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

SECOND SECTION

DECISION

Application no. 12174/22
Filip Bedros KIRKOROV
against Lithuania

The European Court of Human Rights (Second Section), sitting on 19 March 2024 as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Egidijus Kūris,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Davor Derenčinović*, judges*,

and Hasan Bakirci, *Section Registrar,*

Having regard to the above application lodged on 24 February 2022,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Filip Bedros Kirkorov, is a Bulgarian and Russian national, who was born in 1967 and lives in Moscow. He was represented before the Court by Ms I. Svechnikova, a lawyer practising in Moscow.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

B. Proceedings regarding the applicant's right to enter Lithuania

1. Motion of the Ministry of Foreign Affairs

3. On 19 January 2021 the Ministry of Foreign Affairs of the Republic of Lithuania (hereinafter "the Ministry") requested the Migration Department of

the Republic of Lithuania (hereinafter "the Migration Department") to place the applicant on the list of aliens who were prohibited from entering the Republic of Lithuania. The Ministry referred to Article 133 § 5 of the Law on the Legal Status of Aliens (see paragraph 35 below).

4. The Ministry noted that the applicant was a popular music singer and producer in the Russian Federation and that he influenced a large population in that country and in other countries of the former Union of Soviet Socialist Republics (the former USSR), owing to his active concertising and organisational activities; those activities had been openly described by Russian Federation officials as a "soft-power" instrument of Russia. The Ministry also referred to the fact that the applicant had regularly visited and performed in the Crimean Peninsula, which had been unlawfully annexed by the Russian Federation, thus deliberately repudiating Ukraine's territorial integrity as well as its sovereignty and indirectly justifying the aggressive actions of the Russian Federation. For those reasons the applicant had been included on the list of persons in Ukraine who were prohibited from entering that country.

5. The Ministry stated that, considering that the applicant's popularity had been taken advantage of by the Russian Federation in order to justify its aggressive foreign policy and to negatively indoctrinate the population of the Republic of Lithuania and that he himself had supported the occupational policy of the Russian Federation by his example and deliberate actions, the applicant's visit to Lithuania might pose a threat to the Republic of Lithuania's national security.

2. Decision of the Migration Department

6. On the same day, 19 January 2021, the Migration Department, referring to Article 133 of the Law on the Legal Status of Aliens, took a decision to ban the applicant from entering Lithuania for a period of five years, until 18 January 2026. The Department noted that the applicant was a popular Russian performer and producer, who, because of his active concertising and organisational activities, had influence over a large part of society in the Russian Federation and in other States of the former USSR. His concert-related activities were openly characterised as a tool of "soft power" by Russian Federation officials. The Migration Department stated that the applicant regularly visited and gave concerts in the Crimean Peninsula, which had been unlawfully annexed by the Russian Federation, thus intentionally denying Ukraine's territorial integrity and sovereignty and thereby indirectly justifying the Russian Federation's aggressive actions. The applicant, because of his activities, had already been placed on the list of persons who had been banned from entering Ukraine. The Migration Department's decision also noted that the Russian Federation used the applicant's influence to justify its aggressive foreign policy and to negatively indoctrinate Lithuanian inhabitants, and the applicant, by his example and his deliberate actions,

supported the Russian Federation's occupational policy. The Migration Department thus considered that the applicant posed a threat to national security of the Republic of Lithuania.

C. Proceedings before the Vilnius Regional Administrative Court

1. The parties' submissions

(a) The applicant

7. The applicant appealed. He argued, firstly, that the prohibition on his entering Lithuania had been based not on his behaviour but on third parties' accounts of events that had no proper basis in fact, specifically, the Migration Department's decision, which lacked facts relating to the specific period during which the applicant had visited the Crimean peninsula and his activities while he had been there which had resulted in his being banned from entering Lithuania. Instead, the Department's decision had merely stated that he had supported the Russian Federation's occupational policy by his example and his deliberate actions. Secondly, the applicant argued that he had been giving concerts in Crimea for the past thirty years, during music festivals in summertime, when Russian-speaking tourists visited the peninsula. The content of his songs had exclusively dealt with human nature (*apie žmogiškuosius dalykus*) – love, human relationships and nature – and had contained no hint whatsoever about politics, even less so any attempt to justify Crimea being joined to Russia. On the contrary, in his statements the applicant had expressed regret regarding the situation between Ukraine and Russia. Neither in his creative works (*nei savo kūryba*) nor by his behaviour or actions had he supported the occupational policy of any country. Rather, he was an artist and was not interested in politics. Thirdly, he argued that the Foreign Ministry and the Migration Department had had no basis for their attempts to impose on society the view that in the applicant's case culture was being used for the Kremlin's political aims. The applicant had not been placed on a list of persons who might pose a danger to national security by the Ministry of Culture and Information Policy of Ukraine; rather, he had not been allowed to enter Ukraine because, when travelling to Crimea, he had not followed the Ukraine border and customs procedures. Fourthly, he argued that the restriction on his entering Lithuania had damaged his economic interests, since he could not give concerts as planned. Fifthly, he argued that the Law on the Legal Status of Aliens did not establish clear and concrete criteria regarding when a foreigner could be restricted from entering Lithuania; besides, other European Union countries had not banned the applicant from entering them; sixthly, the applicant argued that he posed no danger to the safety of Lithuania or neighbouring countries and that the measures applied to him had been disproportionate, since he was an EU citizen and thus could move within EU territory. The applicant argued,

seventhly, that when responding to his complaint to the court, the Migration Department had provided entirely new grounds which had not been present in the Department's decision. The Migration Department had relied on the threat which the applicant might pose to Lithuania's national security in future and had mentioned no threats in relation to the actions which the applicant had already carried out. The applicant's visits to Lithuania and his concerts there had not been supported by the Kremlin – he had been exercising his concertising activities independently; the Migration Department's decision had been based exclusively on the Foreign Ministry's subjective opinion. Besides, the State Security Department had not initiated a ban on the applicant's entering Lithuania, as it had seen no basis for that action.

(b) Migration Department

8. The Migration Department asked that the applicant's appeal be dismissed: the Department had received reasoned conclusions as to why the applicant might pose a danger to national security in Lithuania from the competent institution which provided such conclusions – the Ministry of Foreign Affairs – and the Department had no ground to doubt such information. The circumstances referred to by the Ministry – that the applicant had clearly supported the unlawful and aggressive expansionist policy of the Russian Federation – had been confirmed by information available in public domain (Lithuanian and foreign media and social networks). The Migration Department also referred to the Lithuanian State institutions' and scientists' conclusions that an information war being waged by the Russian Federation and propaganda comprised particularly dangerous tools of influence and disinformation, not only for inhabitants of Russia, but also for those of Lithuania, those tools being used to persuade the public in respect of the virtue of Russia's policies, for the purpose of which that country's artists (*kultūros veikėjai*), and "especially the applicant", who was well known and was capable of influencing a significant part of the population, had been used.

