concerns the alleged breach of Article 8 of the Convention on account of the annulment of the applicant's Russian citizenship and the subsequent decision to remove him from Russian territory.

THE FACTS

2. The applicant was born in 1977 in Tajikistan. In 2007 he moved to Russia, where he was arrested in 2018 and placed in a temporary detention centre for foreigners for his failure to comply with domestic authorities' decision prescribing him to leave the country. He was represented by Mr Y. Mylnikov, a lawyer practising in Velikiy Novgorod.

3. The Russian Government ("the Government") were represented by Mr M. Galperin, Representative of the Russian Government to the European Court of Human Rights.

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

I. BACKGROUND

5. The applicant was born in Tajikistan, which at the time was one of the Soviet Republics. He had three brothers and two sisters.

6. In 2001 he married Ms M., who gave birth to their two children, A. and D. They were born in 2001 and 2003 respectively.

7. On an unspecified date in 2007 the applicant, together with his wife and children, went to Russia and settled there.

8. On 7 April 2008 he received a residence permit for a term of three years.

9. On 16 May 2008 he applied to the Novgorod Regional Department of the Federal Migration Service for Russian citizenship under the simplified naturalisation procedure applicable to former citizens of the USSR. In the section of the application form entitled "Close relatives (husband (wife), parents, children, brothers and sisters)" he mentioned his wife, parents, children and a brother. According to the applicant, he did not mention his two other brothers and two sisters because a duty officer had told him that it was not necessary to list all of his relatives.

10. On 15 July 2008 the applicant was granted Russian citizenship.

11. On unspecified dates later the Novgorod Regional Department of the Federal Migration Service granted Russian citizenship to his wife and two children.

12. The applicant and his wife had two more children, N., born in 2009, and S., born in 2016.

13. The applicant worked in the agricultural sector and owned the apartment where he lived with his family.

II. ANNULMENT OF THE APPLICANT'S RUSSIAN CITIZENSHIP, HIS PASSPORTS AND THE RELATED COURT PROCEEDINGS

A. Proceedings "regarding the establishment of a legal fact"

14. On 28 September 2017 the Novgorod Regional Department of the Ministry of the Interior ("the DMI", which replaced the Federal Migration Service) applied to the Novgorod District Court of the Novgorod Region ("the District Court") to have it established as a legal fact that the applicant had submitted false information about his siblings when applying for

Russian citizenship in 2008. Such a finding was required for the annulment of the applicant's Russian citizenship.

15. On 20 November 2017 the District Court allowed the application on the grounds that the omission was not disputed by the applicant. The court dismissed his arguments that the officer on duty had advised him not to list all of his relatives; that the missing information was not important; that he did not intend to mislead the authorities; and that he had strong ties with Russia. The first argument was found to be unsubstantiated by evidence and the others were considered to be irrelevant to the subject matter of the case.

16. The applicant challenged that decision by way of an appeal and cassation appeals before the Novgorod Regional Court ("the Regional Court") and the Supreme Court of Russia. Those courts dismissed the appeals on 14 March, 1 June and 17 August 2018 respectively, endorsing the District Court's reasoning.

B. Annulment of the applicant's Russian citizenship and passports

17. On 5 April 2018, referring to the finding of the domestic courts that the applicant had submitted false (incomplete) information about his relatives, the DMI annulled his Russian citizenship, his "internal passport" (a citizen's identity document for use in Russia) and "travel passport" (a citizen's identity document for use abroad). As a result, the applicant was left without any valid identity documents.

C. Proceedings before the Constitutional Court

18. On an unspecified date in 2018 the applicant challenged the compatibility of section 22 of the Russian Citizenship Act (see paragraph 33 below) with the Russian Constitution. He claimed that it arbitrarily provided for the annulment of Russian citizenship without taking into account a person's individual circumstances. The applicant further noted that Russian law did not stipulate any time-limit for the annulment of citizenship.

19. On 15 January 2019 the Constitutional Court refused to examine his complaint on the merits. It held that the application of the impugned section of the Russian Citizenship Act could only result in the automatic annulment of Russian citizenship if it had been established that a person did not meet the conditions required for obtaining citizenship. It also noted that the wording of the impugned section did not absolve the authorities from taking into account surrounding circumstances, such as the time elapsed since the decision granting Russian citizenship. According to the court, to hold otherwise would be contrary to the principles of the rule of law and justice or the requirements of necessary and proportionate interference with human rights. Lastly, the court mentioned that the decision to annul a person's citizenship could be challenged in court and was thus subject to its scrutiny.

III. ENTRY BAN

20. On 12 April 2018 the Novgorod Regional Department of the Federal Security Service drew up a decision imposing on the applicant a thirty-five-year entry ban preventing him from entering Russia until April 2053. It was stated that he posed a threat to national security and public order. He was informed of that decision on 14 June 2018.

21. On an unspecified date he challenged the entry ban before the Regional Court, which dismissed his appeal on 29 November 2018. The court found that the entry ban had been issued by the competent authority on the grounds that he posed a threat to Russia's national security. Without disclosing the information underlying that conclusion, the court held that the impugned measure was appropriate in the applicant's situation. The court noted that he could settle in any country, including Tajikistan. There was no risk to his life there. His family could follow him or stay in Russia. If that happened, he could support them from abroad.

22. The applicant appealed against the Regional Court's decision to the Supreme Court of Russia. The appeal was dismissed on 17 April 2019 on the grounds that the Regional Court when examining the case had not breached substantive or procedural rules of domestic law in a manner that could affect the outcome of the proceedings.

IV. ADMINISTRATIVE REMOVAL

23. On 13 August 2018 the DMI informed the applicant of his obligation to leave Russian territory before 17 August 2018 given the entry ban imposed on him by the Federal Security Service. He did not comply with the order.

24. On 29 November 2018 a DMI officer drew up an administrative offence report in respect of the applicant for breaching the rules governing the stay of foreign nationals in Russia, specifically for his failure to comply with the DMI's order to leave the country. The case was transferred to the District Court for examination on the merits.

