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

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Lack of an effective remedy in relation to deportation and unlawful detention of Syrian national

The case concerned a Syrian Kurd's detention by Cypriot authorities and his intended deportation to Syria after an early morning police operation on 11 June 2010 removing him and other Kurds from Syria from an encampment outside government buildings in Nicosia in protest against the Cypriot Government's asylum policy. It is one of 38 similar applications pending before the European Court of Human Rights.

In today's Chamber judgment in the case of **M.A. v. Cyprus** (application no. 41872/10), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 13 (right to an effective remedy) of the European Convention on Human Rights **taken together with Articles 2 (right to life)** and **3 (prohibition of inhuman and degrading treatment)** due to the lack of an effective remedy with automatic suspensive effect to challenge the applicant's deportation;

a violation of Article 5 §§ 1 and 4 (right to liberty and security) of the Convention due to the unlawfulness of the applicant's entire period of detention with a view to his deportation without an effective remedy at his disposal to challenge the lawfulness of his detention, but **no violation of Article 5 § 2** as concerned the applicant's awareness of the reasons for his arrest and for his ensuing detention; and,

no violation of Article 4 of Protocol No. 4 (collective expulsion of aliens).

The Court concluded that although the applicant could no longer claim to be a victim under Articles 2 and 3 of the Convention as he had been granted refugee status and was no longer at risk of deportation to Syria, his complaint under Article 13 in conjunction with these provisions remained a live issue and was unaffected by the conclusion on the substantive complaints. It held that the applicant did not have an effective remedy with automatic suspensive effect to challenge his deportation. The applicant was not deported to Syria only because of an interim measure issued by the European Court under Rule 39 of its Rules of Court to the Cypriot Government indicating that he should not be removed until further notice.

Principal facts

The applicant is a Syrian national of Kurdish origin who was born in 1969. He entered Cyprus unlawfully in 2005 and, his asylum claim refused, was eventually granted refugee status in April 2011. He currently lives in Nicosia.

At certain stages in the course of the domestic asylum proceedings the applicant was at risk of deportation to Syria.

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

In particular, in May 2010 when the asylum proceedings had been reopened, the applicant, along with other Kurds from Syria, staged a demonstration near some European Union and Cypriot Government buildings in Nicosia to protest against the restrictive policy of the Cypriot Asylum Service in granting international protection. The group of about 150 people established an encampment of around 80 tents on the pavement and remained there around the clock. By the end of the month the authorities had decided to remove the protestors, citing unsanitary conditions around the encampment, the illegal use of electricity from a nearby government building, and complaints from members of the public.

On 11 June 2010 between 3 a.m. and 5 a.m. about 250 officers from various police and public authorities conducted a removal operation at the encampment, leading 149 protestors to mini buses and taking them to police headquarters. Upon arrival they were registered and the status of each individual was examined. 22 protestors were deported on the same day and 44 others, like the applicant, were charged with unlawful stay and transferred to detention centres in Cyprus. Those who were found to be refugees or *bona fide* asylum seekers were allowed to leave.

Also on 11 June 2010, deportation orders were issued in respect of those who were detained, and letters were prepared in English informing them of this decision. On 12 June 2010 the applicant and 43 other people of Kurdish origin submitted a request to the European Court of Human Rights for it to apply interim measures under Rule 39 to prevent their imminent deportation to Syria. On 14 June 2010 the Court indicated to the Cypriot government that they should not be deported until the Court had had the opportunity to receive and examine all documents pertaining to their claims.

On 17 August 2010 the Minister of the Interior declared the applicant an irregular immigrant on public order grounds, relying on information alleging that he had received money from prospective Turkish immigrants in exchange for residence and work permits in Cyprus. On 20 August 2010 the Minister issued deportation and detention orders on this basis and cancelled the previous orders of 11 June. The Rule 39 interim measure in respect of the applicant was reviewed by the European Court on 21 September 2010 and maintained.

