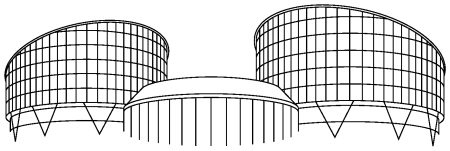

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF NOVRUK AND OTHERS v. RUSSIA

(Applications nos. 31039/11, 48511/11, 76810/12, 14618/13 and 13817/14)

JUDGMENT

STRASBOURG

15 March 2016

FINAL

15/06/2016

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

In the case of Novruk and Others v. Russia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková, *judges*,,
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 23 February 2016,

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

PROCEDURE

1. The case originated in five applications (nos. 31039/11, 48511/11, 76810/12, 14618/13 and 13817/14) 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 five individuals, whose names, dates of birth and nationality are set out below ("the applicants").

2. The applicants' representatives are listed below. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that they were victims of discrimination on account of their health status in the determination of their applications for residence permits.

4. On 8 October 2013 and 19 May 2014 the applicants' complaints of discrimination were communicated to the Government and the remainder of the application was declared inadmissible. The Court put additional questions to the parties about the structural nature of the underlying problem.

5. The Moldovan and Ukrainian Governments, who had been informed of their right to intervene in the proceedings, under Article 36 § 1 of the Convention, gave no indication that they wished to do so.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The case of Mr Novruk (application no. 31039/11, lodged on 10 May 2011)

6. The applicant, Mr Mikhail Novruk, is a Moldovan national who was born in 1972. He is represented before the Court by Ms I. Khrunova, a lawyer practising in Kazan.

7. In 2000, Mr Novruk and Ms O., a Russian national, started living together as a couple in Moldova. In 2001, a boy was born to their union; he acquired Russian nationality by birth. Two years later O. and their son moved to the Primorskiy region of Russia, where most of her family lived. In 2005 Mr Novruk joined them in Russia, and in the same year they married. They divorced in 2008.

8. In 2009, Mr Novruk met Ms S., a Russian national. In March 2010, he travelled to Moldova to renew his passport, where he discovered that he was HIV-positive. Three weeks later Mr Novruk returned to Vladivostok and on 24 April 2010 he and S. married. S. has a daughter from her previous marriage and she is also a foster parent to nine orphaned children, some of whom are HIV-positive.

9. In June 2010 Mr Novruk applied to the Primorskiy Region Federal Migration Service for a temporary residence permit. By a letter of 8 July 2010 he was informed that his application was refused by reference to section 7 § 1 (13) of the Foreign Nationals Act, which restricted the issue of residence permits to foreign nationals who could show that they were HIV-negative.

10. On 4 October 2010 the Sovetskiy District Court of Vladivostok, dismissed a challenge by the applicant to that decision, finding in particular that the Federal Migration Service had been required by law to reject his application for a residence permit. On 16 November 2010 the Primorskiy Regional Court upheld that judgment on appeal.

B. The case of Ms Kravchenko (application no. 48511/11, lodged on 24 July 2011)

11. The applicant Ms Anna Viktorovna Kravchenko is a Ukrainian national who was born in 1982. She is represented before the Court by Ms N. Yermolayeva, a lawyer practising in Moscow.

12. In 2003, Ms Kravchenko married Mr D., a Russian national. They started living in Moscow. During her pregnancy she was diagnosed as

HIV-positive. On 4 April 2003 her son F. was born. He acquired Russian nationality by birth.

13. In 2009, Ms Kravchenko applied for a temporary residence permit. By a letter of 25 May 2009 the Federal Migration Service refused her application by reference to section 7 § 1 (13) of the Foreign Nationals Act and ordered her to leave Russia within fifteen days or face deportation. Ms Kravchenko challenged the refusal with the courts.

14. On 23 September 2009 the Zamoskvoretskiy District Court, Moscow, found for Ms Kravchenko, noting in particular that the Migration Service had decided on her application without taking into account that her minor child and husband were both Russian nationals. It directed the Migration Service to reconsider the application.

15. Further to the District Court's decision, Ms Kravchenko lodged a new application for a residence permit. On 15 January 2010 the Migration Service rejected it, referring to the same provision of the Foreign Nationals Act.

16. Ms Kravchenko applied again for a judicial review. By a judgment of 3 September 2010, the Zamoskvoretskiy District Court of Moscow granted a stay of enforcement of the Migration Service decision and ordered it to reconsider the matter in the light of the Constitutional Court's decision of 12 May 2006 and the Convention principles. Ms Kravchenko appealed; she submitted that the District Court should have ruled that the Migration Service refusal had been unlawful.

17. On 8 February 2011 the Moscow City Court dismissed Ms Kravchenko's appeal against the District Court's judgment, finding that "there were no grounds to vary the judgment, because the Moscow division of the Federal Migration Service had actually complied with it".

C. The case of Mr Khalupa (application no. 76810/12, lodged on 30 October 2012)

18. The applicant, Mr Roman Khalupa, is a Moldovan national who was born in 1974. He was granted legal aid and is represented before the Court by Mr D. Bartenev, a lawyer practising in St Petersburg.

19. In 2005, Mr Khalupa married Ms E., a Russian national. Their children, a girl A. and a boy B., were born in 2005 and 2008 respectively. The family were living in St Petersburg.

20. In early 2008 Mr Khalupa took a blood test with a view to obtaining a health certificate to support his application for a temporary residence permit. He was found to be HIV-positive. The hospital reported the results of his test to the St Petersburg division of the Federal Migration Service, which issued a decision of 4 June 2008 on the undesirability of Mr Khalupa's stay in Russia because he would pose a "real threat to public

health". On 17 June 2008 the director of the Federal Migration Service ratified that decision.

21. On 1 August 2008 the decision was notified to Mr Khalupa; he left Russia three days later, in compliance with the law. He took up residence in Dubossary in the "Moldavian Republic of Transdniestria".

22. On the day following the pronouncement of the *Kiyutin v. Russia* judgment (no. 2700/10, ECHR 2011), Ms E., acting on Mr Khalupa's behalf, applied to the St Petersburg division of the Federal Migration Service, asking it to set aside the decision by which his presence in Russia had been pronounced undesirable. She submitted medical documents showing that Mr Khalupa posed no danger to public health because he was receiving appropriate treatment. Her request was forwarded to the legal department of the Federal Migration Service for review. In a letter of 5 May 2011 addressed to the deputy director of the visas and registration department of the Federal Migration Service, the director of the legal department acknowledged that the decision of 4 June 2008 had not taken fully into account Mr Khalupa's family ties in Russia. Nevertheless, on 12 September 2011 the deputy director of the St Petersburg division of the Federal Migration Service informed Mr Khalupa and Ms E. that their applications for review of the decision of 4 June 2008 had been refused. His letter did not specify the grounds for refusing the request.

23. Mr Khalupa complained to court. On 30 January 2012 the Basmannyy District Court of Moscow dismissed his complaint, finding firstly that his rights and freedoms had not been interfered with, and secondly that the director of the Federal Migration Service was not empowered to review or set aside a decision by which an individual's presence in Russia had been declared undesirable. That judgment was upheld on appeal on 16 May 2012 by the Moscow City Court. On 12 December 2012 the Presidium of the City Court rejected Mr Khalupa's cassation appeal.

24. Mr Khalupa also challenged the compatibility of section 25.10 of the Entry and Exit Procedures Act with the Constitution, in that it allowed an executive agency to pronounce his presence undesirable solely because of his HIV-positive status. By decision no. 902-O of 4 June 2013, the Constitutional Court declared his challenge inadmissible, finding that the impugned section was needed for the protection of public health from infectious diseases, including HIV. The Constitutional Court reiterated that its decision of 12 May 2006 (cited in paragraph 60 below) remained valid and applicable, and that the decision pronouncing someone's presence undesirable must take full account of humanitarian considerations and the factual circumstances of each case, including the family links and state of health of the individual concerned.

25. On 14 January 2014 Mr Khalupa's representative asked the Consumer Protection Authority to review the undesirability decision and to

allow him to visit his children in Russia. By a letter of 13 February 2014 the deputy head of the CPA replied that it did not have the authority to reverse a decision issued by the Federal Migration Service.

D. The case of Ms Ostrovskaya (application no. 14618/13, lodged on 24 January 2013)

26. The applicant, Ms Irina Grigoryevna Ostrovskaya, was born in 1953 in the Kurgan Region of the Russian Soviet Federal Socialist Republic of the USSR. She is represented before the Court by Ms O. Leonova, a lawyer practising in Samara.

27. In 1966 her parents took Ms Ostrovskaya and her sister to live in the Uzbek Soviet Socialist Republic of the USSR. In 1972 Ms Ostrovskaya got married and gave birth to a boy. Two years later her sister also married and moved back to Russia. Following the collapse of the USSR, Ms Ostrovskaya acquired Uzbek nationality.