25. On the same day, 29 November 2018, that court, taking into account the annulment of the applicant's Russian citizenship, the imposition of the entry ban on him and his failure to comply with the order to leave Russia, found him guilty of an administrative offence under Article 18.8 § 1.1 of the Code of Administrative Offences ("the CAO"), namely "a breach by a foreigner or stateless person of the rules for entry into Russia or staying in the country". It imposed a fine on him in the amount of RUB 2,000 (EUR 29) and ordered his forcible administrative removal from Russia.

26. The court imposed the minimum fine provided for by domestic law because the applicant had never committed other administrative offences and had dependent minor children. It did not however see any circumstances

which would prevent it from applying administrative removal as a sanction. The court dismissed the applicant's argument concerning the adverse effect of the removal on his family situation, stating that a foreigner could not be exempt from compliance with Russian law on the grounds that his relatives were Russian nationals.

27. The applicant was immediately placed in a temporary detention centre for foreigners pending his administrative removal. He appealed against the court's decision, arguing that his removal would be in breach of Articles 3 and 8 of the Convention.

28. On 11 December 2018 the Novgorod Regional Court upheld the decision in question. It stated that there was no evidence that the applicant's removal from Russia would be in breach of Article 3 of the Convention. It also held that Article 8 of the Convention did not prevent States from controlling the entry and stay of foreigners in their territory. Furthermore, according to the court, that Article did not impose on the State an obligation to respect the choice of residence of spouses or to allow family reunification in its territory.

V. INTERIM MEASURES AND STAY OF REMOVAL

29. On 10 December 2018 the Court granted the applicant's request for interim measures under Rule 39 of the Rules of Court in connection with his complaints under Articles 3 and 8 and indicated to the Russian Government not to remove him to Tajikistan for the duration of the proceedings before the Court.

30. On 19 December 2018 the District Court ordered that the proceedings concerning the applicant's removal be stayed for the duration of the proceedings before the Court. The applicant continued to be detained in custody. On unspecified dates he appealed against his detention.

31. On 21 December 2018 and on 22 May 2019 the Regional Court and the Supreme Court of Russia respectively dismissed the applicant's appeals.

32. On an unspecified date in 2019 the applicant challenged the lawfulness of his continued detention in custody, but on 27 September 2019 the District Court declared that it was lawful.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. LEGAL FRAMEWORK

A. Russian Citizenship Act (no. 62-FZ of 31 May 2002

33. Section 22 of the Act in its relevant part reads as follows:

"1. A decision granting Russian citizenship ... shall be annulled if it is established that it has been taken on the basis of falsified documents or false information knowingly submitted by the applicant, or if the applicant refuses to take the oath.

2. The submission of falsified documents or knowingly false information must be established by a court..."

B. Regulation on the Examination of Issues Related to Citizenship of the Russian Federation (adopted by Presidential Decree no. 1325 of 14 November 2002)

34. Section 54 of the Regulation, as in force at the material time, specified the procedure for annulment of a decision on Russian citizenship. The relevant part it reads as follows:

"... The form of the annulment decision (*заключение об отмене решения по вопросам гражданства Российской Федерации*) shall comply with the form approved by the Ministry of the Interior of the Russian Federation or by the Ministry of Foreign Affairs of the Russian Federation. It must contain information about the legal basis for the [impugned decision on Russian citizenship]; information about the court's decision establishing a legal fact of the use of falsified documents or false information knowingly submitted by the applicant to acquire or terminate his or her Russian citizenship; a description of the circumstances established by a court; and reference to the relevant section of the Russian Citizenship Act which serves as a legal basis for the annulment of a previously taken decision on Russian citizenship."

35. Presidential Decree no. 398 of 17 June 2020 amended section 54 of the Regulation. It provided that a decision to annul citizenship had to be reasoned and had to describe the circumstances which had been taken into consideration by the competent authority. The relevant part of the amended provision in its relevant part reads as follows:

"... [The annulment decision] ... shall be reasoned. It must contain information about the legal basis for the [impugned decision on Russian citizenship], as well as information about a legal basis for the annulment of the decision on Russian citizenship accompanied by a description of the circumstances which led to its adoption."

C. Other material

36. For a summary of domestic provisions concerning residence permits for foreign nationals, administrative removal of foreign nationals and refusal of entry into Russian Federation see *Liu v. Russia (no. 2)* (no. 29157/09, §§ 45-52, 26 July 2011). For a summary of domestic provisions regarding Russian citizenship, Russian passports, the Federal Migration Service and administrative liability for certain offences see *Alpeyeva and Dzhalagoniya v. Russia* (nos. 7549/09 and 33330/11, §§ 56, 59, 62-64 and 70-72, 12 June 2018).

II. PRACTICE BY THE RUSSIAN CONSTITUTIONAL COURT

37. In its inadmissibility decision of 21 April 2011 (no. 554-O-O) the Constitutional Court dismissed a complaint lodged by a person, who claimed that section 22 of the Russian Citizenship Act was incompatible with the Russian Constitution. The court concluded that the impugned provision was not arbitrary because it was only applicable in cases where individuals did not satisfy the conditions required for obtaining Russian citizenship.

38. On 25 October 2016 the Constitutional Court by other inadmissibility decision dismissed a similar complaint lodged by a person, who was stripped of Russian citizenship for failing to mention his two minor children in his application for Russian citizenship. The court repeated the arguments used in its decision of 21 April 2011.

39. On 15 January, 12 and 28 February 2019 the Constitutional Court in the same manner dismissed several more similar complaints, including that of the applicant (see paragraphs 18 and 19 above). In addition to its previous reasoning, the court stated that the competent authorities should take into account surrounding circumstances, such as the time elapsed since the decision granting Russian citizenship for their decision to comply with the requirements of necessary and proportionate interference with human rights.

III. COUNCIL OF EUROPE DOCUMENTS

A. The European Convention on Nationality

40. The principal Council of Europe document concerning nationality is the European Convention on Nationality (ETS No. 166), which was adopted on 6 November 1997 and came into force on 1 March 2000. It has been ratified by twenty-one member States of the Council of Europe. Russia signed this Convention on 6 November 1997 but has not ratified it.

41. Article 7 of that Convention ("Loss of nationality *ex lege* or at the initiative of a State Party") in the relevant part read as follows:

> "1. A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases:
>
> ...
>
> b) acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant; ..."