9. The applicant's public statements and actions – his frequent visits and concerts in the occupied Crimean peninsula, his support for the annexation of Crimea and participation in events organised for that occasion, his public expressions of support for the President of the Russian Federation, Vladimir Putin, his accepting of presents and State awards from Vladimir Putin and other publicly available and accessible information in the media – had demonstrated that the applicant was being employed as tool of "soft power" in the Russian Federation's policy against the States' territorial sovereignty and against respect for human rights and freedoms. Although the applicant had asserted that his music was about love, human relationships and nature, taking into account the general context of his creative expression (*įvertinus bendrą jo kūrybinės raiškos kontekstą*), he had been broadcasting an entirely

different message that, among other things, the "return" of Crimea to Russia had been a glorious and victorious event. When giving concerts in the unlawfully annexed Crimean peninsula the applicant had linked that annexation, not to the rights of the Ukrainian citizens who lived there, their interests or their misery, but to Russia's "victory" or to "unification" of Crimea and Russia, which was indirectly and metaphorically linked to such values and feelings as love, happiness, joy and friendship. The applicant clearly supported Russia's unlawful policies, condemned by the Republic of Lithuania, and wanted his listeners to believe that the goals of the political actions exercised by Russia corresponded to the applicant's listeners' interests and values; that was why his arrival, his stay and his concert activities in the Republic of Lithuania might pose a threat to the safety of the Lithuanian State and its society, that threat being "real and obvious", not simply based on general prevention of threats. Contrary to what the applicant had suggested, the Migration Department's decision had been adopted on the basis of objective and reasoned data (*objektyvūs ir pagrįsti duomenys*), rather than suppositions, because it had been the applicant's actual physical presence in Lithuanian territory and his actions during such presence before giving concerts, during them and afterwards, when he had indirectly spread pro-Russia propaganda, that had demonstrated the threat which he posed to the Lithuanian State's security.

10. The Migration Department pointed out that various means of propaganda were used by Russia in the Baltic States: television, internet websites, social networks, movies and popular music singers who came from Russia to give concerts. Propaganda was firstly aimed at local Russian communities, however, it was also meant to influence a wider audience: Russian speakers or those who were sympathetic (*prijaučia*) towards Russian culture and those who yearned for the "glorious Soviet Union" era. The applicant was a famous and popular singer, therefore his interviews, public statements and declarations between the songs during his concerts were effective tools with which to spread the Kremlin's propaganda. The applicant himself had not denied that he was a tool used for spreading the ideology of the President of the Russian Federation – the applicant publicly called himself Vladimir Putin's "representative on stage" and constantly and publicly supported the President of the Russian Federation and his policies. Listening to the applicant's songs online and over the radio did not allow him to spread propaganda, so the applicant had to physically travel to a country to give concerts and to meet the media there. The applicant, through his actions, contributed – not as a politician, but as an intentional broadcaster of Russia's narrative – to disseminating Russia's disinformation and propaganda and could be seen as an important part of that effort.

11. Neither the Ministry in its proposal regarding the applicant's not being allowed to enter Lithuania (see paragraphs 3-5 above) nor the Migration Department in its decision (see paragraph 6 above) indicated that the

applicant had been placed on the list of persons who posed a danger to Ukraine's national security. Rather, the Migration Department's decision stated that the applicant had been placed on the list of persons who were not allowed to enter the territory of Ukraine and that those circumstances had not been contested by the applicant. In fact, the applicant had misled the court by suggesting that he had been restricted from entering Ukraine on grounds of a simple breach of border crossing procedures, portraying it as a simple violation of technical rules. In fact, foreigners were forbidden from entering the territory of Ukraine from Crimea and they were also forbidden from entering Crimea from other territories besides Ukraine. Taking into account that the applicant had not been allowed to be present in Ukrainian territory and that, notwithstanding that fact, he had regularly given concerts in Crimea, the conclusion which followed was that he had entered Crimea, not from Ukraine, but from Russia, thus seriously breaching the laws of Ukraine and clearly demonstrating that he supported Russia's occupational policy and disrespected Ukrainian territorial sovereignty.

12. The applicant had visited Lithuania rather frequently and planned to travel to Lithuania in future. Accordingly, the possibly negative influence on Lithuanian society and on the State on account of propaganda that was useful to Russia was obvious. The applicant's presence in Lithuania might give rise to a threat to national security and the five-year entrance ban had to be seen as well-reasoned, proportionate and meeting the requirements of Lithuanian law.

13. The Migration Department asserted that the State's right to control aliens' entrance into its territory had been recognised both in the Supreme Administrative Court's practice (in rulings A^{858}-1810/2010, and A-4161-756/2015) and by the Court (it referred to *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII). Similarly, the States retained the discretion to regulate foreigners' entrance to the country (the Department referred to *Auad v. Bulgaria*, no. 46390/10, § 96, 11 October 2011). The applicant had not acquired a right to reside in the Republic of Lithuania and his family members did not live in Lithuania, where he had no other lawful interests which could be protected under the Convention. The Migration Department's decision had not failed to strike a fair balance between the State's and the applicant's rights and lawful interests. The inconveniences which the applicant mentioned that he would experience if he were not able to enter Lithuania and give concerts there were insufficient to declare the Department's decision unlawful, unfounded or disproportionate.

14. Lastly, Lithuanian law had been coordinated with EU law, in particular with Directive 2004/38/EC, in which Article 27 provides that States may restrict an EU national's right to move freely within the territory (see paragraph 42 below). The Directive had been implemented by Article 98 of the Law on the Legal Status of Aliens (see paragraph 35 below) and that provision of law was imperative. In addition, the assessment of the threat to

national security lay within the discretion of each EU member State; accordingly, the fact that the applicant had not been banned from entering the territory of other member States did not mean that he did not pose threat to Lithuania's security. By the Migration Department's decision, the applicant had only been banned from entering the Republic of Lithuania, with which he had no family, social or other important ties, leaving him a possibility of travelling to other Schengen countries.

(c) Ministry of Foreign Affairs

15. The Ministry of Foreign Affairs asked that the applicant's appeal be dismissed. It referred to the *Seimas*' resolution of 2017 (see paragraph 39 below) and stated that between 2015 and 2021 the applicant had visited the Crimean peninsula numerous times and that he had publicly conveyed in various mass media outlets and on social networks messages to the effect that Crimea was part of the Russian Federation and that he essentially supported the unlawful, aggressive expansive policy of Russia and its President Vladimir Putin in Ukraine; he had also expressed his support for Vladimir Putin in public statements in which he had stated that he was Vladimir Putin's "representative on stage".

(d) State Security Department

16. The State Security Department, which had been given leave to intervene as third party in the proceedings, disagreed with the applicant's complaint. The Migration Department's decision had been taken on the basis of its own conclusion; the State Security Department had not provided any information or conclusions in relation to the applicant, the Ministry or the Migration Department. Even so, the State Security Department supported the Migration Department's decision, holding that it was just and reasoned, and that when adopting the decision of 19 January 2021 the Migration Department had thoroughly evaluated the Ministry's conclusions of 19 January 2021, the factual circumstances therein and the relevant legal norms.

