THIRD SECTION

**CASE OF AKÇAY AND OTHERS v. RUSSIA**

*(Application no. 66729/16)*

JUDGMENT

STRASBOURG

11 December 2018

*This judgment is final but it may be subject to editorial revision*

In the case of Akçay and Others v. Russia,

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

Alena Poláčková, *President,* Dmitry Dedov, Jolien Schukking, *judges,*  
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 20 November 2018,

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

PROCEDURE

1.  The case originated in an application no. 66729/16 against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Omer Akcay, and by Russian nationals, Ms Svetlana Akchay and Mr Deniz Akchay (“the applicants”), on 5 November 2016.

2.  The applicants were represented by a lawyer, Mr V. Zubkov, and by a human-rights defender, Mr E. Mezak, both practising in Syktyvkar, and a lawyer, Mr A. Laptev, residing in Strasbourg. The Russian Government (“the Government”) were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

3.  On 18 September 2017 the Government were given notice of the complaints concerning Articles 8 and 13 of the Convention, and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

4.  The applicants are a family. The first applicant, Mr Omer Akçay (also spelt Emer and Emir Akchay), who was born in 1960, is a Turkish national. The second and third applicants are his wife, Ms Svetlana Akchay, who was born in 1975, and his son, Mr Deniz Akchay, who was born in 2000. Both of them are Russian nationals. The first applicant’s surname is spelt as it would be in Turkish. The second and third applicants’ surname is the same as that of the first applicant, but it has been transliterated into Russian and has a different spelling.

Background information

5.  The first applicant has been residing in Turkey since April 2016. Prior to that, from 1999 to 2016, he resided with his family in Syktyvkar, in the Komi Republic, Russia. The second and third applicants still reside there.

6.  At some point prior to December 1999 the first applicant moved from Turkey to Russia and started living with the second applicant in Syktyvkar. He resided in Russia on the basis of regularly extended residence permits.

7.  In January 2000 the third applicant was born and the first applicant was registered on his birth certificate as his father. The third applicant goes to school in Syktyvkar.

8.  In 2007 the first applicant was officially registered as a business owner; he had a cattle farm, where he employed five Russian nationals.

9.  On 27 January 2015 the Komi Department of the Federal Migration Service (“the Komi FMS”) granted the first applicant yet another renewal of his five-year residence permit, valid until 3 February 2020.

1.  Annulment of the first applicant’s residence permit

10.  On 2 December 2015 (in the documents submitted the date was also referred to as 27 November and 4 December 2015) the Komi Department of the Federal Security Service (“the Komi FSB”) issued a letter requesting that the FMS annul (revoke) the first applicant’s residence permit. The text of the document stated as follows:

“... on 13 October 2005 the Komi FMS issued Mr E. Akchay – a Turkish national who was born on 1 January 1960 in Malazgirt, Turkey – with residence permit 82 no. 0013753 (by FMS decision no. 015777 of 13 October 2005).

According to the department’s information, this person’s actions mean that he poses a threat to the national security of the Russian Federation, which, in accordance with section 9(1)(1) of the Foreign Nationals Act, provides grounds for annulling a foreigner’s residence permit in the Russian Federation.

Given the above, we ask you to annul the residence permit of the Turkish national Mr Emer Akchay, in accordance with the Russian legislation.”

11.  The above request by the Komi FSB specified neither the grounds for the measure nor the nature of the alleged threat.

12.  On 8 December 2015 the Komi FMS annulled the first applicant’s residence permit with reference to section 9(1)(1) of the Foreign Nationals Act, which provided for the revocation of the residence permits of foreign nationals who posed a threat to the national security of the Russian Federation or its citizens.

13.  On 29 December 2015 the first applicant was invited to the Komi FMS, where he was made aware of the annulment decision and his residence permit was confiscated. He was warned that he was supposed to leave Russia within two weeks, or he would be deported. The first applicant was not informed of the grounds for the annulment.

14.  On 26 January 2016 the applicants’ farm was inspected by the Russian Service for Veterinary and Phytosanitary Surveillance, which fined the first applicant 3,000 Russian roubles (RUB) for failing to comply with a number of relevant regulations – for example, for not having pet passports for three of the farm dogs and for piling up manure within less than sixty metres of the cattle barn.