The applicant brought habeas corpus proceedings before the Cypriot national courts to complain about his detention. Ultimately, his appeal to the Supreme Court was dismissed on 15 October 2012 as, in the meantime, he had been released after having been granted refugee status.

Complaints, procedure and composition of the Court

Relying on Articles 2 and 3, the applicant complained that his deportation to Syria would put him at real risk of being killed or subjected to ill-treatment due to his Kurdish origins and political activities as a member of the Yekiti Party. He also complained about the lack of an effective domestic remedy for his complaints under Articles 2 and 3, as required by Article 13. He claimed that the only reason he had not been deported to Syria was because of the Rule 39 interim measure granted by the Court.

Further relying on Article 5 §§ 1, 2 and 4, he complained that his detention for ten months from June 2010 to May 2011 was unlawful, that he was not informed of the grounds of his arrest promptly and in a language he could understand, and that he did not have an effective remedy to challenge the lawfulness of his detention.

Lastly, relying on Article 4 of Protocol No. 4, he complained that the Cypriot authorities had intended to deport him as part of a collective expulsion operation, without having carried out an individual assessment and examination of his case.

The application was lodged with the European Court of Human Rights on 14 June 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Ineta **Ziemele** (Latvia), *President*,
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Zdravka **Kalaydjieva** (Bulgaria),
Krzysztof **Wojtyczek** (Poland),
Faris **Vehabović** (Bosnia and Herzegovina),

and also Fatoş **Aracı**, *Deputy Section Registrar.*

Decision of the Court

Articles 2 (right to life), 3 (inhuman and degrading treatment) and 13 (right to an effective remedy)

The Court stated that as a general rule a decision or measure favourable to an applicant was not sufficient to deprive them of their status as a "victim" unless the national authorities had acknowledged and provided redress for the breach of the Convention. In the present case, as the applicant had been granted refugee status and was therefore no longer at risk of deportation to Syria he could not claim to be a victim of violations of his rights under Articles 2 and 3 of the Convention. As a result his substantive complaints under these articles were declared inadmissible by the Court.

However, the applicant's complaint under Article 13 remained a live issue and was unaffected by the inadmissibility of the substantive claims under Articles 2 and 3: the applicant's complaints under these provisions were arguable and the applicant could therefore rely on Article 13. Furthermore, the facts constituting the alleged violation had already materialised by the time the risk of the applicant's deportation had been lifted and, although the decision to grant the applicant refugee status removed the risk that he would be deported, it did not acknowledge and redress his claim under Article 2 and 3 about the ineffectiveness of the judicial review proceedings. He could therefore still claim to have the status of a "victim" of a violation of the Convention.

An effective remedy in such a context should prevent the execution of measures contrary to the Convention that could have irreversible effects. Where a complaint suggested that an applicant's expulsion could expose them to a real risk of treatment contrary to Articles 2 or 3, the effectiveness of the remedy for the purposes of Article 13 required close scrutiny by a national authority, a particularly prompt response, and access to a remedy with automatic suspensive effect.

When the first set of deportation and detention orders were issued on 11 June 2010 the applicant's file had been reopened and was under consideration by the Asylum Service, and such proceedings were, under domestic law, suspensive in nature. However, as admitted by the Government in their observations to this Court, a mistake was made by the authorities. The applicant was lawfully in Cyprus and should not have been the subject of a deportation order. Nonetheless the order remained in place for over two months, during which time the re-examination of the applicant's asylum case was still taking place, and he was not deported to Syria only because of the application of Rule 39.

The Court noted that no effective domestic judicial remedy was available to counter this error. A Supreme Court recourse against a deportation decision and an application for a provisional order for suspension of his deportation in that context did not offer an adequate remedy as they did not have automatic suspensive effect. The Court rejected the Government's argument advocating the sufficiency of the suspensive effect of an

application for a provisional order "in practice". The requirements of Article 13 and of other provisions of the Convention take the form of guarantees and not mere statements of intent or arrangements in practice. Consequently, there had been a violation of Article 13 of the Convention taken together with Articles 2 and 3.