2. Decision of the Vilnius Regional Administrative Court

17. On 14 June 2021 the Vilnius Regional Administrative Court dismissed the applicant's complaint. The court had regard to Article 133 §§ 6 and 8 of the Law on the Legal Status of Aliens (see paragraph 35 below) and point 37.1 of the Rules regarding the criteria to be assessed when a foreigner is placed on the list of persons prohibited from entering the Republic of Lithuania (*Kriterijų, kuriais vadovaujamasi nustatant ar sutrumpinant draudimo užsieniečiui atvykti į Lietuvos Respubliką laikotarpį arba išbraukiant duomenis apie užsienietį iš Užsieniečių, kuriems draudžiama atvykti į Lietuvos Respubliką, nacionalinio sąrašo, vertinimo tvarka –*

hereinafter "the Rules"; see paragraph 36 below) and concluded that a decision to the effect that a foreigner posed a threat to national security could be based on: (i) documents confirming the grounds of such ban, (ii) reasoned conclusions, and (iii) information relating to the fact that the foreigner might pose danger to national security. In the applicant's case, the information about him had been provided by the Ministry of Foreign Affairs, which under the relevant provisions of the Law on the Basics of National Security of Lithuania was entrusted with the mandate of protecting national security. The information received by the Migration Department from the Ministry regarding the applicant had been sufficient for the Migration Department to take the decision regarding the threat which the applicant posed to national security. Besides, under the law, the Migration Department did not have a right to question the information provided by another competent institution (the Ministry of Foreign Affairs) or to assess it differently. In any event, the applicant had essentially not contested the facts given in the Ministry's conclusion, that is, he had acknowledged that he had given concerts in the occupied Crimea and that he had been banned from entering Ukraine.

18. The Vilnius Regional Administrative Court then referred to the Supreme Administrative Court's practice (in its ruling of 10 July 2019 in case no. eA-4603-629/2019) to the effect that the Law on the Legal Status of Aliens, in so far as it allowed for the expulsion of aliens on national security grounds, did not specify what constituted a threat to national security or public order. For its part, the Court had held that Article 8 of the Convention did not compel States to enact legal provisions which listed in detail any conduct that might prompt a decision to expel an individual on national security grounds; threats to national security might vary in character and might be unanticipated or difficult to define in advance; the notion of "national security" was not capable of being comprehensively defined and might be very wide, with a large margin of appreciation left to the executive to determine what is in the interests of that security (the court referred to *C.G. and Others v. Bulgaria*, no. 1365/07, 24 April 2008).

19. The Vilnius Regional Administrative Court then referred to the *Seimas*' resolution of 2017 (see paragraph 39 below). The court also noted that, under the Supreme Administrative Court's constant position (its rulings of 5 February 2015 in administrative case no. A-506-624/2015 and of 8 March 2015 in administrative case no. A-2744-756/2017), it was important to take into account the entirety of data existing in the file when assessing a person's behaviour. The Regional Court, having regard to the *Seimas*' resolution of 2017 (see paragraph 39 below) and taking into account the content of the information provided by the Ministry, had reached a conclusion that the Migration Department had had a basis for holding that the nature of the applicant's actions had allowed a conclusion that he posed a danger to national security.

20. The ban on the applicant's entering Lithuania and the duration of that ban corresponded to the goal sought – to prevent a threat to national security – and it was necessary for the protection of public interest. The applicant's arguments that the ban was disproportionate were unfounded. The applicant had no family ties in Lithuania and under the relevant legal regulation – point 40.3 of the Rules (see paragraph 36 below) – an EU citizen who had no family ties in a country could be banned from entering that country for five years on national security grounds. The applicant was also a Bulgarian citizen and the Migration Department's decision did not restrict his freedom of movement among other EU member States.

21. The court also explicitly stated that the ban on the applicant's entering Lithuania, as established by the Migration Department's decision, had a basis in the Law on the Legal Status of Aliens, had been established with a legitimate aim within the meaning of Article 10 § 2 of the Convention and had been a necessary means of protecting national security. When adopting the decision, the Migration Department had followed the Rules and the Department's decision was in compliance with Article 133 § 6 of the Law on the Legal Status of Aliens and with the requirements of Article 10 § 5 of the Law on Public Administration (see paragraph 37 below). Measures which had been undertaken by the Lithuanian State in the applicant's case could not be considered to violate or restrict his rights under the Convention or under the Constitution.

22. Lastly, although the applicant had also raised other arguments in his complaint (see paragraph 7 above), they were not essential for the resolution of the case and did not change the conclusion reached. The Court had also ruled that not every argument must be answered (the Vilnius Regional Administrative Court referred to *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288, and *Helle v. Finland*, 19 December 1997, § 55, *Reports of Judgments and Decisions* 1997-VIII).

D. Proceedings before the Supreme Administrative Court

1. The parties' submissions

(a) The applicant

23. The applicant appealed, reiterating his previous arguments (see paragraph 7 above). He also stated that, at that time, he was not banned from giving concerts in other EU member States (Latvia, Estonia and Germany), and that, therefore, he posed no danger to Lithuania's or neighbouring countries' national security. Such restriction was unnecessary and did not meet the principle of proportionality under EU law. The applicant also referred to several Russian performers who had not been banned from entering Lithuania and further noted that the President of the Russian Federation, his press secretary and the President of the Republic of Belarus

had not been banned from entering Lithuania. The Migration Department's decision thus lacked logic and was discriminatory. The applicant considered that the Department's decision had been based not on the applicant's behaviour, but on third parties' statements, which lacked an objective basis. The Department's decision, based on the Ministry's conclusion, had thus been taken "on the basis of the applicant's beliefs and his political views" (*dėl pareiškėjo įsitikinimų ir politinio požiurio*) and not because of his specific behaviour. The applicant also questioned why it was not until 19 January 2021 that the Ministry had decided that he posed a danger to national security, given that such "threat" had not been noted by the previous Ministers of Foreign Affairs and also given that Crimea had been annexed in 2014 and the applicant had been giving concerts there for at least twenty-five years. The applicant also argued that most of the reasons which the Department had referred to in its response to the first-instance court (see paragraphs 8-14 above) had not been noted in the Department's decision of 19 January 2021 (see paragraph 6 above). The applicant also considered that the Migration Department had made no attempt to substantiate in what way, by what actions and when the applicant had allegedly been supported by the Kremlin – the Department had not provided any such evidence in the case.

24. The applicant, who had provided the Court with a copy of a contract between him and a Lithuanian concert organising agency, lastly stated that the ban on his entering Lithuania was in breach of his economic interests, since, on account of the Department's decision, the applicant would not be able to receive income from concerts planned in Lithuania in June.