15.  On 17 February 2016 the Komi FMS issued a decision ordering the first applicant to leave Russia within five days of receiving the decision, under the threat of deportation, and banning his re-entry into the Russian Federation until 19 September 2018. The first applicant was informed of that decision on 7 April 2016.

16.  On an unspecified date in April 2016 the first applicant was again invited to the Komi FSB and reminded to leave Russia on his own initiative, as otherwise he would be detained and then deported. He was given an exit visa valid until 20 April 2016.

17.  On 20 April 2016 the first applicant left Russia. The second and third applicants remained in Syktyvkar to take care of the farm and continue attending school.

18.  On 13 July 2016 (in the documents submitted, the date was also referred to as 21 June 2016) the first and second applicants officially registered their marriage in Turkey.

2.  Court appeals against the annulment of the residence permit

19.  On 31 December 2015 the first applicant appealed to the Syktyvkar Town Court (“the Town Court”) against the annulment of his residence permit, stating that the Komi FSB’s request of 2 December 2015 to annul his residence permit had been made on national security grounds which were unknown to him, and that the subsequent decision of the Komi FMS complying with that request and annulling his residence permit was unlawful and disproportionate. He stated that he had a family in Russia, was a business owner, had no criminal record or record of administrative offences, and that the annulment of his residence permit would deprive him of grounds for staying in Russia and disrupt his family and private life.

20.  On 24 February 2016 the Town Court examined the first applicant’s appeal. At the hearing, representatives of the Komi FSB informed the court that the first applicant had received eleven (in the documents submitted the number was also referred to as twelve) administrative fines for speeding, for which six tickets had been issued in 2015, three tickets in 2014 and two tickets in 2013. In addition, in 2015 the first applicant had been fined for other traffic violations, such as driving a vehicle with a defect, on three occasions. He had also received two administrative fines for violating the terms of foreigners’ residence in Russia (failing to register within the prescribed time-limit, in 2013 and then in 2015). In addition, on one occasion in January 2016 he had been fined for failing to comply with veterinary regulations at the cattle farm.

21.  The first applicant’s representative stated at the hearing that the first applicant had a farm in Russia, diligently paid taxes, employed several Russian nationals, and had a wife and a fourteen-year-old son. After the Russian military aircraft had been brought down in Turkey, the traffic police had started stopping the first applicant “at every turn”. When the first applicant’s representative asked the Komi FSB’s representative why, despite all of the alleged administrative infractions, the first applicant’s permanent residence permit had been extended yet again in February 2015 without any problems, the Komi FSB’s representative replied as follows:

“the international situation is complicated, therefore the attitude in Russia towards violations by foreign nationals has become stricter”.

The first applicant’s representative invited the applicants’ neighbour, Ms Ch., to the hearing, who testified that she had known the first applicant for twenty years, that he was a well-respected man who helped local orphans, that he worked for the good of the local community, and that he had a wife and son and was the breadwinner of the family.

22.  At the hearing the first applicant also asserted that he had not been made aware of the detailed information concerning his administrative infractions which had been presented to the court by the Komi FSB prior to the hearing. He stressed that he was still unaware of the nature of the threat he allegedly posed to Russia’s national security, and that he had family in Russia, including a son who was a minor. He also had a farm which required constant attention. He admitted that he had had speeding tickets, but stressed that such infractions were very common and were of a minor nature, and that throughout the time he had been living in Russia he had never had a traffic accident. In his opinion, the impugned decision to exclude him from Russia had been taken in view of the strained relations between Russia and Turkey after the incident with the Russian military aircraft.

23.  On the same date, 24 February 2016, the Town Court upheld the annulment of the first applicant’s residence permit. In its decision, the court referred to his record of administrative violations as submitted by the Komi FSB at the hearing. The court did not make any references to the nature of the threat posed by the first applicant to national security, other than stating that his record of administrative offences for the last three years had provided the necessary basis for the Komi FSB’s request to annul his residence permit. The Komi FSB did not provide any other documents substantiating its request for the first applicant to be excluded on national security grounds. The court did not examine the first applicant’s complaints concerning the disruptive effect of the exclusion on his family life.