B. Explanatory Report to the European Convention on Nationality

42. The Explanatory report to the European Convention on Nationality in the relevant part reads as follows:

"58. Article 7 consists of an exhaustive list of cases where nationality may be lost automatically by operation of law (*ex lege*) or at the initiative of a State Party. In these limited cases, and subject to certain conditions, a State Party may withdraw its nationality. The provision is formulated in a negative way in order to emphasise that the automatic loss of nationality or a loss of nationality at the initiative of a State Party cannot take place unless it concerns one of the cases provided for under this article. However, a State Party may allow persons to retain its nationality even in such cases. Article 7 does not refer to cases in which there have been administrative errors which are not considered in the country in question to constitute cases of loss of nationality.

...

61. Fraudulent conduct, false information or concealment of any relevant fact has to be the result of a deliberate act or omission by the applicant which was a significant factor in the acquisition of nationality. For example, if a person acquires the nationality of the State Party on condition that the nationality of origin would subsequently be renounced and the person voluntarily did not do so, the State Party would be entitled to provide for the loss of its nationality. Moreover, for the purpose of this Convention, "concealment of any relevant fact" means concealment of a relevant condition which would prevent the acquisition of nationality by the person concerned (such as bigamy). "Relevant" in this context refers to facts (such as concealment of another nationality, or concealment of a conviction for a serious offence) which, had they been known before the nationality was granted, would have resulted in a decision refusing to grant such nationality.

62. The wording of this sub-paragraph is also intended to cover the acquisition of nationality by false pretences (false or incomplete information or other deceitful action, notably by means of non-authentic or untrue certificates), threats, bribery and other similar dishonest actions.

63 In cases where the acquisition of nationality has been the result of the improper conduct specified in sub-paragraph b, States are free either to revoke the nationality (loss) or to consider that the person never acquired their nationality (void ab initio)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

43. The applicant complained that the decisions to annul his Russian citizenship and remove him from Russian territory had amounted to a violation of Article 8 of the Convention, which 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

44. The parties did not comment on the admissibility of the complaint.

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

B. Merits

The parties' submissions

(a) The Applicant

46. The applicant stated that the domestic law was unforeseeable in its application, because it did not provide for the annulment of a decision on citizenship for submitting incomplete information. That measure could only be applied if the information submitted was knowingly false.

47. He also stated that the interference with his rights had not been necessary in a democratic society owing to the authorities' failure to duly take into account his family situation or explain their finding that he posed a threat to national security.

(b) The Government

48. The Government submitted that there had been an interference with the applicant's rights under Article 8 of the Convention, which had fully satisfied the requirements of its second paragraph. It had pursued the legitimate aim of guaranteeing national security; it had been lawful and proportionate to that aim.

49. According to the Government, the "quality of law" requirement had not been breached in the present case. The applicable domestic law stipulated a person's duty to provide exhaustive information related to his application for Russian citizenship in a clear and foreseeable manner. The legislative rules did not provide the authorities with any discretion prescribing that in such a situation citizenship had to be annulled in any event.

50. Furthermore, the Government stated that the applicant's refusal to leave Russia of his own initiative had shown his lack of respect for Russian law. That fact, together with the threat which he posed to national security, warranted the necessity for his removal from Russia. The reasons underlying the applicant's entry ban had been carefully examined by the domestic courts in adversarial proceedings.

51. Lastly, the Government submitted that applicant's family situation and his ties with Russia and Tajikistan had been duly taken into account and assessed by the domestic courts in the proceedings concerning his administrative removal.

C. The Court's assessment

1. General principles

52. The Court reiterates that the notion of "private life" within the meaning of Article 8 of the Convention is a broad concept which encompasses, *inter alia*, the right to establish and develop relationships with other human beings (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B), the right to "personal development" (see *Bensaid v. the United Kingdom*, no. 44599/98, § 47, ECHR 2001-I) and the right to self-determination (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III).

53. In the case of *Ramadan v. Malta*, (no. 76136/12, § 84, 21 June 2016) the Court held that although the right to citizenship is not as such guaranteed by the Convention or its Protocols, it cannot be ruled out that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual. To establish whether "an issue" arose under Article 8 of the Convention the Court assessed whether the revocation of the citizenship was "arbitrary" and the "consequences" of revocation for the applicant (see §§ 85, 90 and 91 ibid). In the case of *K2 v. the United Kingdom* ((dec.), no. 42387/13, §§ 52-64 7 February 2017), which followed, the Court accepted that the revocation of citizenship amounted to an interference and applied the two-steps test to determine whether there has been a breach of Article 8 of the Convention. Subsequently, in the case of *Alpeyeva and Dzhalagoniya* (cited above, §§ 110-27) the Court firstly applied the "consequences" criteria to determine if there had been an interference with the applicant's rights and then used the "arbitrariness" test to determine if there had been a breach of Article 8 of the Convention. That approach was confirmed in the case of *Ahmadov v. Azerbaijan* (no. 32538/10, §§ 46-55, 30 January 2020). In the case of *Ghoumid and Others v. France* (no. 52273/16 and 4 others, §§ 43-44, 25 June 2020) the Court held that nationality is an element of a person's identity. To establish whether there had been a violation of Article 8 of the Convention the Court examined as to whether the revocation of the applicant's nationality had been arbitrary. Then, it assessed the consequences of that measure for the applicant.

54. In determining arbitrariness, the Court should examine whether the impugned measure was in accordance with the law; whether it was accompanied by the necessary procedural safeguards, including whether the person deprived of citizenship was allowed the opportunity to challenge the decision before courts affording the relevant guarantees; and whether the authorities acted diligently and swiftly (see *Ramadan,* cited above, §§ 86-89; *K2*, cited above, § 50; *Alpeyeva and Dzhalagoniya*, cited above, § 109; and *Ahmadov*, cited above, § 44).

55. The Court also reiterates that the States are entitled to control the entry and residence of aliens on their territories (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, § 67, 28 May 1985, Series A no. 94, and *Boujlifa v. France*, 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel, for example, an alien convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be in accordance with the law, pursue the legitimate aim and be necessary in a democratic society (see *Slivenko v. Latvia* [GC], no. 48321/99, § 113, ECHR 2003-X; *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII; *De Souza Ribeiro v. France* [GC], no. 22689/07, § 77, ECHR 2012; *Mehemi v. France*, 26 September 1997, § 34, *Reports* 1997-VI; *Dalia v. France*, 19 February 1998, § 52, *Reports* 1998-I; and *Boultif v. Switzerland*, no. 54273/00, § 46, ECHR 2001-IX).