28. After the death of her parents and husband and her son's move to Russia in 2006, Ms Ostrovskaya remained in Uzbekistan alone. In September 2011 she decided to move to Russia to share the flat occupied by her son's and her sister's families. Ms Ostrovksaya's sister and her husband are Russian nationals; her son and his family are Uzbek nationals with valid Russian residence permits.

29. In November 2011 Ms Ostrovskaya applied for a temporary residence permit. During a medical examination she tested HIV-positive.

30. By decision of 17 January 2012, the Samara division of the Federal Migration Service refused her application for residence permit by reference to section 7 § 1 (13) of the Foreign Nationals Act, and informed her accordingly. On 27 March 2012 a further notification to the same effect was sent by the Federal Migration Service.

31. By a letter of 9 June 2012 the Samara division of the Consumer Protection Authority notified Ms Ostrovskaya that she should leave Russia by 30 June 2012 or face deportation. The letter indicated that on 30 May 2012 the director of the Federal Consumer Protection Authority determined that her presence on Russian territory was undesirable by virtue of section 25.10 of the Entry and Exit Procedures Act.

32. On 26 June 2012 Ms Ostrovskaya complained to court, relying on humanitarian grounds in her claim that she should be allowed to stay in Russia. By a judgment of 23 July 2012, upheld on appeal on 17 September 2012, the Samara District and Regional Courts held that the decision to refuse her a residence permit had been lawfully given by the Migration Service within its jurisdiction and in compliance with the Foreign Nationals Act and its internal regulations. The District Court declared that it would not take any humanitarian considerations into account because Ms Ostrovskaya had missed the three-month time-limit for submitting her claim, and she had

a receipt of notification as early as 16 February 2012. The undesirability decision had been issued by the Federal Consumer Protection Authority rather than by its Samara division; since Ms Ostrovskaya had designated the latter, but not the former, as the defendant in her claim, the courts refused to review what they described as an "actually non-existent decision".

33. On 6 November 2012 the Regional Court refused her leave to appeal to a cassation instance.

E. The case of Mr V.V. (application no. 13817/14, lodged on 10 February 2014)

34. The applicant, Mr V.V., is a national of Kazakhstan who was born in 1983 and lives in Yekaterinburg. The Court granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 4).

35. V.V. came to Russia in 2006 to study at a medical college. Since 23 November 2007 he has been living with his partner Mr X, who also represented him in the present proceedings before the Court. They have maintained a common household, shared expenses and travelled together. They have met each other's parents. V.V. submitted copies of travel documents and family photographs.

36. On 11 March 2012 V.V. applied to the Sverdlovsk division of the Federal Migration Service for a temporary residence permit. He committed himself to producing an HIV certificate within thirty days. On 16 April 2012 the Sverdlovsk Regional Centre for Aids Prevention and Treatment certified him to be HIV-positive.

37. On 28 April 2012 the Federal Migration Service refused his application for a residence permit by reference to section 7 § 1 (13) of the Foreign Nationals Act. V.V. challenged the refusal before a court.

38. On 26 July 2012 the Verkh-Isetskiy District Court of Yekaterinburg upheld the refusal, finding in particular that V.V.'s HIV status amounted to an "actual threat to the health of the Russian population" and that V.V.'s living with a same-sex partner was not equivalent to having a family.

39. On 21 November 2012 the Sverdlovsk Regional Court heard an appeal by V.V. against the District Court's decision and, referring in particular to the *Kiyutin* judgment, held that V.V.'s HIV-positive status could not on its own be a ground for a restriction on his rights. Since the Migration Service did not cite any other grounds in its decision, the Regional Court enjoined it to carry out a new assessment of the application for a residence permit. The judgment became final and enforceable.

40. In the meantime, on 24 April 2012 the Sverdlovsk division of the Consumer Protection Authority forwarded a copy of V.V.'s diagnosis to the Federal Consumer Protection Authority, with a view to pronouncing his presence in Russia undesirable. On 16 November 2012 the federal authority

asked the regional division to re-administer the HIV test. On 25 December 2012 V.V. again tested positive for HIV.

41. On 15 March 2013 the Federal Consumer Protection Authority pronounced V.V.'s presence in Russia undesirable in accordance with section 25.10 of the Entry and Exit Procedures Act. The decision stated that V.V. had been infected with HIV and had avoided treatment. It cited in evidence medical certificates dated 16 April and 25 December 2012. V.V.'s representative challenged the decision before a court.

42. On 26 April 2013 V.V. travelled from Russia to Kazakhstan. On his way back two days later, he was refused entry into Russia by reference to that decision.

43. On 30 May 2013 the Verkh-Isetskiy District Court allowed the challenge, finding that the undesirability decision had been unlawful because it did not refer to any grounds other than V.V.'s HIV-positive status. It also granted a stay of enforcement of that decision, enabling V.V. to return to Russia, which he did.

44. However, on 13 August 2013 the Sverdlovsk Regional Court reversed the District Court's decision and dismissed the claim. It held that the ban against V.V. had been put in place not only because he was infected with HIV but also because he had refused to give contact details of his former partners during an "epidemiological investigation of the HIV infection", that is when filling out a questionnaire at the hospital. The Regional Court also examined V.V.'s personal circumstances and found that he was single, that his next of kin lived in Kazakhstan, that he did not have a family relationship with any Russian nationals, that he lived in a student hostel rather than in a rented flat, and that he had no resources to pay for HIV treatment.

45. On 19 February 2014 the Sverdlovsk Regional Court refused leave to appeal to the cassation instance. It found in particular:

> "The facts which, in the claimant's view, are of legal significance but which the appeal court failed to take into account, including ... his voluntary compliance with the obligation to inform his former partners about a possible HIV infection, his being in a steady sexual relationship ... cannot be established on the basis of the claimant's and his representative's statements alone.
>
> The court did not see any evidence of any social links the claimant has in the Russian Federation. The claimant and his representative merely confirmed that they have a sexual relationship, which does not equate to social links.
>
> A threat to public health ... could result from the fact that the claimant has a registered place of residence and actually lives in a hostel, which is a public place; this fact alone put the health of the other residents of the dormitory at risk because the claimant may use the same public facilities ..."

46. On 1 April 2014 a judge of the Supreme Court refused him leave to appeal to the Supreme Court.

47. After notice of the case had been given to the Government, on 7 July 2014 V.V. informed the Court that the Government Representative's office had forwarded the case materials to the Prosecutor General's Office with a request to inquire whether or not V.V. was lawfully present in Russia, whether or not he was continuing his studies, and whether his representative before the Court Mr X could have been his partner. The request contained full personal details of V.V. The Prosecutor General sent the request to the local prosecutor's office in Yekaterinburg. As it happened, Mr X was a former employee in that prosecutor's office. A prosecutor summonsed Mr X for an interview and put questions about the nature of his relationship with V.V., whether V.V. was still present in Russia, and where they lived. Law-enforcement officers also visited their neighbours and asked them how long V.V. and Mr X had lived together and whether they had girlfriends.

48. The Government submitted a copy of a statement from a prosecutor in charge of human rights and federal law compliance, dated 6 August 2014, from which it appears that on 1 June 2014 Mr X had been asked to attend the Sverdlovsk regional prosecutor's office in his capacity as V.V.'s representative. He was interviewed about "the exercise by V.V. of his labour, family and migration rights". The interview was conducted "tactfully" (*в корректной форме*), and no pressure was put on him. The police and migration authorities had established that no one lived at the address which V.V. had listed as his registered place of residence. The Government also produced a copy of the statement signed by Mr X on 1 June 2014. Mr X clarified that V. had been living in a stable same-sex relationship since 2007. He refused to name V.'s partner or to say whether he was V.'s partner: in his capacity as V.'s representative he was not required to disclose any information about his own private life. He also briefly described V.'s education, employment and migration status.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The HIV Prevention Act (no. 38-FZ of 30 March 1995)

49. Section 11(2) provides that foreign nationals and stateless persons who are in Russian territory are to be deported once it is discovered that they are HIV-positive. For the procedure, see paragraphs 53-54 below.

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

50. Section 6(8) and Government Resolution no. 789 of 1 November 2002 define the list of documents that must be enclosed with an application for a residence permit. Among other documents, an applicant must produce a medical certificate showing that he or she is not HIV-positive.

51. Section 7 contains the list of grounds for refusing a temporary residence permit or for cancelling a previously issued residence permit. In particular, an application for a residence permit will be refused if the foreigner is a drug abuser or is unable to produce a certificate showing that he or she is not HIV-positive (section 7(1)(13)).

52. Section 8(3.1)-(3.3) – in force since 2 May 2014 – establishes that a non-national who is a habitual Russian speaker (*носитель русского языка*) and whose direct ancestors lived within the state borders of modern-day Russia in the Russian Federation, the USSR or the Russian Empire, is eligible *ipso facto* for a three-year residence permit and a simplified naturalisation procedure (see also section 14(2.1) of the Russian Nationality Act, no. 62-FZ of 31 May 2002).