(b) Migration Department

25. The Migration Department asked that the appeal be dismissed: the assessment that the applicant posed a threat had been based, not on general prevention, but on the applicant's specific behaviour which might pose a danger to national security. Besides the aforementioned arguments regarding the applicant's dispersal of Russian propaganda, the Department referred to the *Seimas*' approved national security strategy, wherein "information threat" (*informacinė grėsmė*) was listed among the elements which might pose threats to national security (see paragraph 38 below). The Department noted that by way of the performances (*renginiais*) organised in Crimea, Russia sought to justify and enforce (*įtvirtinti*) the annexation, and the applicant, by giving concerts in Crimea, expressed his support for the Russian Federation's criminal policy; thus, the applicant's presence in the Republic of Lithuania and his spreading of Russian propaganda contradicted Lithuania's national values and posed a danger to its national security. Pecuniary loss, which the applicant argued that he had sustained from being unable to enter Lithuania to give a concert, had not been substantiated by any documents, and, in any event, did not serve as a basis for finding the Migration Department's decision disproportionate. The Migration Department stated that it was

important to note that by its decision, the applicant had been banned only from entering Lithuania, where he had no family, social or other important ties, and that he retained the right to go to other Schengen countries. His rights as an EU citizen were therefore not seriously restricted. The Department's decision had been taken in compliance with the principle of proportionality, given the applicant's individual circumstances, thus the applicant's references to other individuals who had not been banned were irrelevant. It was also irrelevant that the ban had not been established previously.

26. The Department noted that it had comprehensively responded to the applicant's arguments, which was why the content of the document provided to the first-instance court had been detailed. That did not mean that the response to the first-instance court had contradicted the Department's decision or that new grounds had been presented in that response. The Department's decision complied with the requirements of Article 10 of the Law on Public Administration, that fact being noted by the first-instance court, since the decision contained both factual and legal grounds.

(c) Ministry of Foreign Affairs

27. The Ministry of Foreign Affairs asked the court to dismiss the applicant's appeal, reiterating its previous arguments (see paragraphs 3-5 above). The Ministry referred to the Supreme Administrative Court's practice of assessing foreigners' potential to threaten national security from the perspective of potential for future threat (see paragraph 31 below). In the applicant's case, the first-instance court had reached a reasoned conclusion that data in the file, that is, information which was not supposition or suspicion but established facts, confirmed that by organising concerts in Crimea the Russian Federation sought to justify its annexation and that the applicant had been clearly publicly supporting such policy.

(d) State Security Department

28. The State Security Department stated that the applicant had not provided any arguments contesting the circumstances established by the first-instance court. The Migration Department's decision had been neither discriminatory nor disproportionate.

2. Ruling of the Supreme Administrative Court

29. By a final ruling of 1 September 2021 the Supreme Administrative Court dismissed the applicant's appeal and left the Vilnius Regional Administrative Court's decision unchanged. The court held that the first-instance court had performed a comprehensive assessment of the evidence and its decision had been lawful and reasoned.

The appellate court only wished to add the following points to the first-instance court's decision in response to arguments raised by the applicant in his appeal.

30. The Supreme Administrative Court noted that under the Convention, the States had a right to control the arrival of foreigners into their territory (it referred to *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII) and, under Article 133 of the Law on the Legal Status of Aliens, an EU citizen could be banned from entering Lithuania for up to five years if he or she posed a possible threat to national security or public order. Neither that Law nor other legal acts specified (*nedetalizuoja*) what those threats might be; the notion of "possible threat" depended on the particular circumstances of the case (the Supreme Administrative Court referred to its rulings of 23 June 2010 in case no. A[858]-1810/2010 and of 5 February 2015 in case no. A-2744-756/2017). The Court had also held that threats to national security could differ, thus granting a wide margin to the authorities in defining it (the Supreme Administrative Court referred to *C.G. and Others v. Bulgaria*, cited above, § 43). The Supreme Administrative Court also referred to Article 27 §§ 2 and 3 of Directive 2004/38/EC (see paragraph 42 below) and the Court of Justice of the European Union's judgment in case C-331/16 to the effect that a person's behaviour which showed that he or she had breached the fundamental values established in Articles 2 and 3 of the Treaty on European Union (hereinafter "the TEU") could be considered to pose a real and present danger to the main interests of society (see paragraph 43 below).

31. The Supreme Administrative Court also referred to its settled case-law to the effect that each particular foreigner's situation was unique: when assessing whether a foreigner's presence in Lithuania might pose a threat to national security, the assessment was essentially from the perspective of potential for future threat. This meant that a certain prediction of a situation was unavoidable; even so, that process had to be based on established facts, especially on the person's previous actions and their nature; it was on the basis of those actions that it was possible to draw a conclusion on whether a sufficiently "real and present" (*reali ir akivaizdi*) threat to national security was possible (the Supreme Administrative Court referred to its rulings of 23 June 2010 in case no. A[858]-1810/2010, of 14 July 2016 in case no. eA-3484-662/2016 and of 16 October 2019 in case no. eA-5322-520/2019).

32. The Supreme Administrative Court found it established that the Migration Department had banned the applicant from entering Lithuania on the grounds that he posed threat to national security as a tool of "soft power" of the Russian Federation. The court then held that, after assessing the publicly available evidence referred to by the Department, it considered that the applicant's behaviour – his previous actions and their nature – provided sufficient ground to conclude that he posed threat to national security and

that, therefore, the Department's decision had been justified and necessary to the aim sought: that of preventing a foreigner, whose presence in Lithuania was not desired (*nepageidaujamas*) and was assessed as posing a threat to national security, from entering Lithuania. The applicant's abstract arguments, related to general prevention or to the fact that he had not been banned previously, that is, in 2014, did not alter the court's findings.

33. Regarding proportionality, the Supreme Administrative Court referred to Article 133 §§ 6 and 8 of the Law on the Legal Status of Aliens. There was no information in the case file showing that the applicant had family ties to persons living in Lithuania. Taking into account the fact that the ban was aimed at protecting an essential value (*apsaugoti esminę reikšmę turinčią vertybę*) – the safety of the Lithuanian State (*Lietuvos valstybės saugumą*) – and the fact that point 40.3 of the Rules established a specific term of the prohibition on entering the country when a particular ground set out in the Law was present, the Migration Department's decision to ban the applicant from entering Lithuania was an appropriate and proportionate measure for the aims sought. For the court, no circumstances had been established as to why a ban of a length of other than five years should have been imposed. The Migration Department's decision had banned the applicant only from entering Lithuania, taking into account that no family, social or other important connections linked him with Lithuania; his rights as an EU citizen to give concerts in other EU member states had not been curtailed.

34. Regarding the applicant's complaint that he was being discriminated against *vis-à-vis* Russian politicians and other artists (*kultūros veikėjais*), the Supreme Administrative Court held that each person's situation was unique. The Migration Department had taken a decision after receiving information that the applicant posed a specific threat to national security. As correctly noted by the first-instance court, the Department had had no right to question the information provided by another competent institution or to assess it differently. The applicant's other arguments were not essential for the resolution of the case.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Domestic law

1. Legislation and sub-statutory legal acts regarding aliens entering Lithuania

35. The relevant parts of the Law on the Legal Status of Aliens (*Įstatymas "Dėl užsieniečių teisinės padėties"*), as in force at the material time, read as follows:

Article 98. Grounds for refusing admission into the Republic of Lithuania to a national of an EU member State and his family member

"A national of an EU member State and his family member shall be refused admission into the Republic of Lithuania if:

...