56. Where immigration is concerned, Article 8 cannot be considered 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 (see *Gül v. Switzerland*, 19 February 1996, § 38, *Reports* 1996-I). 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 (see *Boultif*, cited above, § 39). 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 non-national 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, and *Zezev v. Russia*, no. 47781/10, § 34, 12 June 2018).

2. Application of the general principles

57. Since the annulment of the applicant's Russian citizenship did not automatically result in the decision to forcibly remove him from Russian territory, and since those issues were examined within separate sets of proceedings, the Court will examine those issues also separately.

(a) Annulment of citizenship

58. Having noted the existence of various approaches to the examination of the issue (see paragraph 53 above), the Court will follow the consequence-based approach in determining whether the annulment of the

applicant's citizenship constituted an interference with his rights under Article 8 of the Convention (see, *mutatis mutandis, Denisov v. Ukraine* [GC], no. 76639/11, §§ 107-09 and 118-34, 25 September 2018). It will examine: (i) what the consequences of the impugned measure were for the applicant and then (ii) whether the measure in question was arbitrary (the same methodology was used in the recent case of *Ahmadov* (cited above, § 43, 46 and 54)).

(i) Consequences for the applicant

59. Firstly, the decision to annul the applicant's Russian citizenship deprived him of any legal status in Russia.

60. Secondly, he was left without any valid identity documents. In *Smirnova v. Russia* (nos. 46133/99 and 48183/99, § 97, ECHR 2003-IX (extracts)), the Court found that Russian citizens had to prove their identity unusually often in their everyday life, even when performing such mundane tasks as exchanging currency or buying train tickets, and that the internal passport was also required for more crucial needs, such as finding employment or receiving medical care. In *Alpeyeva and Dzhalagoniya* (cited above, §§ 70 and 114), the Court also noted that failure to possess a valid identity document was punishable by a fine under Article 19.15 of the CAO. The deprivation of passports in those cases had therefore amounted to interferences with the applicants' private lives. The annulment of the applicant's passports in the instant case had the same effect.

61. Furthermore, the annulment of the applicant's citizenship was a precondition for the imposition of the entry ban on him and the decision to remove him from Russian territory (see paragraphs 20 and 25 above) (contrast *Ramadan v. Malta*, cited above, §§ 20, 26, 87-89, 21 June 2016).

62. The annulment of the applicant's Russian citizenship therefore amounted to an interference with the rights enshrined in Article 8.

(ii) Whether the measure was arbitrary

63. In determining arbitrariness, the Court should examine whether the impugned measure was in accordance with the law; whether it was accompanied by the necessary procedural safeguards, including whether the person deprived of citizenship was allowed the opportunity to challenge the decision before courts affording the relevant guarantees; and whether the authorities acted diligently and swiftly (see *Ramadan*, cited above, §§ 86-89; *K2*, cited above § 50; *Alpeyeva and Dzhalagoniya*, cited above, § 109; and *Ahmadov*, cited above, § 44; see paragraph 54 above).

64. The expression "in accordance with the law" requires that the measure should have some basis in domestic law; it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see *Slivenko*, cited above, § 100,

and *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 341, ECHR 2012 (extracts)). The law must indicate the scope of discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (see *Amann v. Switzerland* [GC], no. 27798/95, ECHR 2000-II, §§ 55 and 56; *Rotaru v. Romania* [GC], no. 28341/95, ECHR 2000-V, §§ 55-63; *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, ECHR 2000-XI; and *Al-Nashif v. Bulgaria*, no. 50963/99, § 119, 20 June 2002).

65. Having regard to the above and to the general principles cited in paragraphs 53-54 above, the Court observes that the revocation or annulment of citizenship as such is not incompatible with the Convention. To assess whether Article 8 has been breached in the present case, the Court will examine the lawfulness of the impugned measure, accompanying procedural guarantees and the manner in which the domestic authorities acted.

66. The Court is ready to accept that the annulment of the applicant's Russian citizenship had its basis in the provisions of the Russian Citizenship Act and the Regulation on the Examination of Issues Related to Citizenship of the Russian Federation (see paragraphs 33 and 34 above). The Court is not satisfied by the clarity of the relevant provisions, or by the procedural safeguards of the domestic law as in force at the material time.

67. The Court notes that to meet the requirements of the Convention, a law should be formulated in clear terms. If a person's citizenship may be annulled or revoked for submitting false information or concealing information by that person, the law should specify the nature of that information (see the concept of "relevant facts" in the European Convention on Nationality and in the Explanatory Report to it cited in paragraphs 40-42 above; compare the Constitutional Court's practice cited in paragraphs 37-39 above).

68. Whilst conferring on the migration authorities the right to annul Russian citizenship, under the Regulation on the Examination of Issues Related to Citizenship of the Russian Federation as in force at the material time (see paragraphs 33 and 34 above), the authorities were not required to give a reasoned decision specifying the factual grounds on which it had been taken, like the surrounding circumstances, such as the nature of the missing information, the reason for not submitting it to the authorities, the time elapsed since obtaining citizenship, the strength of the ties which the person concerned had with a country, his or her family situation or other important factors. Especially, they were not required to explain why the failure by the applicant to indicate the full number of his siblings had been relevant for obtaining Russian citizenship. It was not explained whether the migration authorities could have refused to grant the applicant Russian citizenship if the facts about his siblings had been known by them (compare

the European Convention on Nationality and the Explanatory Report cited in paragraphs 40-42 above as well as the case-law of the Constitutional Court in paragraphs 37-39 above). The migration authority and the District Court dismissed the applicant's argument that the missing information was not important for obtaining Russian citizenship as irrelevant. That finding was not overruled by the Regional or Supreme Courts (see paragraph 16 above).