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

53. A competent authority may issue a decision that a foreign national's presence on Russian territory is undesirable. Such a decision may be issued if a foreign national is unlawfully residing on Russian territory or if his or her residence is lawful but creates a real threat to, in particular, public order or health, etc. If such a decision has been taken, the foreign national has to leave Russia or will otherwise be deported. That decision also forms the legal basis for subsequent refusal of re-entry into Russia (section 25.10).

54. The list of authorities competent to take such a decision was approved by Government resolution no. 199 of 7 April 2003. It included the Ministry of the Interior, the Federal Migration Service, the Consumer Protection Authority, and eight other executive agencies.

55. A foreign national shall be refused entry into Russia if, in particular, a competent authority issues a decision that his or her presence on Russian territory is undesirable (section 27 § 7).

D. Code of Administrative Offences

56. Article 6.1 provides that an HIV-positive individual who refuses to disclose the source of infection or identify the individuals with whom he or she had contacts that created the risk of transmission may be fined between 500 and 1,000 Russian roubles (RUB).

E. Regulations issued by the Consumer Protection Authority

57. On 14 September 2010 the Federal Authority for Consumer Protection and Supervision of Human Well-being, headed by the Chief Sanitary Inspector of Russia, by Order no. 336, approved Guidance on the procedure for preparation, submission and examination of materials leading to a decision on undesirability of the presence of a foreign national or

stateless person in Russia. The Guidance established that such a decision must be taken by the head of the Consumer Protection Authority or his deputy (section 2) on the proposal of a regional division of the Consumer Protection Authority (section 3).

58. On 13 February 2012 the Chief Sanitary Inspector of Russia issued a resolution (no. 16) on urgent measures required for countering the spread of HIV infection in Russia. He noted, in particular, as follows:

> "In 2011 ... 1,070,887 foreign nationals and stateless persons were tested for communicable diseases. 6,114 persons were diagnosed with diseases dangerous to the public, which is the basis for issuing a decision on the undesirability of their presence in Russia. Of those, 1,215 persons were HIV-positive ...
>
> In 2011, the Russian Consumer Protection Authority issued 1,327 decisions declaring the presence of foreign nationals from thirty-eight countries undesirable in the Russian Federation. 727 migrants left Russia or were deported ...
>
> A low rate of detection of sexually transmitted diseases among migrants in Vladimir, Tver, Leningrad, Pskov, Samara, Kirov, Pensa ... Regions is a reason for concern. Such a low rate does not correspond to the statistical average and is indicative of a poorly organised regime of medical testing of foreign nationals ..."

59. According to the report of the conference on the epidemiological monitoring of the measures that were deployed in 2012 for the prevention, detection and treatment of HIV infection and B- and C-type hepatitis (Suzdal, 11-14 March 2013), in 2012 a further 1,357,804 foreign nationals were tested for communicable diseases, of whom 1,403 tested HIV-positive.

F. The case-law of the Constitutional Court

60. On 12 May 2006 the Constitutional Court rejected a constitutional complaint introduced by an HIV-positive Ukrainian national, who lived in Russia with his Russian wife and daughter (decision no. 155-O). The Constitutional Court held that section 11(2) of the HIV Prevention Act and section 7(1)(13) of the Foreign Nationals Act were compatible with the Russian Constitution, as the restriction on temporary residence of HIV-positive foreign nationals had been imposed by the legislature for the protection of constitutional values, the main one being public health. The Constitutional Court emphasised the principle of proportionality in respect of the measures adopted in pursuance of constitutional aims, and noted that the law-enforcement authorities and courts may – on the basis of humanitarian considerations – take into account the family situation, the state of health of the HIV-positive foreign national or stateless person, and other exceptional but meritorious circumstances in determining whether the person should be granted temporary residence in the Russian territory.

61. On 12 March 2015 the Constitutional Court examined a new challenge to section 11(2) of the HIV Prevention Act, section 7(1)(13) of the Foreign Nationals Act, and section 25.10 of the Entry and Exit

Procedures Act. The challenge was brought by two nationals of Ukraine and one of Moldova and their Russian spouses. The non-Russian complainants had either been refused a residence permit or declared undesirable in Russia on account of their HIV-positive status. The Constitution Court held that the migration laws can lawfully restrict access to Russia by non-Russian nationals whose medical condition may jeopardise public health and pose a threat to national security. It acknowledged the contemporary medical consensus that HIV does not pose a threat to public health because it is not transmitted merely by the presence of the infected individual in the country or through casual contact, airborne particles, food or water. The Constitutional Court noted, on the strength of evidence submitted by the complainants, that law-enforcement authorities did not systematically take into account its position in the matter, as expressed in its previous decisions of 12 May 2006 and 4 June 2013 (see paragraph 24 above). A continued failure to interpret and apply the provisions in accordance with the Constitutional Court's pronouncements can be a reason for declaring them incompatible with the Constitution. The Constitutional Court held as follows:

> "1. To declare that the closely related provisions of section 25.10 of the Entry and Exit Procedures Act, section 11(2) of the HIV Prevention Act, and section 7(1)(13) of the Foreign Nationals Act are incompatible with the Russian Constitution ... in so far as they allow [the executive authorities] to declare undesirable the presence of a foreign national or a stateless person whose family permanently resides in Russia, to issue a deportation order or an entry ban, to refuse him a residence permit or to cancel a previously issued residence permit solely because that person is HIV-positive, provided that the person has complied with the legal requirements on HIV-positive individuals relating to the prevention of spreading the infection, and provided that no other circumstances would call for such restrictions.
>
> 2. The federal legislation should – in the light of the requirements of the Russian Constitution and the position of the Constitutional Court, as expressed in the present judgment – introduce the necessary amendments into the existing corpus of laws which would clarify the grounds and the procedure for making decisions relating to the right of HIV-positive foreign nationals or stateless persons to stay and to live in the Russian Federation."

Pending such amendments, the Constitutional Court directed that the executive and judicial authorities be guided by the position it had formulated in the judgment.

G. Draft law implementing the Constitutional Court's judgment

62. On 20 August 2015 the Russian Government introduced a draft law into the State Duma (registered under number 866379-6). The draft law purports to bring section 11(2) of the HIV Prevention Act, sections 25.10 and 27 of the Entry and Exit Procedures Act, and section 7 (1) of the Foreign Nationals Act into conformity with the Constitutional Court's

judgment of 12 March 2015 (see paragraph 61 above). It provides that HIV-positive non-nationals who have not breached the Russian legislation on the prevention of spreading of the HIV infection and whose spouse, parents or children are Russian or permanently resident in Russia shall not be denied entry into Russia, deported, pronounced undesirable on Russian territory or required to enclose an HIV-negative certificate with their application for residence permit. The Government also directs that the Federal Migration Service should revise their procedure for assessing applications for residence permits within three months of the enactment of the amendments.

III. COMPARATIVE DATA

63. In May 2009 the Joint United Nations Programme on HIV and AIDS (UNAIDS) published the survey "Mapping of restrictions on the entry, stay and residence of people living with HIV". The latest version of the survey, updated in September 2015, is available on its website[1].

64. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.

65. Within the European region, two member States of the Council of Europe lifted HIV-related travel and residence restrictions in the period after the *Kiyutin* judgment: Armenia did so in July 2011 and Moldova in June 2012. In 2013 and 2015, Andorra and Slovakia, which are member States, and Belarus, which is a European non-member State, confirmed to UNAIDS that they applied no restrictions on the entry, stay and residence for people living with HIV.

IV. RELEVANT COMMITTEE OF MINISTERS DOCUMENTS

66. In the context of the execution of the *Kiyutin v. Russia* judgment, on 6 February 2012 the Russian Government submitted a report and an action plan (DH-DD(2012)160E). The report indicated that the text of the judgment was translated into Russian and disseminated among law-enforcement officials and courts, and that no further action was necessary, for the following reasons:

1. See http://www.unaids.org/en/resources/infographics/20120514_travel.

"... the decision of 12 May 2006 by the Constitutional Court of the Russian Federation ... does not exclude that law-enforcement authorities and national courts, by reference to humanitarian considerations, taking into account the marital status, the health status of the HIV-positive individual and other important considerations for the resolution of the issue whether the deportation of that person from the Russian Federation is necessary ...

Therefore, the reading of section 7 § 1 (13) of the Foreign Nationals Act does not exclude the possibility to allow an HIV-positive foreign national to enter and to reside on Russian territory on account of the concrete circumstances of the case and with regard to Article 8 and other provisions of the Convention ...

The legal position of the Constitutional Court, as expressed in the above decision ... is obligatory in the entire territory of the Russian Federation for legislative, executive and judicial authorities, local government bodies, State officials, etc ...

In consideration of the foregoing, the competent State bodies reached the conclusion that it is not necessary to vary the currently existing legislation of the Russian Federation in connection with the entry into force of the *Kiyutin v. Russia* judgment.

Therefore, the violation of the Convention provisions established in the European Court's judgment *Kiyutin v. Russia* resulted from subjective circumstances, such as violations by the concrete State bodies and national courts which rejected the application for a residence permit without taking into account the requirements of the Russian legislation or the interpretation given by the Constitutional Court ..."