(2) their stay in the Republic of Lithuania may represent a threat to national security (*valstybės saugumui*) or public order (*viešajai tvarkai*); ..."

Article 133. Ban of entry into the Republic of Lithuania

"5. A foreigner shall be subject to an entry ban prohibiting his entry into the Republic of Lithuania where he may represent a threat to national security or public policy. The length of the entry ban may exceed five years.

6. A national of an EU member State and/or his family member or another person who enjoys the right of free movement under legal acts of the European Union may be subject to an entry ban prohibiting his entry into the Republic of Lithuania for a period not exceeding five years solely in the event that his entry into and stay in the Republic of Lithuania may represent a threat to national security or public order.

...

8. A decision whether to ban a foreigner's entry into the Republic of Lithuania shall be taken by the ... Migration Department... The length of the ban of entry into the Republic of Lithuania shall be determined on a case-by-case basis with due regard to all relevant circumstances of the individual case."

36. By a decision of 14 April 2014 the director of the Migration Department adopted the Rules, which provide that an EU citizen, who has no family connection with persons living in the Republic of Lithuania and who exercises freedom of movement within the EU may be prohibited from entering Lithuania for a period of five years if his or her presence in the country may pose a danger to national security or public order (points 40 and 40.3 of the Rules). The decision to prohibit a foreigner from entering Lithuania is to be taken on the basis of a reasoned conclusion or information by a competent State institution that a foreigner may pose threat to national security or public order (point 37.1 of the Rules).

2. The Law on Public Administration

37. The Law on Public Administration reads that an administrative decision must contain a legal and factual basis as well as its reasoning (Article 10 § 5).

3. Other relevant materials

38. The relevant parts of the *Seimas*' Resolution (*nutarimas*) on the Approval of the National Security Strategy, adopted on 28 May 2002 and re-worded on 17 January 2017, read as follows:

THREATS, DANGERS AND RISK FACTORS

"13. In the dynamic, complex and unpredictable security environment of the Republic of Lithuania the external, internal, military and non-military threats, dangers and risk factors are interlinked. Taking into account the changed security environment, conventional military threats to the Republic of Lithuania or any other country in the region are no longer theoretical, as military and non-military (diplomatic, information, cyber, economic, energy, financial and legal) measures against the national security of the Republic of Lithuania may be used concurrently, seeking to affect the most vulnerable areas of the State.

14. Threats, dangers and risk factors which must be given particular attention by the national security institutions are as follows:

...

14.6. threats to information**:** military propaganda spread by certain States and non-State actors, warmongering and incitement to hatred, attempts to distort history and unsubstantiated and misleading information directed against the national security interests of the Republic of Lithuania which lead to the distrust of and dissatisfaction with the State of Lithuania and its institutions, democracy and national defence, seeking to widen national and cultural divides and to weaken national identity and active citizenship, attempts to discredit Lithuania's membership of NATO, NATO capabilities and the commitment to defend allies and activities which undermine citizens' will to defend their State; also information activities that are aimed at influencing the country's democratic or electoral processes or the party system, or that are targeted at the societies and policy makers of other member States of the EU and NATO, seeking unfavourable decisions for the Republic of Lithuania; ..."

39. On 16 March 2017 the *Seimas* adopted Resolution (*rezoliucija*) no. XIII-233 on Ongoing Occupation and Annexation of Crimea. The Resolution reads as follows (bold and italics in the original text):

"The Seimas of the Republic of Lithuania,

reminding that three years ago the Russian Federation, by using armed military force, occupied and annexed a part of the Ukrainian territory – the Autonomous Republic of Crimea and the city of Sevastopol;

having regard to the UN General Assembly Resolution of 27 March 2014 expressing support for the sovereignty and territorial integrity of Ukraine and affirming the commitment of the United Nations to recognise Crimea as part of the Ukrainian territory;

having regard to the International Criminal Court's Report on Preliminary Examination Activities of 14 November 2016 in relation to the international armed conflict in Ukraine, stating that the military aggression, which was unleashed by the Russian Federation three years ago in the Autonomous Republic of Crimea and has currently expanded to Eastern Ukraine, gravely infringes the Charter of the United Nations, the provisions of the Helsinki Final Act, the 1994 Budapest Memorandum and other international agreements;

having regard to the UN General Assembly Resolution of 19 December 2016 on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine);

having regard to the [Organization for Security and Co-operation in Europe] Parliamentary Assembly Resolution of 4 July 2016 on violations of human rights and fundamental freedoms in Crimea;

expresses its strong support for the sovereignty, independence, unity and territorial integrity of Ukraine and the inviolability of its internationally recognised borders;

strongly condemns the ongoing occupation and annexation of part of the sovereign territory of Ukraine – the Autonomous Republic of Crimea and the city of Sevastopol – by the Russian Federation;

reiterates its call on the Russian Federation to end the unlawful occupation and annexation of Crimea, withdraw its armed forces from the Ukrainian territory, immediately implement the Minsk agreements and comply with international law and its own obligations under international law;

points out that the intensive militarisation of the Crimean peninsula carried out by the Russian Federation poses a threat to the security and stability of the whole of Europe;

...

expresses support for the Ukrainian authorities' raising the issues of recovery of the occupied and annexed territory and claims for damage incurred in the course of the occupation and annexation in international organisations and courts;

appeals to the political leaders, parliaments and governments of the transatlantic-community and the European Union, urging them to pursue an active policy of non-recognition of the occupation and annexation of Crimea and to uphold the sanctions regime in a principled manner, preventing any attempts to evade it; furthermore, to unanimously uphold the position that the termination of the occupation and annexation of Crimea is one of the conditions for the resumption of full cooperation with the Russian Federation and the sanctions applied by the Western democratic communities for the actions that undermine the independence of Ukraine and infringe its territorial integrity should be maintained until Ukraine's territorial integrity is restored in accordance with the principles enshrined in the Constitution of Ukraine and international law."

B. International law and material

1. Council of Europe

40. On 10 April 2014 the Council of Europe Parliamentary Assembly adopted resolution no. 1990 (2014) on Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation, in which the Assembly considered that the actions of the Russian Federation, leading up to the annexation of Crimea and the military occupation of the Ukrainian territory constituted, beyond any doubt, a grave violation of international law, including of the United Nations Charter and the Organization for Security and Co-operation in Europe (OSCE) Helsinki Final Act. Those actions were also in clear contradiction with the Statute of the Council of Europe, in particular its preamble, and the obligations resulting from Article 3, as well as with the commitments undertaken by the Russian

Federation upon accession and contained in Assembly Opinion 193 (1996) on Russia's request for membership of the Council of Europe.