24.  On 17 March 2016 the first applicant appealed to the Komi Supreme Court against the judgment of 24 February 2016, stating, amongst other things, that he had been residing in Russia since 1999, and that since 2005 he had been living there on the basis of regularly extended five-year residence permits. The last extension had been granted in February 2015, which demonstrated that he was a long-term migrant of good standing who complied with the relevant regulations. The first applicant further stated that he had always paid the taxes relating to his farm business and that he provided jobs for five Russian nationals. Referring to Article 8 of the Convention, he submitted that the annulment violated his and his family members’ right to respect for their family life, and that it was a disproportionate measure that did not pursue a legitimate aim. Lastly, the first applicant stressed that he was still unaware of the nature of the threat he allegedly posed to the national security of the Russian Federation.

25.  On 15 and 28 April 2016 the Komi FSB lodged its objections to the first applicant’s appeal with the Komi Supreme Court, demanding that the court find against him. Amongst other things, its submissions of 15 April 2016 stated the following:

“... State security bodies, in particular the Federal Security Service, have the right to evaluate the activities of foreign citizens and stateless persons as [people] representing a threat to defence, the security of the State, public order or health, and the court has no right to interfere with that authority. The use of those preventive measures in respect of national security is left to the discretion of the Federal Security Service.

Issues relating to national security are specific, and their evaluation is carried out by designated bodies on the basis of information obtained from sources, including those outside of judicial control.

Therefore, the Federal Security Service is not supposed to provide the court with documents substantiating the grounds for its decisions concerning the undesirability of the residence of a foreign citizen in the Russian Federation, as such documents contain State secrets, and the court does not have authority to request those documents ...”

26.  Amongst other things, the FSB’s further submissions to the court of 15 April 2016 stated the following:

“... the information concerning the annulment of the residence permit was provided to the Federal Migration Service by the Federal Security Service on the basis of classified decision no. 18577c of 27 November 2015 concerning the applicant’s actions posing a threat to the national security of the Russian Federation and its citizens, [actions] which serve as the basis for the annulment of the residence permit, in accordance with section 9(1) of The Foreign Nationals Act ...

The [Komi] FSB provided the court of first instance with [only] information whose disclosure was not limited ...”

27.  On 5 May 2016 the Komi Supreme Court examined the appeal and upheld the annulment. In its decision, the court referred to the first applicant’s record of administrative violations committed between 2013 and 2016 and some undisclosed information provided by the FSB, without specifying what the nature of that information was. The court stated that the decision to annul the residence permit had been taken by the FSB within its executive authority, and that the information obtained from classified sources was not subject to judicial control, stating as follows:

“... the court takes into account that in accordance with Federal Law no. 40- ФЗ on the Federal Security Service of 3 April 1995, the right to assess the activities of foreign nationals as [people] representing a threat to the State’s defence capacity or national security, or public order or health, is within the competence of the Russian FSB and lies within the discretion of the security service. Within administrative proceedings, the court does not have the right to assess the [information relating to] factors threatening national security which has been obtained in respect of a foreign national ...”

As for the first applicant’s allegations regarding the adverse effect of the measure on his right to respect for family life, the court stated as follows:

“the annulment did not represent an inadmissible interference by the authorities with the right to respect for family life”.

28.  On 28 October 2016 the first applicant lodged a cassation appeal with the Presidium of the Komi Supreme Court, and on 25 November 2016 the court rejected it without examining his allegations concerning the violation of his right to respect for family life.

29.  On 13 February 2017 the Administrative Cases Chamber of the Supreme Court of the Russian Federation refused to examine a further cassation appeal lodged by the first applicant.

3.  Court appeals against the entry ban of 17 February 2016

30.  On 17 February 2016 the Komi FMS issued a decision banning the first applicant from re-entering the Russian Federation until 19 September 2018 (the entry ban) and ordering him to leave Russia within five days of receiving the decision, under the threat of deportation. The first applicant was informed of that decision on 7 April 2016 (see paragraph 15 above).