The Court further noted that there was a lack of effective safeguards which could have protected the applicant from wrongful deportation.

Similarly, in view of the fact that a recourse and an application for a provisional measure before the Supreme Court lacked automatic suspensive effect, the Court found that the applicant did not have an effective remedy both in relation to the second set of deportation and detention orders which were also issued during the re-examination of his asylum claim as well as in relation to the decision on his asylum claim once this was taken.

Article 5 § 1 (unlawful detention)

In order to evaluate the lawfulness of the applicant's detention, the Court identified three distinct stages of his overall time in detention and considered each in isolation.

First, regarding his transfer to police headquarters on 11 June 2010 along with the other protestors and his stay there while awaiting identification, the Court held that the protestors had been left with little choice but to board the buses and remain in the headquarters. Given the coercive nature, scale and aim of this police operation, including the fact that it was carried out so early in the morning, there had been a *de facto* deprivation of liberty. Emphasising the importance of legal certainty in such circumstances, the authorities had not effected the applicant's detention in accordance with any particular domestic legal provision that could have offered such certainty.

Second, the applicant's detention on the basis of deportation and detention orders issued on 11 June 2010 on the ground that he was an immigrant staying unlawfully in Cyprus, when this was not in fact the case, was unlawful.

Finally, the procedure prescribed by law was not followed in respect of the applicant's detention from 20 August 2010, as the applicant was not given notice of the new deportation and detention orders in accordance with the domestic law.

Overall, the Court therefore concluded that there had been a violation of Article 5 § 1 of the Convention in respect of the applicant's entire period of detention namely, from 11 June 2010 until 3 May 2011.

Article 5 § 2 (informed of reasons for arrest and charge)

Upon his initial arrest and transfer to police headquarters the applicant was screened in an identification procedure aimed at establishing which protestors were staying in Cyprus illegally, and the Court accepted that the applicant was either informed that he had been arrested on grounds of unlawful stay or at least understood the reason for his arrest and detention. Moreover, the fact that he filed a Rule 39 request seeking suspension of his deportation order the next day supported this conclusion. Accordingly, there was no violation of Article 5 § 2 of the Convention from 11 June to 20 August 2010. In relation to the applicant's detention on the basis of new orders from 20 August 2010, the Court held that no separate issues arose for consideration under Article 5 § 2.

Article 5 § 4 (effective remedy to challenge lawfulness of detention)

The only recourse in domestic law that would have allowed the applicant to have had the lawfulness of his detention examined would have been one brought under Article 146 of the Constitution. The Court held that the average length of such proceedings, standing at eight months, was undoubtedly too long for the purposes of Article 5 § 4, and rejected the argument of the Government that it was possible for individuals to speed up their actions by reaching an agreement with the Government. Domestic remedies must be

certain, and speediness, as an indispensable aspect of Article 5 § 4, should not depend on the parties reaching an agreement. Accordingly, there had been a violation of Article 5 § 4 of the Convention.

Article 4 of Protocol No. 4 (collective expulsion of aliens)

The Court noted that it was important that every case concerning deportation was looked at individually and decided on its own particular facts. The fact that the protestors, including the applicant, were taken together to the police headquarters, that some were deported in groups, or that deportation orders and letters were phrased in similar terms and therefore did not specifically refer to earlier stages of respective applications did not make this a collective measure. Each decision to deport a protestor had been based on the conclusion that they were an irregular immigrant following the rejection of his or her asylum claim or the closure of the file, which had been dealt with on an individual basis over a period of more than five years. Consequently, the measures in question did not have the appearance of a collective expulsion and there had been no violation of Article 4 of Protocol No. 4 to the Convention.

Just satisfaction (Article 41)

The court held that Cyprus was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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