69. According to the Government, after it had been established that the information submitted by the applicant was incomplete, the authorities had no other choice but to annul the decision granting him Russian citizenship, irrespective of the time elapsed since the obtaining of citizenship, the strength of the ties which the person concerned had with Russia, his or her family situation or other important factors (see paragraph 49 above). It has not been shown that the national courts had to consider the aforementioned factors either in the proceedings "regarding the establishment of a legal fact" or in the proceedings concerning the annulment of Russian citizenship. In the applicant's case, the District Court considered that the argument about his strong ties with Russia was irrelevant.

70. It follows that the legal framework as in force at the material time fostered excessively formalistic approach to the annulment of Russian citizenship and failed to give the individual adequate protection against arbitrary interference. The subsequent improvement of the applicable legislation cannot change that conclusion, because the amendments had no effect on the applicant's situation.

(iii) Conclusion

71. In the light of the above, the Court cannot accept that the annulment of the applicant's Russian citizenship satisfied the requirements of Article 8 of the Convention. The Government did not demonstrate why the applicant's failure to submit information about some of his siblings was of such gravity to justify deprivation of Russian citizenship several years after the applicant had obtained it. In the absence of balancing exercise which domestic authorities were expected to perform, the impugned measure appears to be grossly disproportionate to the applicant's omission. The Court therefore concludes that there has been a violation of Article 8 of the Convention on account of the annulment of the applicant's Russian citizenship.

(b) Expulsion of the applicant from Russian territory

72. The decision to remove the applicant from the country amounted to an "interference" with his right to respect for his family life.

73. That interference was in accordance with the law, namely Article 18.8 of the CAO. Administrative removal was a subsidiary penalty

for breaching immigration rules. The applicant was found liable owing to his failure to comply with the DMI's order to leave the country following the thirty-five-year entry ban imposed by the Federal Security Service on the grounds that he posed a threat to national security (see paragraphs 20, 23 and 25 above).

74. In these circumstances, and in the light of the parties' submissions, the Court has to take into account the proceedings concerning the imposition of the entry ban on the applicant, which were a prerequisite for the decision to remove him from Russia.

75. The Government argued that the applicant's removal and the entry ban had pursued the legitimate aim of protecting public safety or order. However, neither they nor the domestic courts outlined the basis for the security services' allegations against the applicant (contrast *Regner v. the Czech Republic* [GC], no. 35289/11, §§ 156-57, 19 September 2017; *Liu v. Russia (no. 2)* (no. 29157/09, § 75, 26 July 2011; *Amie and Others v. Bulgaria*, no. 58149/08, §§ 12-13 and 98, 12 February 2013; and *Zezev*, cited above, § 39).

76. Even if the aim pursued by the applicant's exclusion from Russian territory was legitimate, the Court cannot conclude that the impugned interference was proportionate and therefore necessary in a democratic society. The domestic proceedings concerning the entry ban were focused on the issue of whether the Federal Security Service had issued it within its competence. No independent review of whether its conclusion had a reasonable basis in fact was carried out by the court. It does not appear that a critical aspect of the case – whether the Federal Security Service had been able to demonstrate the existence of specific facts serving as a basis for its assessment that the applicant presented a national security risk – was examined in a meaningful manner (see paragraph 21 above; contrast *Regner*, cited above, § 154). The national courts confined themselves to a purely formal examination of the decision concerning the applicant's thirty-five-year exclusion from Russia (see, for similar reasoning, *Liu (no. 2)*, cited above, § 89, and *Kamenov v. Russia*, no. 17570/15, § 36, 7 March 2017).

77. Furthermore, neither in the proceedings concerning the ban on entering Russia nor in the proceedings concerning the applicant's administrative removal did the domestic courts duly balance the interests at stake, taking into account the general principles established by the Court (see references in paragraph 52 above). In particular, the courts did not take into account: (i) the length of the applicant's stay in Russia, (ii) the solidity of his professional, social, cultural and family ties with the country, (iii) the difficulties which he and his family were likely to encounter after the applicant's removal from Russia and the best interests and (iv) well-being of his children (see *Jeunesse*, cited above, §§ 118 and 120). The mere reference to the applicant's family's ability to follow him or stay in Russia

and receive financial support from him abroad (see paragraphs 21 and 28 above) is clearly insufficient justification for the serious issue which was at stake.

78. Overall, in those two sets of the proceedings it was not convincingly established that the threat which the applicant allegedly posed to national security outweighed the fact that he had been living in Russia for a considerable period of time in a household with a Russian national, with whom he had four children, two of whom had been born in Russia. This is particularly relevant given that during his stay in Russia the applicant had not committed any offences.

79. Accordingly, there has been a violation of Article 8 of the Convention on account of the decision to remove the applicant from the country.

80. In the light of the above conclusion, the Court considers that it is not necessary to examine as to whether the imposition of the entry ban on the applicant satisfied the requirements of Article 8 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

81. On 23 September 2019 the applicant submitted additional complaint under Article 6 of the Convention. Having regard to all the material in its possession, and in so far as this complaint falls within the Court's competence, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. This part of the application must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. RULE 39 OF THE RULES OF COURT

82. The Court reiterates that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if referral of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

83. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 29 above) should remain in force until the present judgment becomes final or until the Court takes a further decision in this connection (see, *mutatis mutandis, Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 10, ECHR 2010, and *Nunez v. Norway*, no. 55597/09, § 4, 28 June 2011).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

1. Pecuniary damage

85. The applicant submitted that following the proceedings concerning the administrative offence under Article 18.8 of the CAO he had paid the fine in the amount of EUR 29 (see paragraph 25 above). He also stated that on 26 September 2019 the Regional Court had ordered him to pay EUR 133 for the costs and expenses of the proceedings in which he had challenged the entry ban. Lastly, he claimed EUR 148 for the travel expenses incurred by his wife to visit him in detention and EUR 190 for his medical expenses. In total, he claimed EUR 500 in respect of pecuniary damage.

86. The Government contested the applicant's claim. They stated that his obligation to pay the fine and cover the costs and expenses incurred by the national authorities in the domestic proceedings was not directly linked to the alleged violation. A similar argument was used against his claim for medical expenses, which, according to the Government, related to chronic illnesses he had developed before his detention.