67. On 20 December 2012 the Russian Government submitted a summary of more than twenty-five cases which were heard by Russian courts in 2011 and 2012 and which concerned challenges brought by individual claimants against the Migration Service decisions refusing them residence permits on account of their HIV-positive status (DH-DD(2013)273). In the majority of those cases the courts overturned either the Migration Service or the lower courts' decisions and found in favour of the claimants, noting in particular their family ties in Russia and state of health. In the other cases the courts upheld the refusal, finding that the claimant had not established any lasting ties in Russia.

THE LAW

I. JOINDER OF THE APPLICATIONS

68. Given their similar factual and legal background, the Court decides that the five applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, READ IN CONJUNCTION WITH ARTICLE 8

69. The applicants complained that the difference in the treatment to which they were subjected on account of their health status amounted to discrimination within the meaning of Article 14 of the Convention, read in conjunction with Article 8. Those provisions read as follows:

Article 8

"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."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

1. Exhaustion of domestic remedies

70. The Government submitted that the applicants Mr Khalupa and Ms Ostrovskaya had not exhausted domestic remedies, because they had appealed to courts against the decisions pronouncing their presence in Russia undesirable outside the three-month time-limit which had been established in Russian law for challenges to such decisions. Furthermore, in their view V.V. had not exhausted domestic remedies by failing to bring a cassation appeal to the Supreme Court of the Russian Federation or to apply for supervisory review to the Presidium of that court.

71. The applicant Mr Khalupa replied that the Moscow courts had not accepted the Migration Service's objection as to the allegedly belated filing of the claim, and had proceeded to the examination of its merits and to a substantive review of the grounds for the 17 July 2008 decision. They had found that the contested decision did not violate his rights "at the present time", that is to say at the time of the hearing in 2012. Mr Khalupa also pointed out that in 2008 only three days separated the notification of the decision from his departure from Russia, which was too short a period to find legal representation, secure evidence and exercise his right to court. Besides, a judicial review of the undesirability decision had no automatic suspensive effect, and would not have prevented his deportation. In

conclusion, Mr Khalupa submitted that he had challenged the undesirability decision before the Constitutional Court, and that this showed that he had exhausted all available domestic remedies. Ms Ostrovskaya submitted that she had applied to court on 26 June 2012, that is to say within three months after she had received notification from the Federal Migration Service on 27 March 2012. Mr V.V. pointed out that he had filed a cassation appeal and a supervisory-review application with the Supreme Court, although he did not consider them to be effective remedies.

72. The rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against a State to use first the remedies provided by the national legal system, thus allowing States the opportunity to put matters right through their own legal systems before being required to answer for their acts before an international body. In order to comply with the rule, applicants should normally use remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

73. Both the applicants, Mr Khalupa and Ms Ostrovskaya, challenged the decision pronouncing their presence in Russia undesirable before domestic courts. The courts accepted their claims and dealt with the substance of the issues raised, notably Mr Khalupa's request to set aside the impugned decision and Ms Ostrovskaya's challenge to the decision. Therefore, since the domestic authorities found the applicants' appeals against the undesirability decisions admissible and examined them, delivering judicial decisions on the substance of the issues now brought before the Court, it cannot be maintained, as the Government did, that the applicants had not exhausted domestic remedies (see *Vachkovi v. Bulgaria*, no. 2747/02, § 58, 8 July 2010; *Raichinov v. Bulgaria* (dec.), no. 47579/99, 1 February 2005; and, *mutatis mutandis*, *Öztürk v. Turkey* [GC], no. 22479/93, §§ 45-46, ECHR 1999-VI).

74. The Court has recently held that, following the legislative amendments reforming the Russian civil procedure with effect from 1 January 2012, the new cassation appeal was no longer attended by the previously existing uncertainty, and that any individual who intends to lodge an application in respect of a violation of his or her Convention rights should first use the remedies offered by the new cassation procedure, including a second cassation appeal to the Supreme Court (see *Abramyan and Others v. Russia* (dec.), nos. 38951/13 and 59611/13, §§ 76-96, 12 May 2015). By contrast, the Court affirmed its constant approach to the supervisory-review procedure, which it does not consider an effective remedy to be exhausted (ibid., § 102).

75. It is however observed that the issue of whether domestic remedies have been exhausted is normally determined by reference to the date on which the application was lodged with the Court (see *Shalya v. Russia*,

no. 27335/13, § 16, 13 November 2014, and *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)). In cases where the effectiveness of a given remedy was recognised in the Court's case-law after the introduction of an application, the Court deemed it disproportionate to require the applicants to turn to that remedy for redress a long time after they had lodged their applications with the Court, especially after the time-limit for using that remedy had expired (see *Riđić and Others v. Serbia*, nos. 53736/08, 53737/08, 14271/11, 17124/11, 24452/11 and 36515/11, § 72, 1 July 2014, and *Pikić v. Croatia*, no. 16552/02, §§ 29-33, 18 January 2005, contrast with *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002‑VIII, in which the applicant could still avail himself of a new remedy).

76. The applicant V.V. lodged his application with the Court on 10 February 2014, that is to say within six months of the Regional Court's appeal judgment rejecting his claim. He continued to pursue the domestic chain of appeals concurrently with the Court proceedings, and gave the authorities further opportunities to address his grievances, submitting cassation appeals to both the Regional Court and the Supreme Court (see paragraphs 45-46 above), even though he was not required to do so before the Court recognised the reformed two-tier cassation appeal procedure to be an effective remedy. As to the application for supervisory review, the use of which depends on the discretionary powers of public officials, it was not – and is not – an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Abramyan and Others*, cited above, § 102). The Court therefore rejects the Government's objection as to the alleged non-exhaustion of domestic remedies also in the case of Mr V.V.

2. Ms Kravchenko's status as a "victim" of the alleged violation

77. The Government further alleged that Ms Kravchenko did not suffer any impairment of her rights, because the domestic courts had ruled in her favour.

78. The applicant replied that the Moscow courts had rejected her claim for her right to be issued with a residence permit to be recognised. They found that, by having reconsidered her application for a residence permit the Migration Service had executed the previous judicial decision in her favour. However, she pointed out that her right to court had been frustrated because a final decision had remained inoperative to the detriment of one party (here she referred to *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). The Convention requires the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. In her case, a judicial review of the Migration Service's decision was ineffective in practice and did not provide her with any relief for the violation of her rights which had occurred.

79. The Court observes that Ms Kravchenko complained about a refusal of residence permit because of her health status. Even though the District Court ruled in her favour on 23 September 2009 and directed the Migration Service to carry out a new assessment of her application for a residence permit, her new application was rejected on the same ground as before (see paragraphs 14-17 above). The City Court dismissed her subsequent complaint, finding that the Migration Service had "actually complied" with the District Court's judgment. As a consequence, Ms Kravchenko's situation in relation to her application for a residence permit was no different from how it had been before the start of the judicial proceedings. It follows that she may still claim to be a "victim" of the alleged violation.

3. Conclusion as to the admissibility

80. The Court considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Applicability of Article 14 of the Convention taken in conjunction with Article 8

(a) Whether the facts of the case fall "within the ambit" of Article 8

(i) Submissions by the parties

81. The Government distinguished the present case from *Kiyutin* in that none of the applicants could be considered a long-term or settled migrant within the meaning of the Court's case-law. They submitted in particular that Mr Novruk's second marriage had been very recent, that he had not had any children with his new wife and had lived with her at different addresses, and that he did not work or maintain contact with his child from the first marriage. In Ms Kravchenko's case, the domestic courts had duly taken into account the fact that her husband and child were Russian nationals. Ms Ostrovskaya had recently arrived in Russia; her sister lived far away in Magadan Region; and her adult son was no longer a member of her "core family" (here the Government referred to *Slivenko v. Latvia* [GC], no. 48321/99, §§ 94, 97, ECHR 2003-X). Although V.V. claimed in the domestic proceedings that he had lived for a long time with his same-sex partner, he did not give any details about their duration of their relationship, nor did he submit any evidence of "family life" showing that they shared expenses, jointly acquired household items, or lived under the same roof. When asked by the medical authorities, V.V. stated that he had not had any sexual relations in the past year. Moreover, V.V. did not prove that he was

working or continuing his studies at the material time. The Government concluded that he did not have a stable relationship similar to "family life", nor did he maintain any other activities falling under the notion of "private life" (here they referred to *W.J. and D.P. v. the United Kingdom*, no. 12513/86, Commission decision of 13 July 1987).

82. The applicants disputed the Government's factual allegations. Mr Novruk submitted that his relationship with his second wife had started one year before their marriage. Together they had provided a foster family to nine children, some of them HIV-positive. They lived at the same place, and the Government had deliberately confused their registered address and the actual residence. Having no work permit, he was reduced to doing menial jobs. Ms Kravchenko pointed out that both her spouse and her son were Russian nationals. Ms Ostrovskaya indicated that her entire family, comprising her son, daughter-in-law, grandson – and also, since 2012, her sister and her sister's husband – lived under the same roof, supported and took care of one another. She did not have any friends or relatives in Uzbekistan. Mr V.V. indicated that he had been in a relationship with Mr X since 2007. They had spent their free time together, travelled in Russia and abroad, supported each other, and known each other's mothers. In the domestic civil proceedings, the existence of their relationship had not been disputed. At the material time he had been continuing his studies and had also been employed by the non-governmental organisation of which he was the founder.