31.  On 18 April 2016 the first applicant appealed to the Town Court against the above entry ban. He stated, in particular, that the decision referred to his record of administrative infractions for speeding and failing to comply with minor immigration regulations and sanitary rules at the farm, but the ban imposed had been issued on national security grounds which he still did not know about. The first applicant further stated the ban was a disproportionate punishment, as he was a law-abiding resident of good standing who paid all his taxes and employed Russian nationals. The first applicant stressed that when imposing the sanction, the authorities had failed to balance the public interests with his right to respect for his family life with his son and wife.

32.  On 19 July 2016 the Town Court rejected the first applicant’s appeal, referring to his administrative infractions and stating that “the impugned decision had been taken in accordance with the law and within the authority of the Komi FMS”.

33.  On 30 March 2017 the Komi Supreme Court upheld the above decision and on 22 August 2017 it rejected a cassation appeal by the first applicant.

II.  RELEVANT DOMESTIC LAW

34.  For the relevant domestic law and practice, see *Liu v. Russia* (no. 2), no. [29157/09](http://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2229157/09%22%5D%7D), §§ 45-52, 26 July 2011.

III.  RELEVANT COUNCIL OF EUROPE MATERIAL

35.  For the relevant Council of Europe material, see *Gablishvili v. Russia*, no. [39428/12](http://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2239428/12%22%5D%7D), § 37, 26 June 2014.

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

36.  The applicants complained under Article 8 of the Convention that the annulment of the first applicant’s residence permit based on undisclosed information had violated their right to respect for family life. Article 8 of the Convention reads as follows:

“1.  Everyone has the right to respect for his private and family life, his home and his correspondence.

2.  There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A.  Admissibility

37.  The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B.  Merits

1.  The parties’ submissions

(a)  The Government

38.  The Government acknowledged in general terms that there had been interference with the applicants’ right to respect for family life under Article 8 of the Convention. They submitted that the lawfulness and necessity of the decision to annul the first applicant’s residence permit had been duly examined by the domestic courts. The numerous administrative infractions by the first applicant had provided grounds for his exclusion. The domestic courts had found that he “had not demonstrated loyalty to Russian law and order, had violated Russian laws, and had systematically and intentionally committed administrative violations, including those representing danger to third persons; [such behaviour] had shown that the decision to annul the residence permit had been justified, fair, proportionate and had not contradicted the case-law of the European Court”. The first applicant had committed eighteen administrative infractions during the last three years that he had been living in Russia. The Government stressed that the procedural guarantees under Article 8 of the Convention had been complied with, which had been “verified by [an] independent court”.

39.  The Government further stated that the first applicant, in spite of his lengthy stay in Russia, had not taken steps to apply for Russian nationality. The fact that he owned property in Russia did not absolve him from complying with immigration regulations. As for his allegations that the annulment of his residence permit had been connected to the worsening of relations between Russia and Turkey owing to the military aircraft incident, on 24 February 2016 the Town Court had heard both the first applicant’s allegations and the FSB’s position concerning those allegations, and had made appropriate conclusions (see paragraph 21 above). In addition, the first applicant was neither a long-term nor settled migrant, as he had arrived in Russia at a mature age; his first five-year residence permit had been granted to him in 2005, when he was forty-five years old.

40.  Lastly, referring to the case of *Samsonnikov v. Estonia*, no. 52178/10, 3 July 2012 (where the applicant was banned from re‑entering Estonia for three years after a number of convictions for criminal offences, including aggravated drug trafficking, and the Court did not find the length of his three-year exclusion excessive), the Government stated that the first applicant’s ban of only two and half years did not appear to be “too long”.