87. The Court does not discern any causal link between the violation found and the claim for travel and medical expenses. It therefore dismisses that part of the claim. On the other hand, it decides to grant the remainder of the claim, awarding the applicant EUR 162 in respect of pecuniary damage, plus any tax that may be chargeable (compare *Bogomolova v. Russia*, no. 13812/09, §§ 60-62, 20 June 2017, and *Elvira Dmitriyeva v. Russia*, nos. 60921/17 and 7202/18, §§ 107-10, 30 April 2019).

2. Non-pecuniary damage

88. The applicant also claimed EUR 10,000 in respect of non-pecuniary damage.

89. The Government argued that the claim was excessive and inconsistent with the Court's awards in similar cases.

90. Taking into account the parties' submissions, the violations found, the Court grants the applicant's claim in full. It awards him EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

B. Costs and expenses

91. Lastly, the applicant claimed EUR 960 for the costs and expenses incurred before the Court.

92. The Government contested the claim.

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

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the annulment of the applicant's Russian citizenship and the decision to expel him from Russian territory following the imposition of the entry ban admissible and the complaint under Article 6 of the Convention inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention on account of the annulment of the applicant's Russian citizenship;

3. *Holds* that there has been a violation of Article 8 of the Convention on account of the decision to expel the applicant from Russian territory;

4. *Holds* that there is no need to examine the applicant's complaint under Article 8 of the Convention concerning the imposition of the entry ban on him;

5. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to expel the applicant until such time as the present judgment becomes final or until further notice;

6. *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 the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 162 (one hundred and sixty-two euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 850 (eight hundred and fifty euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 22 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Lemmens and Ravarani is annexed to this judgment.

P.L.
M.B.

JOINT CONCURRING OPINION OF JUDGES LEMMENS AND RAVARANI

1. We voted on all points with our distinguished colleagues. To our regret, however, we cannot agree with the reasoning adopted by the majority with respect to the complaint relating to the annulment of the applicant's citizenship (see paragraphs 52-54 and 58-71 of the judgment).

In our opinion, that reasoning is methodologically flawed. It also puts the blame for the violation of the applicant's rights on the wrong organ of the Russian Federation. We will discuss both issues separately.

A. The principles: a confusing and incoherent methodology in cases of denial or revocation of citizenship

2. The Court's present case-law deals with the issue of denial or revocation of citizenship in so many different ways that an impression of great confusion is created, to which more confusion is added by the present judgment (see point 1 below). We believe that it would be rather easy to come to a coherent approach (see point 2 below).

1. From confusion...

3. The applicant argues that the decision to annul his Russian citizenship amounts to a violation of Article 8 of the Convention. It thus would seem that his complaint raises two main issues: was there an interference with the right to respect for his private life, and if so, has Article 8 been violated? These are the classic issues to be examined under Article 8, and there is more than extensive case-law on each of them.

The Court in its case-law on Article 8 has developed principles which are generally applied in all cases relating to an alleged interference with the right to respect for private life. For unexplained reasons, however, these principles are not applied in cases concerning denial or revocation of citizenship. For that rather limited category of cases, the Court has thus far followed lines of reasoning that significantly derogate from the methodology that is followed in all other cases. Moreover, there is a growing divergence within the diverging reasons themselves.

The present case offered an opportunity to restore some order. Unfortunately however, the majority preferred to refine only slightly the existing, unclear case law rather than to thoroughly overhaul it. The result is, paradoxically, that the confusion is now even greater than before.

4. The majority are perfectly aware of the confusion created by the case-law to date. In paragraph 53, they refer to a number of different lines of analysis.

Before taking a closer look at these different types of reasoning, it is perhaps useful to recall that the starting point in cases of denial or

revocation of citizenship is always the same: the Court notes that, although the right of citizenship is not as such guaranteed by the Convention or its Protocols, it cannot be ruled out that an *arbitrary* denial of citizenship might in certain circumstances *raise an issue* under Article 8 of the Convention because of the *impact* of such a denial on the private life of the individual (italics added). It seems that this statement was first made in *Karassev v. Finland* ((dec.), no. 31414/96, ECHR 1999-II).

But this opening statement is not as clear as it may seem. What does it mean to "raise an issue": does it mean that the measure complained of falls within the scope of application of Article 8, or that Article 8 is violated? And does an "issue" arise only after the denial of citizenship has been certified as being "arbitrary", or is arbitrariness an object of the very analysis of the complaint itself? Finally, is the "impact" on the private life only a condition for the applicability of Article 8 ("because of"), or is it part of the analysis of the complaint under Article 8? All these questions are interlinked.

In none of the cases examined thus far by the Court has there been an attempt to clarify the meaning of this point of departure in the Court's reasoning.

And yet, it seems that it is the ambiguity of the opening statement that has contributed to the existence of different approaches to Article 8 complaints in this area.

5. As acknowledged in paragraph 53 of the judgment, there are indeed various strands in the Court's case-law.

Taking into account a somewhat broader sample of cases than those mentioned in the judgment, we would identify four main approaches:

- in *Karassev* (cited above) and *Ramadan v. Malta* (no. 76136/12, §§ 86-94, 21 June 2016), the Court examined both whether the denial or revocation was arbitrary *and* whether there were serious consequences for the applicant, in order to determine whether an issue arose (*Karassev*) or whether an assessment of the State's obligations under Article 8 was warranted (*Ramadan*, § 94);

- in *Fedorova and Others v. Latvia* ((dec.), no. 69405/01, 9 October 2003, *Kolosovskiy v. Latvia* ((dec.), no. 50183/99, 29 January 2004, and *Ivanov v. Latvia* ((dec.), no. 55933/00, 25 March 2004), which all dealt with an alleged denial of citizenship, the Court concluded from the absence of arbitrariness that Article 8 was not applicable, without going into the issue of the impact on the applicant's private life;

- in *Genovese v. Malta* (no. 53124/09, § 33, 11 October 2011), it concluded from the impact of the denial on the private life of the applicant that the measure fell within the scope of Article 8, without mentioning the arbitrariness of the measure as a possible factor triggering the applicability of Article 8; similarly, in *Alpeyeva and Dzhalagoniya v. Russia* (nos. 7549/09 and 33330/11, §§ 111-27, 12 June 2018) and *Ahmadov*

v. Azerbaijan (no. 32538/10, §§ 46-55), 30 January 2020), the Court first examined the consequences of the denial in order to decide whether or not there was an interference with the right to respect for private life, and, after finding that the measure indeed amounted to an interference, then went on to examine, on the merits, whether the measure was arbitrary