41. On 26 January 2023 the Parliamentary Assembly of the Council of Europe adopted resolution no. 2482 (2023) on Legal and human rights aspects of the Russian Federation's aggression against Ukraine, in which it reiterated that the Russian Federation's armed attack and large-scale invasion of Ukraine launched on 24 February 2022 constitute an 'aggression' under the terms of Resolution 3314 (XXIX) of the United Nations General Assembly adopted in 1974 and are clearly in breach of the Charter of the United Nations.

2. European Union

42. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, in so far as it concerns the restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health, reads as follows:

Article 27
General principles

> "1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.
>
> 2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.
>
> The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted. ..."

43. In its judgment of 2 May 2018 in *K. v Staatssecretaris van Veiligheid en Justitie and H.F. v Belgische Staat* (concerning the right of residence and allegations of war crimes, C-331/16 and C-366/16, EU:C:2018:296), which, among other things, concerned restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health, the Court of Justice of the European Union (hereinafter "the CJEU"), sitting as a Grand Chamber, ruled as follows:

> "42. As regards the concept of 'public security', it is clear from the [CJEU's] case-law that this concept covers both the internal and external security of a Member State (judgment of 23 November 2010, *Tsakouridis*, C-145/09, EU:C:2010:708, paragraph

43). Internal security may be affected by, *inter alia*, a direct threat to the peace of mind and physical security of the population of the Member State concerned (see, to that effect, judgment of 22 May 2012, I., C-348/09, EU:C:2012:300, paragraph 28). As regards external security, that may be affected by, *inter alia*, the risk of a serious disturbance to the foreign relations of that Member State or to the peaceful coexistence of nations (see, to that effect, judgment of 23 November 2010, *Tsakouridis*, C-145/09, EU:C:2010:708, paragraph 44).

...

60. ... [I]t must be observed that, however improbable it may appear that such crimes or acts may recur outside their specific historical and social context, conduct of the individual concerned that shows the persistence in him of a disposition hostile to the fundamental values enshrined in Articles 2 and 3 of the TEU, such as human dignity and human rights, as revealed by those crimes or those acts, is, for its part, capable of constituting a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, within the meaning of the first sentence of the second subparagraph of Article 27(2) of Directive 2004/38."

44. The CJEU also held in its judgment of 4 October 2012 in *Hristo Byankov v Glaven sekretar na Ministerstvo na vatreshnite raboti* (C 249/11, EU:C:2012:608, § 41) as follows (see also judgment of the CJEU of 13 July 2017 in *E v Subdelegación del Gobierno en Álava*, C 193/16, EU:C:2017:542, § 22):

"the derogations from the free movement of persons that are capable of being invoked by a Member State imply in particular, as is stated in Article 27(2) of Directive 2004/38, that, if measures taken on grounds of public policy or public security are to be justified, they must be based exclusively on the personal conduct of the individual concerned and that justifications that are isolated from the particulars of the case in question or that rely on considerations of general prevention cannot be accepted."

45. On 23 November 2016 the European Parliament adopted a resolution (no. 2016/2030(INI)) on EU strategic communication to counteract propaganda against it by third parties, the relevant parts of which read (bold and italics in the original text):

"The European Parliament,

...

Recognising and exposing Russian disinformation and propaganda warfare

...

8. Recognises that the Russian Government is employing a wide range of tools and instruments, such as think tanks and special foundations (e.g. Russkiy Mir), special authorities (Rossotrudnichestvo), multilingual TV stations (e.g. RT), pseudo news agencies and multimedia services (e.g. Sputnik), cross-border social and religious groups, as the regime wants to present itself as the only defender of traditional Christian values, social media and internet trolls to challenge democratic values, divide Europe, gather domestic support and create the perception of failed states in the EU's eastern neighbourhood; stresses that Russia invests relevant financial resources in its disinformation and propaganda instruments engaged either directly by the state or through Kremlin-controlled companies and organisations; underlines that, on the one hand, the Kremlin is funding political parties and other organisations within the EU

with the intent of undermining political cohesion, and that, on the other hand, Kremlin propaganda directly targets specific journalists, politicians and individuals in the EU;

9. Recalls that security and intelligence services conclude that Russia has the capacity and intention to conduct operations aimed at destabilising other countries; points out that this often takes the form of support for political extremists and large-scale disinformation and mass media campaigns; notes, furthermore, that such media companies are present and active in the EU;

...

11. Argues that Russian strategic communication is part of a larger subversive campaign to weaken EU cooperation and the sovereignty, political independence and territorial integrity of the Union and its Member States; urges Member State governments to be vigilant towards Russian information operations on European soil and to increase capacity sharing and counterintelligence efforts aimed at countering such operations;

...

13. Is seriously concerned by the rapid expansion of Kremlin-inspired activities in Europe, including disinformation and propaganda seeking to maintain or increase Russia's influence to weaken and split the EU; stresses that a large part of the Kremlin's propaganda is aimed at describing some European countries as belonging to 'Russia's traditional sphere of influence'; notes that one of its main strategies is to circulate and impose an alternative narrative, often based on a manipulated interpretation of historical events and aimed at justifying its external actions and geopolitical interests; notes that falsifying history is one of its main strategies; in this respect, notes the need to raise awareness of the crimes of communist regimes through public campaigns and educational systems and to support research and documentation activities, especially in the former members of the Soviet bloc, to counter the Kremlin narrative; ..."

COMPLAINTS

46. The applicant complained under Article 10 of the Convention about the prohibition on his temporary entry into the Republic of Lithuania. He submitted that the restrictive measure had been adopted as a means of censoring his political views.

47. The applicant further complained that the entry ban had led to his inability to obtain income from previously planned concert activities in Lithuania, in breach of his rights under Article 1 of Protocol No. 1 to the Convention, and had been discriminatory, in breach of Article 14 of the Convention.

THE LAW

A. Complaint under Article 10 of the Convention

48. The applicant argued that the Lithuanian authorities had failed to substantiate the ban on his entering Lithuania with proper legal grounds and to explain specifically the reasons why his activities had been characterised

as a threat to national security and that the measure had been disproportionate. He complained that this measure was aimed at censoring his political views and expression on Lithuanian territory, which represented an interference on his rights under Article 10 of the Convention. That Article reads:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

1. Existence of an interference with the applicant's right to freedom of expression

49. The Court observes that the applicant did not complain that he was not allowed to stay or live in Lithuania, but rather that his previously expressed opinions had prompted the Lithuanian authorities to impose a temporary ban on his entry. The Court reiterates in this connection that, whereas the right of a foreigner to enter or remain in a country is not as such guaranteed by the Convention, immigration controls must be exercised consistently with Convention obligations (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, §§ 59-60, Series A no. 94). Thus, in the context of freedom of religion, in *Perry v. Latvia* (no. 30273/03, §§ 10 and 56, 8 November 2007), 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, had amounted to an interference with that applicant's right to freedom of religion.

50. In its decision in the case of *Omkarananda and the Divine Light Zentrum v. Switzerland*,(no. 8118/77, Commission decision of 19 March 1981, Decisions and Reports 25, p. 118), the Commission found in the context of deportation 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". Similarly, in *Nolan and K. v. Russia* (no. 2512/04, §§ 58-79, 12 February 2009) the Court examined a denial of re-entry in conjunction with the grounds of expulsion in the context of freedom of religion.