(b)  The applicants

41.  The applicants alleged that the annulment of the first applicant’s residence permit and subsequent imposition of an re-entry ban had adversely affected their right to respect for family life, as the first applicant had to leave Russia, his wife and minor son staying to reside there. The first applicant stated that the real reason for his exclusion was the deterioration of relations between Russia and Turkey owing to the military aircraft incident, which was illustrated by the fact that the traffic violations he had allegedly committed had been registered after that incident (see paragraph 20 above), as well as the inspection of his farm which had led to his administrative punishment (see paragraph 14 above). Moreover, actual proof of that connection had clearly been confirmed by the representative of the Komi FSB at the court hearing on 24 February 2016 when he had stated “the international situation is complicated, therefore the attitude in Russia towards violations by foreign nationals has become stricter” (see paragraph 21 above). However, despite the first applicant requesting that the courts verify his allegation that his exclusion had been caused by the deterioration of the political relationship between Russia and Turkey, the courts had not done so. The first applicant further pointed out that the copy of the Komi FSB’s letter of 2 December 2015 requesting that his residence permit be annulled did not provide any information concerning either the factual basis or motives for the sanction against him. The Government had failed to provide the Court with the Komi FSB’s decision of 27 November 2015 which had served as the basis for its request of 2 December 2015 to annul his residence permit (see paragraph 26 above). Given that no explanations for such a failure had been given, the first applicant, referring to *Nolan and K. v. Russia*, no. 2512/04, §§ 51-57, 12 February 2009, invited the Court to draw inferences from the Government’s failure to furnish all necessary facilities to the Court in its task of establishing the facts.

42.  The applicants further submitted that the judicial review of the annulment of the first applicant’s residence permit by the domestic courts had not been attended by adequate procedural safeguards. The courts had failed to request and examine its actual basis, that is scrutinise the evidence proving that he represented threat to national security; moreover, the courts had directly stated that they could not subject the FSB’s submissions to judicial scrutiny (see paragraph 27 above), and had limited themselves to assessing whether the decision had been issued within the FSB’s administrative competence and in compliance with the relevant procedure.

43.  Moreover, the courts had failed to conduct a meaningful balancing exercise between the national security interests claimed and the applicants’ right to respect for family life. In particular, they had disregarded the fact that the first applicant was a long-term migrant with very close ties to Russia, given that his family and business were there. The second and third applicants’ moving to Turkey to join the first applicant would cause them hardship, as the second applicant did not speak Turkish and the third applicant had to continue to attend school in Russia.

2.  The Court’s assessment

(a)  General considerations

44.  It is not disputed by the parties that the first applicant’s residence permit was annulled on the basis of the Komi FSB’s request of 2 December 2015 which stated that he represented a threat to national security (see paragraph 10 above). It is neither disputed by the parties that this measure, and the subsequent imposition of a re-entry ban, interfered with the applicants’ right to respect for their family life.

45.  Such interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of that provision as being “in accordance with the law”, as pursuing one or more of the legitimate aims listed therein, and as being “necessary in a democratic society” in order to achieve the aim or aims concerned.

(b)  Principles concerning procedural guarantees relating to challenging the executive’s assertion of a national security risk in court

46.  For a summary of the relevant principles, see *Gaspar v. Russia*, no. 123038/15, §§ 38-39 and §§ 41-44, 12 June 2018.

47.  From these relevant principles it follows that the Court in cases such as the present one must examine whether the domestic proceedings were attended by sufficient procedural guarantees. It is reiterated in this connection that even where national security is at stake, the concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights must be subject to some form of adversarial proceedings before an independent body competent to review the reasons for the decision and relevant evidence, if need be with appropriate procedural limitations on the use of classified information (see, mutatis mutandis, *Regner*, cited above, §§ 151 and 161). The individual must be able to challenge the executive’s assertion that national security is at stake. Failing such safeguards, the police or other State authorities would be able to encroach arbitrarily on rights protected by the Convention (see *Nolan and K. v. Russia*, no. 2512/04, § 71, 12 February 2009, and *Al-Nashif v. Bulgaria*, no. 50963/99, §§ 123 and 124, 20 June 2002).

(c)  Application of the principles to the present case

48.  Turning to present case, the Court observes that the content of the Komi FSB’s decision of 27 November 2015, which served as the basis for the annulment of the residence permit, has not been revealed to it (see paragraph 26 above). The documents submitted indicate that the first applicant’s record of administrative infraction might have to some extent facilitated the FSB’s decisions (see paragraphs 23 and 27 above), but the actual grounds of his alleged threat to national security referred to by the executive in the request of 2 December 2015, based on the Komi FSB’s decision of 27 November 2015, were never disclosed to him.