- in *Savoia and Bounegru v. Italy* ((dec.), no. 8407/05, 11 July 2006), *K2 v. the United Kingdom* ((dec.), no. 42387/13, 52-64, 7 February 2017), *Mansour Said Abdul Salam Mubarak v. Denmark* ((dec.), no. 74411/16, §§ 64-71, 22 January 2019) and *Ghoumid and Others v. France* (nos. 52273/16 and 4 others, §§ 45-52, 25 June 2020), the Court did not explicitly address the issue of the applicability of Article 8, but examined whether the denial or revocation was arbitrary *and* what the consequences were for the applicant, in order to conclude that the complaint was well-founded or (manifestly) ill-founded.

The majority in the present case follow the methodology in the third group of cases. They refer to the judgment adopted by the Grand Chamber in *Denisov v. Ukraine* ([GC], no. 76639/11, §§ 107-09, 25 September 2018) to justify their choice for the "consequence-based approach" in order to determine whether or not there has been an interference with the right to respect for private life (see paragraph 58 of the judgment). No specific justification is given for the "arbitrariness approach" in examining the merits of the complaint (ibid.).

6. There is confusion not only with respect to the general approach to determining whether a denial or revocation of citizenship constitutes an interference with the right to respect for private life and whether Article 8 of the Convention has been violated. The two elements used in each of the various forms of reasoning (arbitrariness, impact) are themselves also sources of confusion.

7. We will begin with the arbitrariness element.

Arbitrariness is something to be avoided, and protection against arbitrary interference is in general referred to by the Court as one of the elements of the required quality of the "law", as the latter word is used in the phrase "in accordance with the law" or similar phrases (see, among many other judgments, *Mihalache v. Romania* [GC], no. 54012/10, § 112, 8 July 2019, *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 93, 20 January 2020, and *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, § 118, 15 October 2020). By contrast, in the case-law on revocation of citizenship, the relationship between arbitrariness and "in accordance with the law" is turned upside down: the absence of arbitrariness is characterised by a number of elements, among them "whether the impugned measure was in accordance with the law" (see paragraph 63 of the judgment, with further references). No explanation for this derogation from the ordinary way of reasoning is given.

The other elements in an absence of arbitrariness, as specifically enumerated in cases concerning revocation of citizenship, are the existence of procedural safeguards accompanying the impugned decision, and a diligent and swift reaction by the authorities to the emergence of the ground for revocation of citizenship (ibid.). This approach is to be contrasted with the general approach in Article 8 cases: the fairness of proceedings and the procedural guarantees afforded to the applicant are normally factors to be taken into account when assessing the proportionality of an interference with his or her fundamental rights (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 171, ECHR 2005-XIII; *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 133, 17 May 2016; and *Baka v. Hungary* [GC], no. 20261/12, § 161, 23 June 2016). In other words, the existence of procedural safeguards is a factor normally linked to the requirement of a fair balance between the rights of an individual and the competing public or private interests (or to the "necessity" of an interference), not to the quality of the law.

8. When it comes to the impact or consequences of the impugned measure on the private life of the applicant, the question arises what exactly should be taken into account: is it the impact as such, or is it the impact weighed against the general interest served by the denial or revocation of citizenship? Whereas what generally counts in cases involving Article 8 issues is the above-mentioned fair balance, in most of the case-law on denial or revocation of citizenship only the seriousness of the negative consequences for the applicant is assessed (see *Karassev*, cited above; *Genovese*, cited above, § 33; *Ramadan*, cited above, §§ 90-93; *K2 v. the United Kingdom*, cited above, §§ 62-63; *Alpeyeva and Dzhalagoniya*, cited above, § 111-15; and *Ahmadov*, cited above, § 46). The majority in the present case follow this trend (see paragraphs 59-62 of the judgment). However, in a minority of cases, the impact for the applicant of the revocation of citizenship is weighed against the seriousness of the ground for revocation, thus amounting to a proportionality test (see *Mansour Said Abdul Salam Mubarak*, cited above, §§ 69-70, and *Ghoumid and Others*, cited above, §§ 49-51).

2. ... to more coherence

9. The picture drawn above is one of a lack of coherence with the case-law on Article 8 generally and, moreover, an internal inconsistency within the specific case-law on denial or revocation of citizenship. Such a lack of coherence is prejudicial to legal certainty.

In a sensitive area of growing importance, there is a need for a more coherent approach, in line with the generally applicable principles relating to Article 8 of the Convention. Such an approach is, in our opinion, perfectly possible. We will try to briefly outline the contours of an alternative approach.

10. The first question is whether Article 8 of the Convention is applicable (and whether there has been an interference with the applicant's right to respect for private life). On this point, we agree with the majority's approach, namely basing the reasoning only on whether the impugned measure had serious negative effects on the applicant's private life. This is the "consequence-based approach" to the applicability of Article 8, as outlined in *Denisov* with respect to measures affecting an individual's professional life (cited above, §§ 107-09). We see no reason of principle why this approach could not be applied in other areas as well.

In this respect, we would like to add two clarifications.

First, we prefer this approach to the one that considers that a person's citizenship is part of his or her social identity and thus *per se* part of his or her private life; the denial or revocation of citizenship would thus have a direct impact on the person's private life (see the suggestions in *Genovese*, cited above, § 33; *Mennesson v. France*, no. 65192/11, § 97, ECHR 2014 (extracts); and *Ghoumid and Others*, cited above, § 43). That could perhaps be the case for persons who have a strong bond with the country of their citizenship (see the arguments given in *Petropavlovskis v. Latvia*, no. 44230/06, § 80, ECHR 2015), but that is not necessarily the case for everyone.

Second, there is in our opinion no room for an *a priori* assessment of whether the impugned measure was arbitrary in order to come to the conclusion that Article 8 is applicable. Issues relating to arbitrariness belong to the examination of the merits.