51. The considerations applicable in the context of freedom of religion are also relevant in the context of freedom of expression. For example, in *Piermont v. France* (27 April 1995, §§ 51-53, Series A no. 314), the Court

held that the expulsion and ban imposed on a German national's entry into French Polynesia on account of that applicant's statements attacking French policies had amounted to an interference under Article 10 of the Convention. The Court has also examined a case concerning a ban imposed by the Portuguese authorities on a ship whose crew was about to launch a campaign in Portugal in favour of the decriminalisation of abortion. The Court held that the ban, which had effectively prevented the ship from entering Portuguese territorial waters, amounted to an interference with the applicants' right to freedom of expression (see *Women On Waves and Others v. Portugal*, no. 31276/05, § 30, 3 February 2009).

52. In the present case the applicant was banned from re-entering Lithuania in 2021, despite his apparent previous entries (see paragraphs 12 and 23 above), on account of the contents of his previous public statements and position. His appeal was denied by the administrative courts and the ban is still valid. He has been unable to enter Lithuania since 2021.

53. The Court considers that the ban on the applicant's entry is materially related to his right to freedom of expression because it disregards the fact that Article 10 rights are enshrined "regardless of frontiers" and that no distinction can be drawn between the protected freedom of expression of nationals and that of foreigners. This principle implies that the Contracting States may only restrict information received from abroad within the confines of the justifications set out in Article 10 § 2 (see *Cox v. Turkey*, no. 2933/03, § 31, 20 May 2010). The scope of Article 10 of the Convention includes the right to impart information. The applicant is precluded from entering Lithuania on grounds of his opinions as demonstrated by his conduct and, as a result, his ability to impart information and ideas within that country has been restricted. In light of the foregoing, the Court concludes that there has been an interference with the applicant's rights guaranteed by Article 10 of the Convention. The Court will thus proceed to examine whether that interference was justified under the second paragraph of that provision.

2. Whether the interference was "prescribed by law"

54. The Court has consistently held that the first of these requirements does not merely dictate that the interference should have a basis in domestic law, but also relates to the quality of that law, requiring it to be compatible with the rule of law. The phrase thus implies that domestic law must be accessible and foreseeable, in the sense of being sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention. The law must moreover afford a degree of legal protection against arbitrary interference by the authorities. In matters affecting fundamental rights it would be contrary to the rule of law for a legal discretion granted to the executive to be expressed in terms of unfettered power. Consequently, the law must indicate the scope of any such

discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, so as to give the individual adequate protection against arbitrary interference (see, *mutatis mutandis*, *C.G. and Others v. Bulgaria*, cited above, § 39).

55. The Court is satisfied that the measure was prescribed by law, namely, Article 133 §§ 5, 6 and 8 of the Law on the Legal Status of Aliens (see paragraph 35 above) and points 37.1, 40 and 43.3 of the Rules (see paragraph 36 above), that fact having been referred to by the Migration Department and also acknowledged by the domestic courts at two levels of jurisdiction (see paragraphs 6, 17, 21, 29 and 33 above). The Court also takes note of the Migration Department's explanation that the restriction on the applicant, an EU citizen, on entering Lithuania had a basis in Article 98 of the Law on the Legal Status of Aliens, which was introduced into Lithuanian domestic law in order to implement Lithuania's obligations under EU law, namely, Directive 2004/38/EC (see paragraphs 14 and 42 above).

56. The Court also takes note of the Vilnius Regional Administrative Court's explanation, on the basis of the Supreme Administrative Court's practice and the Court's case-law, that, under the Convention, States may not be required to enact legal provisions listing in detail all the conduct that might prompt a decision to expel an individual on national security grounds, given that the notion of national security was not capable of being comprehensively defined (see paragraph 18 above). In that connection, in the applicant's case the Supreme Administrative Court emphasised that the notion "possible threat" depended on the particular circumstances of the case (see paragraph 30 above). The Court finds that those explanations further support a finding that the interference with the applicant's rights under Article 10 of the Convention had a legal basis compatible with the rule of law.

3. Whether the ban pursued a "legitimate aim"

57. The Court reiterates that the ban on the applicant's entering Lithuania was adopted in the interests of national security and public order. It takes note of the arguments by the Ministry of Foreign Affairs (see paragraphs 5 and 27 above) and the Migration Department (see paragraphs 6, 9, 10 and 25 above) and also observes that the aims of protection of national security and public order were referred to by the domestic courts (see paragraphs 19, 32 and 33 above). The Court is prepared to accept that the interference pursued one or more of the legitimate aims under Article 10 of the Convention, which include, *inter alia*, national security, public safety, and the prevention of disorder.

58. It remains to be assessed whether the interference was necessary in a democratic society.

4. Whether the interference was "necessary in a democratic society"

59. As established by the Lithuanian authorities, the applicant was banned from entering Lithuania for five years because the domestic authorities concluded that his presence in Lithuania constituted a threat to national security and public order on account of the applicant's having been the Russian Federation's tool of "soft power" (see paragraphs 4, 6, 9 and 32 above).

60. It is not for the Court to take the place of the States Parties to the Convention in defining their national interests, a sphere which traditionally forms part of the inner core of State sovereignty (see *Zarubin and Others v. Lithuania* (dec.), no. 69111/17, § 54, 26 November 2019)). On the facts of the case the Court notes that the decision to ban the applicant from entering Lithuania was prompted by the Ministry of Foreign Affairs, which referred to his possible sway over part of the population not only within the borders of the Russian Federation, but also within the States of the former USSR (see point 13 *in fine* in paragraph 45 above), the applicant having publicly supported the Russian Federation's occupational policy and justified its aggressive actions (see paragraphs 4, 5 and 15 above). The Migration Department, which, under domestic law had no competence to question information provided by the Ministry of Foreign Affairs (see paragraphs 8 and 17 above), subscribed to those arguments (see paragraph 6 above) and further noted that the applicant had expressed public support for the annexation of Crimea by the Russian Federation and broadcasted the message that the return of the Crimean Peninsula to Russia had been a glorious and victorious event. As noted by the Migration Department, its decision was adopted on the basis of objective and reasoned data rather than suppositions (see paragraph 9 *in fine* above). The Migration Department also referred to the applicant being Vladimir Putin's "representative on stage", constantly and publicly supporting the President of the Russian Federation and his policies (see paragraph 10 above).