(ii) The Court's assessment

83. The Court reiterates at the outset that the right of an alien to enter or to settle in a particular country is not guaranteed by the Convention. Where immigration is concerned, neither Article 8 nor any other Convention provision can be considered to impose on a State a general obligation to respect the choice by married or cohabiting couples of their country of residence and to authorise family reunion in its territory. Neither party contests this. However, although Article 8 does not include a right to settle in a particular country or a right to obtain a residence permit, the State must nevertheless exercise its immigration policies in a manner which is compatible with a foreign national's human rights, in particular the right to respect for his or her private or family life and the right not to be subject to discrimination (see *Kiyutin*, cited above, § 53; *Nolan and K. v. Russia*, no. 2512/04, § 62, 12 February 2009; and *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, §§ 59-60, Series A no. 94).

84. Article 14 guarantees the enjoyment of the rights and freedoms set forth in the Convention without discrimination. It has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its

Protocols. However, the application of Article 14 does not presuppose a breach of one or more of such provisions, and to this extent it is autonomous. For Article 14 to become applicable, what is necessary, and also sufficient, is for the facts of the case to fall "within the ambit" of one or more of the Articles of the Convention or its Protocols (see *Kiyutin*, cited above, § 54, and *Thlimmenos v. Greece* [GC], no. 34369/97, § 40, ECHR 2000-IV).

85. In accordance with the Court's case-law, the existence or non-existence of "family life" is essentially a question of fact depending upon the existence of close personal ties. The notion of the "family" in Article 8 is not confined solely to marriage-based relationships, and may encompass other *de facto* "family" ties where the parties are living together outside of marriage. This includes relationships formed by cohabiting same-sex couples living in a stable *de facto* partnership (see *Schalk and Kopf v. Austria*, no. 30141/04, § 94, ECHR 2010; *K. and T. v. Finland* [GC], no. 25702/94, § 150, ECHR 2001-VII; and *Marckx v. Belgium*, 13 June 1979, § 31, Series A no. 31). Furthermore, as Article 8 also protects the right to establish and develop relationships with other human beings and the outside world, and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Regardless of the existence or otherwise of a "family life", the expulsion of a settled migrant therefore constitutes an interference with his or her right to respect for private life (see *Üner v. the Netherlands* [GC], no. 46410/99, § 59, ECHR 2006-XII, and *Maslov v. Austria* [GC], no. 1638/03, § 63, ECHR 2008). Indeed, it would be a rare case in which a settled migrant would be unable to demonstrate that his or her removal would interfere with his or her "private life" (see *Samsonnikov v. Estonia*, no. 52178/10, §§ 81-82, 3 July 2012, and *A.H. Khan v. the United Kingdom*, no. 6222/10, § 32, 20 December 2011).

86. The Court observes that the applicants Mr Novruk, Ms Kravchenko and Mr Khalupa have all been lawfully married to their Russian spouses. Children born of their marriages (to his first marriage, in the case of Mr Novruk) acquired Russian nationality by birth. The concept of "family life" must at the very least include relationships that arise from a lawful and genuine marriage (see *Abdulaziz, Cabales and Balkandali*, cited above, § 62) and children born out of a relationship are *ipso iure* part of the "family" unit from the moment of their birth and by the very fact of it (see *Keegan v. Ireland*, 26 May 1994, § 44, Series A, no. 290). The Court finds that these applicants enjoyed "family life" within the meaning of Article 8 of the Convention.

87. The applicant Mr V.V. indicated that he had lived with his partner Mr X since 2007. The Government's claim that the evidence of their

relationship has not been tested in the domestic proceedings sits ill with the actual findings of the Russian courts, which had taken that evidence but refused to recognise that their same-sex relationship amounted to a family or at least a social link (see paragraphs 38 and 45 above). On the strength of the material produced by Mr V.V., which included family photographs and travel vouchers, the Court is satisfied that V.V. and Mr X have been living in a stable *de facto* partnership which falls within the notion of "private life" and that of "family life" (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 73, ECHR 2013 (extracts)).

88. The applicant Ms Ostrovskaya moved to Russia to follow her extended family. Her parents and husband had died but her sister and her adult son lived permanently in Russia with their families. The Court reiterates that an applicant cannot rely upon the existence of "family life" in relation to adults who do not belong to his or her core family and who have not been shown to be or to have been dependent on him or her (see *Slivenko*, cited above, § 97). Nonetheless, the link between adult children and their parents falls under the head of "private life" within the meaning of Article 8 of the Convention (ibid.). She shares household expenses with her son's family and does not have friends or relatives outside Russia. These are further indicators of the personal, social and economic ties which make up her "private life" in Russia, which the exclusion order against her has threatened to disrupt.

89. Accordingly, the facts of the case fall "within the ambit" of Article 8 of the Convention.

(b) Whether the applicants' health was covered by the term "other status" within the meaning of Article 14

90. Article 14 does not prohibit all differences in treatment, but only those differences based on an identifiable, objective, or personal characteristic, or "status", by which individuals or groups are distinguishable from one another. It lists specific grounds which constitute "status" including, *inter alia*, sex, race and property. However, the list set out in Article 14 is illustrative and not exhaustive, as is shown by the words "any ground such as" (in French "*notamment*") and the inclusion in the list of the phrase "any other status" (in French "*toute autre situation*") (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, §§ 61 and 70, ECHR 2010). Although Article 14 does not expressly list health or any medical condition among the protected grounds of discrimination, the Court recognised that a physical disability and various health impairments fall within the scope of this provision (see *Glor v. Switzerland*, no. 13444/04, §§ 53-56, ECHR 2009, and *G.N. and Others v. Italy*, no. 43134/05, § 119, 1 December 2009).

91. The Court has found that a distinction made on account of an individual's health status, including such conditions as HIV infection,

should be covered – either as a disability or a form thereof – by the term "other status" in the text of Article 14 of the Convention (see *I.B. v. Greece*, no. 552/10, § 73, ECHR 2013, and *Kiyutin*, cited above, § 57). The parties did not argue otherwise in the present case.

92. It follows that Article 14 of the Convention taken in conjunction with Article 8 is applicable in the present case.

2. Compliance with Article 14 of the Convention taken in conjunction with Article 8

(a) Submissions by the parties

93. The Government submitted that unlike Mr Kiyutin, whose application for a residence permit had been rejected on the sole ground that he had not provided an HIV-negative medical certificate, the domestic courts in the present case had examined the particular situation of each applicant, including their family ties, state of health, and other exceptional circumstances. The national authorities had had regard to the facts that the applicants had arrived in Russia as adults, and could not be seen as long-term or settled migrants, and that they had not sought medical assistance in Russia. The Government considered that the national authorities had not exceeded their margin of appreciation in the matter of issuing residence permits. The number of States requiring an HIV-negative certificate as a condition for taking up residence has admittedly decreased, but a few States have retained this requirement. Moreover, since 17 January 2014 the United Kingdom has required Russian nationals to produce a negative tuberculosis test as part of their long-term visa application. Finally, the Government referred to the facts of the *Ndangoya v. Sweden* case in which the applicant, an HIV-positive man, had had unprotected sexual relations with his wife and partners and had transmitted the virus to them ((dec.), no. 17868/03, 22 June 2004). In the Government's view, this indicated that the applicants cannot be presumed to wish to avoid unsafe behaviour. Thus, in the past five years V.V. has had a significant number of sexual contacts but has refused to provide those contact details to the Consumer Protection Authority, preventing it from establishing the origin of the infection and tracing its further spread. In these circumstances, isolating V.V. from the Russian population was the only adequate measure; it has not been shown that he would be unable to obtain medical assistance in Kazakhstan.

94. The applicants submitted that the Court's finding in *Kiyutin* were applicable to the present case. They emphasised that travel restrictions could be reasonable and necessary only in connection with highly contagious diseases. The Government's reference to the tuberculosis screening which the United Kingdom imposed upon Russian nationals was irrelevant to the present case, because tuberculosis can be transmitted by airborne particles

from people with active tuberculosis to others. Even if the tuberculosis were inactive at the moment a visa application was submitted, it can develop into active tuberculosis and become infectious during a prolonged stay in the host State. Besides, tuberculosis is a treatable condition and the travel restriction is not permanent or irreversible for the affected individual. The applicants also pointed out that the Government failed to identify any specific obligations or restrictions which Russian law imposed on them in connection with their health. The applicant V.V. emphasised that there was no evidence that he had ever had unprotected sexual relations.

(b) The Court's assessment

(i) Whether the applicants were in an analogous position to other aliens

95. The Court has established in its case-law that discrimination means treating differently, without an objective and reasonable justification, persons in analogous, or relevantly similar, situations (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV, and *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008).