49.  Moreover, the domestic judgments contained no indication of why the applicant was considered a danger to national security. Those judgments neither mentioned any facts on the basis of which that finding had been made, nor provided even a generalised description of the acts ascribed to the applicant.

50.  In their submissions to the Court, the Government neither gave a general outline of the possible basis for the security services’ allegations against the first applicant.

51.  Irrespective of the nature of the acts attributed to the applicant and the alleged danger he posed to national security, the Court notes that the national courts confined the scope of their examination to ascertaining that the FSB’s recommendation had been issued within its administrative competence, without carrying out an independent review of whether their conclusion had a reasonable basis in fact. As can be seen from the Town Court’s judgment of 24 February 2016, the court did not examine any of the FSB’s documents substantiating its request for the annulment of the first applicant’s residence permit on national security grounds (see paragraph 23 above). On appeal, the Komi Supreme Court endorsed the findings of the Town Court and refused to examine the basis for the FSB’s assertion that the first applicant was a national security threat, stating that the information obtained by the FSB from classified sources was not subject to judicial control (see paragraph 27 above). The national courts thus failed to examine a critical aspect of the case, namely whether the FSB was able to demonstrate the existence of facts serving as a basis for its assessment that the applicant presented a national security risk (see, by contrast, *Regner,* cited above, § 154). Confining their scope of review to a purely formal examination of authorities’ decisions, renders it impossible to duly balance the interests at stake, taking into account the general principles established by the Court (see paragraphs 37-38, above) and applying standards in conformity with Article 8 of the Convention (for a similar situation, see *Gaspar*, cited above, § 48, and *Zezev v. Russia*, no. 147781/10, § 41, 12 June 2018). The allegations against the applicant remained of an undisclosed nature, making it impossible for him to challenge the security service’s assertions by providing exonerating evidence, such as an alibi or an alternative explanation for his actions, if any (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, §§ 220-24, ECHR 2009).

52.  Therefore, the Court finds that the domestic court proceedings concerning the examination of the annulment of first applicant’s residence permit and the subsequent re-entry ban and its effect on the applicants’ family life were not attended by sufficient procedural guarantees.

53.  There has therefore been a violation of Article 8 of the Convention.

II.  ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

54.  The applicants complained that the judicial review proceedings had failed to examine the actual basis of the Komi FSB’s allegations that the first applicant posed a threat to national security and provide him with the opportunity to refute them. The applicants relied on Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

55.  The Court notes that, in the present case, the complaint under Article 13 of the Convention largely overlaps with the procedural aspects of Article 8 of the Convention. Given that the complaint under Article 13 relates to the same issues as those examined under Article 8, it should be declared admissible. However, having regard to its conclusion above under Article 8 of the Convention, the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention (see *Kamenov*, cited above, § 45, and *Dzhurayev and Shalkova v. Russia*, no. 1056/15, § 47, 25 October 2016).

III.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

56.  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

57.  The applicants claimed 11,502 euros (EUR) in respect of pecuniary damage. They stated that the first applicant was the head of their farm, and in his absence the farm had lost the regular average income of 30,000 Russian roubles (RUB) per month which it had generated when he was running it. Given that the entry ban had been imposed on the first applicant for twenty-nine months, the amount of lost profit was RUB 870,000 (about EUR 11,502).

58.  The Government submitted that the applicants’ claim should be rejected as unsubstantiated and speculative, as the applicants had neither submitted any documents showing the loss of profit nor put forward any explanation as to how the amount claimed had been calculated.

59.  Having regard to the parties’ submissions and the lack of documents substantiating the claim, the Court rejects the applicants’ claim in respect of pecuniary damage.

60.  As for non-pecuniary damage, the applicants stated that their family life had been disrupted for twenty-nine months owing to the first applicant’s exclusion. Given the length of that disruption, as well as the psychological suffering which they had suffered as a result of the authorities’ attitude, they claimed EUR 20,000 each in respect of non-pecuniary damage.

61.  The Government submitted that the claim was excessive and unsubstantiated, and that in any event no compensation should be granted as there had been no violation of the applicants’ rights.