61. The Court refers to the Migration Department's explanation that various means of propaganda, including television, social networks, movies and popular music singers, such as the applicant, who wished to come from Russia to give concerts, had been employed by the Russian Federation against the Baltic States. Propaganda was firstly aimed at the local Russian communities, yet its goal was also to influence a wider audience – Russian speakers or those who yearned for "the glorious Soviet Union era". As noted by the Department, the applicant did not deny that he was a tool of the Russian Federation's "soft power" and the applicant's physical presence in Lithuania was indispensable in spreading the Russian Federation's disinformation and propaganda (see paragraph 9 above). Those elements were referred to by the Supreme Administrative Court when it reached a conclusion that the applicant's ban from entering Lithuania had been justified and necessary (see paragraph 32 above). In this context the Court also refers to the *Seimas*'

Resolution of 2002, cited by the Migration Department, which lists information threats, including propaganda spread by certain States and non-State actors, as being among the threats to national security (see paragraphs 25 and 38 above). The need for recognising and exposing Russian disinformation and propaganda warfare has also been acknowledged by the European Parliament (see paragraph 45 above).

62. The Court has also observed that the right to freely express opinions and to take part in a peaceful assembly is of such importance that it cannot be restricted in any way, so long as the person concerned does not himself or herself commit any reprehensible act on such an occasion (see, *mutatis mutandis*, *Ezelin v. France*, 26 April 1991, § 53, Series A no. 202, and *Women On Waves and Others*, cited above, § 41 *in fine*).

63. The Court further notes that the Supreme Administrative Court, when assessing whether on the grounds of protecting Lithuania's national security and public order it had been necessary to ban the applicant from entering Lithuania, also referred to Article 27 §§ 2 and 3 of Directive 2004/38/EC and the CJEU's judgment in case C-331/16 (see paragraphs 30, 42 and 43 above). As held by the CJEU, the concept of "public security" clearly covers both the internal and external security of the member State; internal security may be affected by direct threat to the peace of mind of the population of the member State concerned; external security may be affected by the risk to a peaceful coexistence of nations. The CJEU also noted that an individual's conduct that "shows the persistence in him of a disposition hostile to the fundamental values enshrined in Articles 2 and 3 of the TEU ... is, for its part, capable of constituting a genuine, present and sufficiently serious threat affecting one of the fundamental interest of society, within the meaning of the first sentence of the second sub-paragraph of Article 27 § 2 of Directive 2004/38" (see paragraph 43 above). On the facts of the case, and also taking note of the resolutions of the Council of Europe Parliamentary Assembly (see paragraphs 40 and 41 above), the Court does not find that the Lithuanian authorities' assessment that the applicant posed a real and present danger to national security and public order was arbitrary or without basis. As noted by the Migration Department and confirmed by the domestic courts, the applicant did not deny the facts regarding his support of the Russian Federation's actions in the Crimean Peninsula (see paragraphs 9, 10, 17 *in fine* and 29 above). In addition, although the applicant contended that the ban had been adopted as a general prevention, his argument was disputed by the Supreme Administrative Court, which emphasised that although the assessment of a threat posed by a foreigner, should he or she be permitted to enter the country, was essentially from the perspective of a future threat and that a certain projection was unavoidable, that process had to be based on established facts, especially on the person's previous actions and their nature (see paragraph 31 above; see also paragraph 44 above). In the applicant's case, he essentially did not contest the facts stated in the Ministry of Foreign

Affairs' conclusion regarding his giving concerts in occupied Crimea or that he had been banned from entering Ukraine (see paragraphs 4 and 17 *in fine* above).

64. The Court has held that while the executive's assessment of what poses a threat to national security will naturally be of significant weight, the independent authority or court must be able to react in cases where the invocation of this concept has no reasonable basis in the facts or reveals an interpretation of "national security" that is unlawful or contrary to common sense and arbitrary (see *C.G. and Others v. Bulgaria*, cited above, § 40).

65. In the light of the foregoing, the Court does not find that the national courts, while accepting for examination the applicant's application for judicial review *ex post facto*, did not subject the Migration Department's assertion that he represented a threat to national security and public order to meaningful scrutiny. There is nothing in the case file to suggest that the domestic courts erred in their assessment of the relevant facts or applied domestic law in an arbitrary or manifestly unreasonable manner. Furthermore, the Court has held that considerations concerning the fairness of proceedings may need to be taken into account in examining a case of interference with the exercise of Article 10 rights (see *Stoll v. Switzerland* [GC], no. 69698/01, § 137, ECHR 2007-V). In the applicant's case, the domestic courts' decisions were reached after hearing the applicant's position (see paragraphs 7 and 23 above).

66. Lastly, as to the proportionality of the impugned measure, the Court notes that the courts explicitly addressed the matter and weighed the interests of national security and public order, on the one hand, against the applicant's actions and the severity of the impugned measures, on the other hand (compare and contrast *Butkevich v. Russia*, no. 5865/07, §§ 137-38, 13 February 2018). The Court sees no reason to depart from the conclusion reached by the Migration Department and upheld by the domestic courts that the measure imposed on the applicant had not been disproportionate, taking into account the fact that he did not have any family, social or economic ties in Lithuania (see paragraphs 13, 20, 25 and 33 above; see also *Zarubin and Others,* cited above, § 57 *in fine).* As explicitly noted by the domestic courts, the applicant's rights as an EU citizen had been restricted only in so far as it concerned his entering Lithuania (see paragraphs 20 *in fine* and 33 *in fine* above).

67. In the light of the circumstances above, the Court is satisfied that the domestic authorities credibly demonstrated that the entry ban imposed on the applicant was necessary in the interests of national security, public safety, and/or the prevention of disorder and that it was proportionate to the legitimate aim(s) pursued. Accordingly, the applicant's complaint under Article 10 of the Convention is manifestly ill-founded and must be declared inadmissible, in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Complaint under Article 1 of Protocol No. 1 to the Convention

68. The applicant further complained that a certain number of concerts had been planned in Lithuanian territory in 2021, which had had to be cancelled on account of his entry ban, which he also considered to have been discriminatory, as other artists who had performed in Crimea had not been banned from entering Lithuania. He had therefore had to reimburse the money for the tickets already sold for some of those concerts. The applicant thus considered that he had been unable to obtain income from concert activities in Lithuania to which he had had a "legitimate expectation" on the basis of his previous concerts in Lithuania, for example, after 2014.

69. The applicant relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest ..."

70. The Court reiterates that, as a matter of well-established international law and subject to their treaty obligations, the States have the right to control the entry, residence and expulsion of aliens. The Convention does not guarantee the right of an alien to enter or to reside in a particular country (see *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, § 114, 15 October 2020). That being so, the Court finds that, in the light of the fact that the applicant was banned from entering Lithuania to give concerts (see paragraph 24 above), there may remain certain doubts as to whether the applicant could have had a "legitimate expectation" to which Article 1 of Protocol No. 1 to the Convention is applicable and, therefore, also whether Article 14 of the Convention applies. Be that as it may, it is sufficient to note that the applicant did not bring an action for damages in the Lithuanian civil courts – a remedy which he could have used under the Lithuanian law (see, *mutatis mutandis*, *Povilonis v. Lithuania* (dec.), no. 81624/17, § 37 *in fine*, 15 March 2022), had he considered that such damage had been caused to him by the Lithuanian authorities' decision to ban him from entering the country. It follows that this complaint must be declared inadmissible for failure to exhaust domestic remedies in accordance with Article 35 § 1 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 18 April 2024.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President