96. The applicants wished to obtain residence permits in Russia. For their application to be completed, they were required to submit to a medical examination which included a mandatory test for HIV infection. After they tested positive for HIV, the Federal Migration Service refused their applications by reference to the Foreign Nationals Act, which prevented HIV-positive aliens from obtaining residence permits (see paragraphs 9, 15, 20, 31 and 37 above). In addition, once the hospitals had reported their test results to the competent authorities, the Federal Migration Service (in the case of Mr Khalupa) and the Consumer Protection Authority (in the cases of Ms Ostrovskaya and Mr V.V.) pronounced their presence on Russian territory undesirable on the basis of the provisions of the HIV Prevention Act and of the Entry and Exit Procedures Act, which mandated deportation of aliens who were discovered to be HIV-positive (see paragraphs 20, 30 and 41). Since the authorities did not refer to any other legal provisions for refusing them residence permits or declaring their presence undesirable, it follows that the applicants' HIV-positive status was the sole element that exposed them to a treatment distinct from the treatment of HIV-negative non-nationals.

97. The Court therefore considers that the applicants can claim to be in a situation analogous to that of other, HIV-negative aliens.

(ii) Whether the difference in treatment was objectively and reasonably justified

98. Once an applicant has shown that there has been a difference in treatment, it is then for the respondent Government to show that the difference in treatment can be justified (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, §§ 91-92,

ECHR 1999-III). Such justification must be both objective and reasonable or, in other words, it must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim pursued. The Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify differing treatment. The scope of this margin will vary according to the circumstances, subject matter and background (see *Burden*, § 60, and *Carson and Others*, § 61, both cited above).

99. The existence of a European consensus is an additional consideration relevant in determining whether the respondent State should be afforded a narrow or a wide margin of appreciation (see *Dickson v. the United Kingdom* [GC], no. 44362/04, § 81, ECHR 2007‑V, and *S.L. v. Austria*, no. 45330/99, § 31, 9 January 2003). Where there is a common standard which the respondent State has failed to meet, this may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases (see *Kiyutin*, cited above, § 65; *Tănase v. Moldova* [GC], no. 7/08, § 176, ECHR 2010; and *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 85, ECHR 2008).

100. If a restriction on fundamental rights applies to a particularly vulnerable group in society that has suffered significant discrimination in the past, then the State's margin of appreciation is substantially narrower and it must have very weighty reasons for imposing the restrictions in question. The reason for this approach, which questions certain classifications *per se*, is that such groups were historically subject to prejudice, with lasting consequences resulting in their social exclusion. Such prejudice could entail legislative stereotyping which prohibits the individualised evaluation of their capacities and needs (see *Kiyutin*, cited above, § 63, and *Alajos Kiss v. Hungary*, no. 38832/06, § 42, 20 May 2010). The Court has found that people living with HIV have to face a whole host of problems, not only medical but also professional, social, personal and psychological, and to confront deeply rooted prejudice even from among highly educated people (see *I.B. v. Greece*, cited above, § 80). The prejudice was born out of ignorance about the routes of transmission of HIV/Aids, and has stigmatised and marginalised those who live with the virus. Consequently, the Court has held that people living with HIV are a vulnerable group and that the State should be afforded only a narrow margin of appreciation in choosing measures that single out this group for differential treatment on account of their health status (see *I.B. v. Greece*, § 81, and *Kiyutin*, § 64, both cited above).

101. The Court notes a marked improvement in the situation of people living with HIV as regards restrictions on their entry, stay and residence in a foreign country. Shortly after it gave the *Kiyutin* judgment on 10 March 2011, the General Assembly of the United Nations adopted, at its 95th plenary meeting on 10 June 2011, the "Political Declaration on HIV and

AIDS", by which the heads and representatives of UN member States declared their solemn commitment to end the HIV/Aids epidemic by bold and decisive action, including in particular identification and review of any remaining HIV-related restrictions on aliens' entry, stay and residence in order to eliminate them (paragraph 79 of the Political Declaration). In the ensuing period up to the present day, the number of countries, territories and areas worldwide that do not impose any HIV-specific restrictions on entry, stay or residence has grown from 124 to 142. Conversely, the number of countries that maintain such restrictions has fallen from 52 to 35 (see paragraph 64 above, and compare with *Kiyutin*, cited above, § 37). It is at the European level that the progress has been most significant: in the wake of the *Kiyutin* judgment, Armenia and Moldova brought their legislation into compliance with the Court's findings and abolished HIV-specific travel restrictions, while Andorra and Slovakia clarified that they did not apply any such restrictions (see paragraph 65 above). As things currently stand, Russia is the only member State of the Council of Europe and one of sixteen States world-wide that enforces deportation of HIV-positive non-nationals (see paragraph 64 above). Since the expulsion of HIV-positive individuals does not reflect an established European consensus, and has no support in other member States, the respondent State is under an obligation to provide a particularly compelling justification for the differential treatment of which the applicants complained that they had been victims (see *Kiyutin*, cited above, § 65).

102. In *Kiyutin*, the Court found that, while the restriction on residence rights of HIV-positive non-nationals may be said to pursue the legitimate aim of the protection of public health, internationally recognised experts and organisations active in the field of public health, including the World Health Organisation (WHO), the International Organisation for Migration, the International Labour Organisation, and EU institutions, unanimously agreed that entry, stay and residence restrictions on people living with HIV could not be objectively justified by reference to public-health concerns (see *Kiyutin*, cited above, §§ 66-67).

103. Admittedly, travel restrictions are instrumental for the protection of public health against highly contagious diseases which can be transmitted through casual contact or airborne particles (see *Kiyutin*, cited above, § 68). The example of tuberculosis-related restrictions which the Government gave in their submissions is particularly apposite here. Tuberculosis has no symptoms in its latent form but may progress over time to the active phase and be spread through the air when people who have active tuberculosis cough or sneeze. Russia has an extremely high incidence of tuberculosis, with an estimated rate of 114 cases per 100,000 population, as compared with seventeen cases in the United Kingdom (WHO Global Tuberculosis Report 2014). Screening prospective UK long-term residents for latent tuberculosis does not affect just Russian nationals, as the Government

incorrectly claimed, but applies indiscriminately on the basis of their residence – rather than their nationality – in countries with a similarly high incidence of tuberculosis.[1]

104. By contrast with tuberculosis, the presence of an HIV-positive individual in a country, whether for a short or an extended period, is not in itself a threat to public health: HIV is not transmitted through casual contact or by airborne particles, but rather through specific behaviours that include unprotected sexual intercourse and the sharing of contaminated syringes as the main routes of transmission (see *Kiyutin*, cited above, § 68). The Court is bound to observe that the Russian court of cassation based its decision justifying the exclusion order against the applicant V.V. on a manifestly inaccurate premise, namely that he may transmit the infection to others by using shared facilities in a student dormitory (see paragraph 45 above and compare with *I.B. v. Greece*, cited above, § 88).

105. The limited ways in which HIV can be transmitted does not put prevention exclusively within the control of the HIV-positive non-national, but rather enables HIV-negative persons to take steps to protect themselves against the infection through safer sexual relations and safer injections. Excluding HIV-positive non-nationals from entry or residence in order to prevent HIV transmission is based on the assumption that they will engage in specific unsafe behaviours, and that the national will also fail to protect himself or herself. This assumption amounts to an unwarranted generalisation which has no basis in fact and fails to take into account the specific situation of the individual concerned (see *Kiyutin*, cited above, § 68).

106. The present case is distinguishable from the *Ndangoya* case, which the Government prayed in aid. In that case, the expulsion order against Mr Ndangoya followed on his conviction of criminal assault on people with whom he had had unprotected sexual intercourse without disclosing his HIV-positive status. In the instant case, the applicants have been living with their families or partners and they have not been suspected of, or charged with, any comparable acts, even though Russian law treats any form of behaviour by an HIV-positive person who is aware of his or her HIV status and who exposes others to the risk of HIV infection as a criminal offence punishable by deprivation of liberty (see *Kiyutin*, cited above, §§ 27 and 68). The case of V.V. is different from the others, in that the domestic authorities deduced an increased risk of unsafe behaviour on his part from his refusal to name his former partners. The Court is not persuaded that the risk was convincingly established. It observes at the outset that this particular ground appeared rather late in the proceedings: it was not part of the decision declaring the applicant's presence undesirable that referred solely to the medical certificates showing the applicant's diagnosis

1. See https://www.gov.uk/tb-test-visa/countries-where-you-need-a-tb-test-to-enter-the-uk.

(see paragraph 41 above), and was put forward for the first time by the court of appeal which overturned the initial decision in the applicant's favour (see paragraph 44 above). The applicant could not reasonably expect that a new ground for his exclusion would be brought up, as concealing names of contacts by an HIV-positive person constitutes an administrative offence in Russian law (see paragraph 56 above), of which he had never been accused or found guilty. He mounted a defence to that charge in his cassation appeal, indicating that he had disclosed his HIV status to his former partners and that he was living in a stable relationship, yet the Regional Court shifted the burden of proof on to him, holding that he had to adduce evidence, above and beyond his own declaration, to clear himself of that allegation (see paragraph 45 above). Besides, the Regional Court based its decision on another novel ground, namely that the applicant could transmit HIV by using shared dormitory facilities, which, as the Court observed above, was scientifically false. In sum, the Court finds that the alleged risk of unsafe behaviour on the part of V.V. amounted to nothing more than conjecture not supported with facts or evidence. Nor has any public health risk been shown to exist in Mr Khalupa's case, in which the Migration Service described that risk as "real", without elaborating on why it was so (see paragraph 20 above).