11. Turning then to the merits, we would simply follow the general rule, repeated over and over again in the Court's case-law: any interference with the right to respect for private life constitutes a violation of Article 8 unless it is "in accordance with the law", pursues an aim or aims that is or are legitimate under paragraph 2 and can be regarded as "necessary in a democratic society" (see, as the most recent expressions of this approach in the Grand Chamber's case-law, *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 167, 24 January 2017, and *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 202, 10 September 2019). That is all. There is no need for an *ad hoc* reasoning, which has no basis in the text of Article 8.

Here too, we would like to add two clarifications.

With regard to the expression "in accordance with the law", we would follow the general interpretation given to that and similar expressions. "[It] not only requires that the impugned measure should have a legal basis in

domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects ... The notion of 'quality of the law' requires, as a corollary of the foreseeability test, that the law be compatible with the rule of law; it thus implies that there must be adequate safeguards in domestic law against arbitrary interferences by public authorities" (see, among many other authorities, *Magyar Kétfarkú Kutya Párt*, cited above, § 93). The legality condition as applied in the case-law on denial or revocation of citizenship can naturally find its place in the context of the condition that the measure should be "in accordance with the law".

As for the requirement of the necessity of the interference in a democratic society, here too there is no need to reinvent the wheel. In determining whether the denial or revocation was "necessary", "the Court [should] consider whether, in the light of the case as a whole, the reasons adduced to justify that measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 ... The notion of necessity further implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests ..." (see, among many other authorities, *Strand Lobben and Others*, cited above, § 203). The conditions relating to the existence of procedural safeguards and the manner in which the authorities acted, as applied in the case law on denial or revocation of citizenship, can be part of the assessment of whether the interference was "necessary". That assessment must in the end also include, as indicated in the quotation above, an assessment of whether a fair balance has been struck between the right of the applicant to respect for his or her private life and any competing rights or interests.

B. The revocation of citizenship in the present case: on the domestic legal framework and its application by the competent authorities

12. We have no hesitation whatsoever in concluding, like the majority, that in the present case there has been a violation of Article 8.

The question is: how should the Court reach such a conclusion?

13. The majority argue that there are a number of shortcomings in the applicable legal framework, namely the Russian Citizenship Act and the Regulation on the Examination of Issues Related to Citizenship of the Russian Federation.

They argue, in particular, that the relevant provisions are not sufficiently clear, as these provisions do not specify the nature of the information that, if not adequately submitted in the application for citizenship, can be the basis for revoking the citizenship thus granted (see paragraph 67 of the judgment).

They also argue that under the applicable provisions the authorities were not required to give a reasoned decision specifying all the factual grounds on which it had been taken (see paragraph 68 of the judgment). On this latter point, they refer to the Government's statement that, "after it had been established that the information submitted by the applicant was incomplete, the authorities had no other choice but to annul the decision granting him Russian citizenship", and they add that "it has not been shown that the national courts had to consider" a number of relevant factors (see paragraph 69 of the judgment).

14. To our regret, we are unable to follow our colleagues in their blunt criticism of the legal framework, as though the applicable rules did not permit the competent authorities to apply them in a Convention-compliant way.

The law is the law as interpreted by the courts. In this case, there was clear case-law of the Constitutional Court on how the Russian Citizenship Act was to be applied. On 21 April 2011 and 25 October 2016 –that is, well before the decision was taken to revoke the applicant's citizenship – the Constitutional Court had interpreted section 22 of the Act in such a way that it could be applied only "in cases where individuals did not satisfy the conditions required for obtaining Russian citizenship" (see paragraphs 37-38 of the judgment). This means that section 22 does not offer a basis for a "blind" revocation of citizenship, irrespective of the concrete importance of the information that has been concealed from the authorities.

Moreover, in a series of decisions, including on an appeal by the applicant himself, the Constitutional Court stated that "the competent authorities should take into account surrounding circumstances, such as the time elapsed since the decision granting Russian citizenship for their decision to comply with the requirements of necessary and proportionate interference with human rights" (decisions of 15 January, 12 and 28 February 2019, referred to in paragraph 39 of the judgment). This is a clear application of some of the principles set out in this Court's case-law, and allows for a balancing of interests in each concrete case. Admittedly, the Constitutional Court made these statements after the decision to revoke the applicant's citizenship had been taken. However, since the statement reflects principles taken from this Court's pre-existing case-law, it should be assumed that there had been nothing to prevent the competent authorities from previously taking these principles into consideration in the applicant's case, and thus to apply the Russian Citizen Act in a Convention-compliant way.

It is true that section 54 of the Regulation on the Examination of Issues Related to Citizenship of the Russian Federation, as in force at the material time, did not explicitly provide for an obligation to state the reasons for the annulment of a decision on Russian citizenship (see paragraph 34 of the

judgment). It was only by a presidential decree of 17 June 2020 that such an obligation was introduced in section 54. There is now an explicit obligation to describe the circumstances which led to the adoption of the annulment decision (see paragraph 35 of the judgment). It seems to us, however, that there was nothing to prevent the competent authorities in an individual case from giving such reasons already, on the basis of the Russian Citizen Act as interpreted by the Constitutional Court.

15. The violation of the applicant's rights is not therefore to be situated at the level of the legislature. The legal framework offered the competent authorities, both within the administration and the judiciary, the opportunity to refrain from revoking the applicant's citizenship if there were no relevant and sufficient reasons for doing so. We cannot agree with the Government's argument that the authorities had no other choice but to revoke the applicant's citizenship.

It can be argued that the competent authorities applied the provisions of domestic law in a way that was incompatible with the Constitutional Court's interpretation of the Russian Citizens Act. The conclusion then would be that the impugned measure lacked a legal basis in domestic law, and for that reason (which is different from the one advanced by the majority) was not "in accordance with the law".

Alternatively, it is also possible to leave open the question whether the measure was in accordance with domestic law.

In any event, the domestic authorities adopted an "excessively formalistic approach" (see paragraph 70 of the judgment), paying no attention to any "surrounding circumstances" and thereby omitting any balancing of rights and interests. In these circumstances, they did not justify the proportionality of the impugned measure in the light of the aim pursued (the protection of national security, according to the Government; see paragraph 48 of the judgment). It has therefore not been demonstrated that the measure was "necessary in a democratic society".