62.  Regard being had to the documents in its possession and its findings in the present case, and making its assessment on an equitable basis, the Court finds it reasonable to award the applicants EUR 12,000 jointly in respect of non-pecuniary damage, plus any tax which may be chargeable, to be paid to the second applicant’s bank account in Russia.

B.  Costs and expenses

63.  The applicants claimed EUR 39,809 in total for the costs and expenses incurred before the domestic courts and the proceedings before the Court. The amounts claimed were as follows:

-  EUR 20 for the domestic courts’ fees;

-  EUR 39 for the certification of documents by a notary and translation of the first applicant’s identity documents from Turkish to Russian;

-  EUR 6,500 for twenty-six hours of Mr V. Zubkov’s services for representation before the domestic courts at a rate of EUR 250 per hour;

-  EUR 8,250 for thirty-three hours of Mr E. Mezak’s services for representation before the domestic courts and submissions to the Court at a rate of EUR 250 per hour;

-  EUR 25,000 for thirty-six hours of Mr A. Laptev’s services for preparation of the application and the applicants’ observations before the Court, and sixty-four hours for translation of the observations from Russian into English at a rate of EUR 250 per hour.

64.  The Government submitted that the amount of EUR 59 claimed for expenses incurred at domestic level was not relevant to the proceedings before the Court and should therefore be rejected. In addition, the applicants had failed to substantiate their claim by enclosing documents showing that the expenses had actually been incurred. The Government further pointed out that, given that the applicants’ payment for their representation before the Court was conditional upon the Court rendering a judgment in their favour, the actual fees had not been incurred.

65.  The Court reiterates that an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *X and Others v. Austria* [GC], no. 19010/07, § 163, 19 February 2013). In the present case, the Court notes that that the applicants submitted an agreement with their representatives of 13 April 2016 concerning the representatives’ fees in the event that the Court delivered a judgment in the applicants’ favour. Such an agreement is comparable to a contingency fee agreement and, if legally enforceable, may show that the sums claimed are actually payable by the applicant. However, agreements of this nature – giving rise to obligations solely between lawyer and client – cannot bind the Court, which must assess the level of costs and expenses to be awarded with reference not only to whether the costs are actually incurred, but also to whether they have been reasonably incurred (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000‑XI, and *Stergiopoulos v. Greece*, no. 29049/12, § 63, 7 December 2017).

66.  Regard being had to the documents in its possession and to its case‑law, the Court considers it reasonable to award the sum of EUR 1,000 each to the applicants’ representatives Mr V. Zubkov and Mr E. Mezak, and EUR 1,300 to the applicants’ representative Mr A. Laptev, plus any tax that may be chargeable to the applicants. The amounts are to be paid directly into each representative’s bank account, as indicated by the applicants.

C.  Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Declares* the complaints concerning Articles 8 and 13 of the Convention admissible;

2.  *Holds* that there has been a violation of Article 8 of the Convention;

3.  *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

4.  *Holds*

(a)  that the respondent State is to pay, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, except for the payment to the first applicant which is to be made in euros:

(i)  EUR 12,000 to the applicants jointly, plus any tax that may be chargeable to them, in respect of non‑pecuniary damage, to be paid to the account of the second applicant in Russia;

(ii)  EUR 1,000 (one thousand euros) to Mr V. Zubkov, plus any tax that may be chargeable to the applicants, in respect of costs and expenses. This amount is to be converted into the currency of the respondent State at the rate applicable at the date of settlement and is to be paid directly into the representative’s account, as indicated by the applicants.

(iii)  EUR 1,000 (one thousand euros) to Mr E. Mezak, plus any tax that may be chargeable to the applicants, in respect of costs and expenses. This amount is to be converted into the currency of the respondent State at the rate applicable at the date of settlement and is to be paid directly into the representative’s account, as indicated by the applicants.

(iv)  EUR 1,300 (one thousand three hundred euros) to Mr A. Laptev, plus any tax that may be chargeable to the applicants, in respect of costs and expenses. This amount is to be paid directly into the representative’s account, as indicated by the applicants.

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

5.  *Dismisses* the remainder of the applicants’ claim for just satisfaction.

Done in English, and notified in writing on 11 December 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Alena Poláčková  
 Deputy Registrar President