107. In so far as the Government interpreted the fact that the applicants could receive treatment in their home countries as a factor militating in favour of their removal, the Court reiterates that it cannot be relied upon as a ground for denying them an opportunity to continue their family and private life in Russia. The applicants should be free to decide on their own medical arrangements, including paying for the medication they need or travelling to the State where they are eligible for free medical assistance.

108. The Court emphasises that a decision capable of curtailing the right to respect for the individual's private and family life must be preceded by an individualised judicial assessment of all the relevant facts. Where such a decision is based on a predetermined classification of the entire group of vulnerable individuals as a threat to public health solely because of their health status, it cannot be considered compatible with the protection against discrimination enshrined in Article 14 of the Convention (see *Kiyutin*, § 73, and *Alajos Kiss*, § 44, both cited above). In *Kiyutin*, the Court found that the impugned provisions of Russian law, including section 7(1)(13) of the Foreign Nationals Act and section 11(2) of the HIV Prevention Act, are of an imperative nature, leaving no room for an individualised assessment based on the facts of a particular case (see *Kiyutin*, cited above, § 72). In the cases of Mr Novruk and Ms Ostrovskaya, as in *Kiyutin*, the courts refused their applications for residence permits solely by reference to the Foreign Nationals Act, without taking into account their ties with family members in Russia. Mr Khalupa was unable to obtain a new Convention-compliant assessment of the exclusion decisions for purely formal administrative

reasons. At first, the courts refused to order a new review of the undesirability decision, contending that there was no legal provision explicitly providing for the possibility of such a review (see paragraph 23 above). Later on, the Consumer Protection Authority refused to consider his request to be allowed to visit his children in Russia, claiming that it was not competent to review the decisions issued by another agency (see paragraph 25 above).

109. The balancing exercise which Russian courts performed in the first round of proceedings brought by Ms Kravchenko and Mr V.V. appears to have been sufficiently comprehensive. The courts held that their personal ties in Russia carried a greater weight than an alleged threat to public health, and enjoined the migration service to make a new assessment of their applications (see paragraphs 14 and 39 above). However, their judgments had no practical effect and gave no relief to the applicants, for their HIV-positive status was again cited as a ground for refusing Ms Kravchenko's application and for pronouncing V.V.'s presence in Russia undesirable. In both cases, the executive agencies grounded new decisions solely on the applicable legal provisions without any mention or individualised assessment of the applicants' family situations. In the Court's view, these elements disclose a lack of a genuine desire to go beyond a formalistic approach and to perform in earnest a balancing act with due regard to the position of the Russian Constitutional Court (see paragraph 60 above) and the requirements of the Convention.

110. Finally, it must be borne in mind that the decisions declaring the individuals' presence in Russia undesirable, such as those issued against Mr Khalupa, Ms Ostrovskaya and Mr V.V., set no time-limit on their exclusion from the Russian territory. As they were issued in connection with their infection with HIV, which is by today's medical standards a lifetime condition, they have the effect of a permanent ban on their re-entry to Russia in accordance with the current legislation. The Court reiterates that the imposition of a residence prohibition of unlimited duration is an overly rigorous measure which it has found to be disproportionate to the aim pursued in many previous cases (see *Keles v. Germany*, no. 32231/02, § 66, 27 October 2005; *Radovanovic v. Austria*, no. 42703/98, § 37, 22 April 2004; *Yilmaz v. Germany*, no. 52853/99, §§ 48-49, 17 April 2003; and *Ezzouhdi v. France*, no. 47160/99, § 35, 13 February 2001). In these circumstances, the unlimited validity of the undesirability decisions against the three applicants was a factor that ought to have been part of the domestic authorities' assessment, but the decisions of executive agencies and judgments of the Russian courts were silent on this issue (compare *Gablishvili v. Russia*, no. 39428/12, §§ 58-59, 26 June 2014).

111. In sum, the Court finds that, in the light of the overwhelming European and international consensus geared towards abolishing the outstanding restrictions on entry, stay and residence of HIV-positive

non-nationals who constitute a particularly vulnerable group, the respondent Government have not advanced compelling reasons or any objective justification for their differential treatment for health reasons.

112. The applicants have therefore been victims of discrimination on account of their health, in violation of Article 14 of the Convention taken in conjunction with Article 8.

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

113. The applicant V.V. complained that the police visit to their home and the summonsing of his partner to the prosecutor's office for an interview amounted to a hindrance to the exercise of his right of individual petition under Article 34 of the Convention, which reads, in so far as relevant, as follows:

> "The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

114. The Government explained that the Government Representative's office does not have territorial divisions; it relies on its cooperation with local prosecutors to obtain information from regional authorities or negotiate friendly settlements with applicants. This is the standard procedure which has been used in all cases. No applicant has complained about it, with the exception of the applicant in the *Markin* case, in which the Court found no breach of the Respondent State's obligations under Article 34 (see *Konstantin Markin v. Russia* [GC], no. 30078/06, §§ 162-163, ECHR 2012 (extracts)). In the present case, the prosecutor paid a visit to V.'s and Mr X's flat to check the information they had given about their family life. Mr X had given a statement to the local prosecutor, without any pressure being brought to bear on him. There has been no attempt to persecute, intimidate or put pressure on either the applicant or his representative.

115. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, "pressure" includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy. Whether or not contacts between the authorities and an applicant are tantamount to unacceptable practice from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. The Court has repeatedly emphasised that it was in principle not appropriate for

the authorities of a respondent State to enter into direct contact with an applicant in connection with his case before the Court. In this respect, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities. Even an informal interview with the applicant or his representative, let alone his or her formal questioning in respect of the Court proceedings, may be regarded as a form of intimidation (see, among other authorities, *Fedotova v. Russia*, no. 73225/01, §§ 49-52, 13 April 2006; *Kurt v. Turkey*, 25 May 1998, §§ 159-160, *Reports* 1998-III; *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports* 1996-IV, and *Aksoy v. Turkey*, 18 December 1996, § 105, *Reports* 1996-VI).

116. Yet not every contact between the authorities and an applicant in connection with the application pending before the Court can be regarded as "intimidation". Article 34 does not prevent the State from taking measures for improving the applicant's situation or investigating the problem which was at the heart of the complaints to the Court. In cases concerning a domestic inquiry into the facts underlying the application, the Court was unable to find, in the absence of evidence of pressure or compulsion to give evidence, that the applicant was hindered in the exercise of the right of individual petition (see *Vladimir Sokolov v. Russia*, no. 31242/05, § 80, 29 March 2011; *Tarariyeva v. Russia*, no. 4353/03, §§ 118-122, ECHR 2006-XV (extracts); and *Matyar v. Turkey*, no. 23423/94, § 159, 21 February 2002). By contrast, the Court established a breach of Article 34 where the questioning of the applicants was unconnected to any domestic investigation or conducted by an authority having no competence in the matter (see *Kosheleva and Others v. Russia*, no. 9046/07, §§ 20-29, 17 January 2012, and *Ryabov v. Russia*, no. 3896/04, §§ 60-65, 31 January 2008). Similarly, lacking any submissions from the Government about the nature or findings of a domestic investigation into complaints raised by the applicant before the Court and having no transcripts of the meetings between the applicant and the State officials, the Court was not satisfied that the applicant was contacted in connection with a domestic investigation and concluded to a breach of Article 34 of the Convention (see *Lopata v. Russia*, no. 72250/01, § 156, 13 July 2010; *Popov v. Russia*, no. 26853/04, § 249, 13 July 2006; and *Dulaş v. Turkey*, no. 25801/94, § 81, 30 January 2001).

117. In the present case, the Russian authorities contacted the representative of the applicant V.V. and invited him for an interview to a local prosecutor's office. The Government submitted a copy of the compliance prosecutor's description of the interview and a statement which the representative Mr X had given to the interviewer (see paragraph 48 above). The interview touched upon the applicant's family situation, his education, past and present employment, and migration status. Some of the questions were personal in nature but it does not appear that Mr X felt compelled to give evidence, as he chose, for instance, not to divulge the

details of his personal life. As a former employee of the same prosecutor's office and a legal professional, Mr X was able to tell the difference between a formal questioning and the fact-finding discussion that was taking place (see, by contrast, *Kosheleva and Others*, cited above, § 27, in which the applicants without legal backgrounds could well have perceived the recital of the right not to incriminate themselves as an intimidating reference to the criminal proceedings against them). The Court is therefore satisfied that the interview related to the public prosecutor's duty to collect information about the applicant's complaints for the purpose of the Government's submissions to the Court, and that no pressure was brought to bear on the applicant's representative. The inquiries conducted by the police and the migration authorities pursued the same purpose, with no discernible indication of intimidation.

118. Thus, the authorities of the respondent State cannot be held to have hindered the applicant V.V. in the exercise of his right of individual petition. Accordingly, the respondent State has not breached its obligations under Article 34 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

119. 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

120. Mr Novruk, Ms Kravchenko and Mr Khalupa claimed 15,000 euros (EUR) each in respect of compensation for non-pecuniary damage. Ms Ostrovskaya asked the Court to determine the appropriate amount of just satisfaction. Mr V.V. claimed EUR 300,000 under this head.

121. The Government considered their claims to be excessive.

122. The Court accepts that the applicants suffered distress and frustration because of the discrimination against them on account of their health status. The Court awards each applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable (see *Kiyutin*, cited above, § 80).

B. Costs and expenses

123. The applicants also claimed the following amounts for costs and expenses: Mr Novruk EUR 2,000, Ms Kravchenko EUR 7,100, Mr Khalupa

EUR 4,420 in legal fees and EUR 750 in travel expenses, Ms Ostrovskaya EUR 1,000, and Mr V.V. EUR 4,700.

124. The Government responded that Mr Novruk had not specified the hourly rate of his representative and had not produced a payment receipt, that Ms Kravchenko had not submitted a copy of a legal services agreement, that Mr Khalupa's claim was excessive and his transport expenses unrelated to the Court proceedings, that the nature and extent of legal assistance was not apparent from Ms Ostrovskaya's documents, and that V.V. did not substantiate his claims with receipts.

125. 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 have been 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 following sums covering costs under all heads: EUR 2,000 to Mr Novruk, EUR 4,000 to Ms Kravchenko, EUR 5,170 to Mr Khalupa, less EUR 850 which he has received in legal aid, and EUR 850 to each of Ms Ostrovskaya and Mr V.V., plus any tax that may be chargeable to the applicants.

C. Default interest

126. 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.

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

127. The relevant parts of Article 46 read as follows:

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

128. The Court reiterates that by Article 46 of the Convention the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress as far as possible its

effects. It is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge its obligation under Article 46 of the Convention. However, with a view to helping the respondent State to fulfil its obligations under Article 46, the Court may seek to indicate the type of individual and general measures that might be taken in order to put an end to the situation it has found to exist (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, §§ 158-159, ECHR 2014; *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 254-255, ECHR 2012; *Scoppola v. Italy* (no. 2) [GC], no. 10249/03, § 148, 17 September 2009; and *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V).

A. The parties' arguments as to the existence of a systemic problem

129. The Government denied that there existed a structural problem concerning refusal of residence permits to HIV-positive non-nationals or declaring their presence undesirable in Russia. They firstly emphasised that, to this day, the *Kiyutin* judgment had remained the only judgment finding a violation of a foreign national's right to respect for family life and of the prohibition of discrimination. The Government relied on a selection of approximately sixty cases in which the Russian courts granted challenges by HIV-positive non-nationals against the Federal Migration Service's and Consumer Protection Authority's decisions refusing them residence permits or declaring their presence undesirable. The courts had taken into account the individual circumstances of each case, including the duration of the non-national's residence, the lawfully contracted marriage, the ages of any children, the absence of housing or family links in the country of origin, and so on.

130. The applicants responded that the Government had selected only the domestic judicial decisions that corroborated their position. They did not provide information about the state of execution of those decisions or any statistical data from the migration authorities reflecting the number of HIV-positive non-nationals who had been granted or refused residence permits. The Government did not show that the executive authorities had taken into account the case-law of the Russian Constitutional Court or the findings of this Court in *Kiyutin*. In some cases, which the Government referred to, the executive authorities issued decisions declaring the non-national's presence in Russia undesirable even after the courts had overturned the Migration Service's decision refusing them residence permits.

B. The Court's assessment

131. The Court reiterates that the identification of a structural problem does not necessarily have to be linked to, or based on, a given number of similar applications that have been decided upon or are still pending. In the context of systemic or structural violations the potential inflow of future cases is also an important consideration in terms of preventing the accumulation of repetitive cases on the Court's list, which hinders the effective processing of other cases giving rise to violations, sometimes serious, of the rights it is responsible for safeguarding. A systemic or structural problem stems or results not just from an isolated incident or a particular turn of events in individual cases but from defective legislation, when actions and omissions based thereon have given rise, or may give rise, to repetitive applications (see *Gülmez v. Turkey*, no. 16330/02, § 60, 20 May 2008; *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, § 148, 27 November 2007; and *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 235-237, ECHR 2006-VIII). The problem underlying the violation the Court has found concerns the legislation itself, and the findings extend beyond the sole interests of the applicants in the instant case (see *Statileo v. Croatia*, no. 12027/10, § 165, 10 July 2014).

132. The Convention issue in the present case involves the entry and residence rights of HIV-positive non-Russian nationals. Over the past years the varying rates of economic, social and political development in the former USSR countries have generated large economic migration flows towards Russia. The net migration to Russia in 2010-14 is estimated by the World Bank to be in excess of one million people. The Russian authorities have deployed large-scale efforts for testing migrants for communicable diseases, which has allowed them to identify thousands of HIV-positive non-nationals and to pronounce their presence in Russia undesirable for health reasons (see paragraphs 58 and 59 above). Those who have unsuccessfully challenged the decisions that discriminate against them before Russian courts may eventually turn to the Court for relief. Starting from 2014, a new category of migrants, defined as "habitual Russian speakers", are eligible for residence permits, but the same health-related restrictions apply to them (see paragraph 52 above). The Court accordingly finds that the actions based on defective legislation amount to a structural problem which may give rise to further repetitive applications.

133. The Court notes that, in the period since the communication of the present case, important legal developments have ensued at the national level. The judgment by the Russian Constitutional Court dated 12 March 2015 represented a major step forward for the protection of the rights of people living with HIV (see paragraph 61 above). It acknowledged the medical consensus regarding the means of transmission of HIV, and observed that the existing administrative practice of assessing the situation

of HIV-positive people did not follow its own case-law. On that ground, it pronounced the legal provisions of the Entry and Exit Procedures Act, the Foreign Nationals Act, and the HIV Prevention Act – which were at the heart of the instant case – incompatible with the Russian Constitution in so far as they allowed the authorities to refuse entry or residence or to deport an HIV-positive non-national with family ties in Russia solely on account of his or her diagnosis. The Constitutional Court directed the legislator to make the necessary amendments in the light of its judgment which remained directly applicable pending the legislative reform. The Court notes that a draft law implementing the Constitutional Court's judgment has already been prepared and submitted to the Russian Parliament (see paragraph 62 above).

134. The Court is concerned that the scope of the proposed draft legislation is restricted to those non-nationals who have permanently resident spouses, parents or children in Russia. The proposed amendment will therefore not affect individuals in the situation of the applicant Mr V.V. It is moreover not clear whether the law would apply with retroactive effect so as to allow individuals who were banned from Russia, as was the applicant Mr Khalupa, to obtain a new assessment of the grounds for their exclusion. However, the legislative reform is currently under way and it is not for the Court to speculate what final shape the proposed draft law may take (see *Statileo*, cited above, § 165). The Court will therefore abstain at this stage from formulating general measures, considering that the indications provided above will help to ensure the proper execution of the present judgment under the supervision of the Committee of Ministers (see *Savriddin Dzhurayev v. Russia*, no. 71386/10, § 264, ECHR 2013 (extracts)). It is for the Committee of Ministers to assess the effectiveness of the measures proposed by the Russian Government and to follow up on their subsequent implementation in line with the Convention requirements (see *Lindheim and Others v. Norway*, nos. 13221/08 and 2139/10, § 137, 12 June 2012).

135. Should the efforts made by the Government to tackle the underlying Convention problem or the remit of the envisaged reform prove to be insufficient, the Court may reassess the need to apply the pilot-judgment procedure to this type of case (see *Gazsó v. Hungary*, no. 48322/12, §§ 32-33 and 35, 16 July 2015, and *Rutkowski and Others v. Poland*, nos. 72287/10, 13927/11 and 46187/11, §§ 203-206, 219 *et passim*, 7 July 2015).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 14 of the Convention, read together with Article 8;

4. *Holds* that the respondent State has not failed to comply with its obligations under Article 34 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicants, 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 15,000 (fifteen thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros) to Mr Novruk, EUR 4,000 (four thousand euros) to Ms Kravchenko, EUR 4,320 (four thousand three hundred and twenty euros) to Mr Khalupa, EUR 850 (eight hundred and fifty euros) to Ms Ostrovskaya, and EUR 850 (eight hundred and fifty euros) to Mr V.V., plus any tax that may be chargeable to the applicants, 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;

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

Done in English, and notified in writing on 15 March 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President