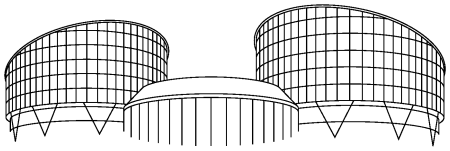

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF K.F. v. CYPRUS

(Application no. 41858/10)

JUDGMENT

STRASBOURG

21 July 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of K.F. v. Cyprus,

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

Guido Raimondi, *President,*
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Yonko Grozev, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 30 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 41858/10) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Syrian national of Kurdish origin, Mr K.F. ("the applicant"), on 14 June 2010.

2. The applicant, who had been granted legal aid, was represented by Ms N. Charalambidou, a lawyer practising in Nicosia. The Cypriot Government ("the Government") were initially represented by their Agent Mr P. Clerides, Attorney-General of the Republic of Cyprus, and subsequently by Mr C. Clerides, his successor.

3. The applicant alleged that his deportation to Syria would entail the risk of his being subjected to treatment in breach of Article 3. In this respect he also complained of the lack of a remedy satisfying the requirements of Article 13 of the Convention. Further, the applicant complained under Article 5 §§ 1 (f), 2 and 4 of the Convention about his detention by the Cypriot authorities. Lastly, he claimed that his deportation would be in breach of Article 4 of Protocol No. 4.

4. On 14 June 2010 the President of the First Section decided to apply Rule 39 of the Rules of Court, indicating to the respondent Government that the applicant should not be deported to Syria. The application was granted priority on the same date (Rule 41). On 21 September 2010 the President of the First Section, following an examination of all the information received from the parties, decided to maintain the interim measure (see paragraph 76 below).

5. On 19 January 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

6. On 25 August 2011 the Court changed the composition of its Sections (Rule 25 § 1 of the Rules of Court) and the present application was assigned to the newly composed Fourth Section.

7. The measure indicated under Rule 39 was lifted on 14 June 2012 (see paragraph 78 below).

8. On 30 November 2012 the President of the Section decided on her own motion to grant the applicant anonymity (Rule 47 § 3 of the Rules of Court).

9. On 19 February 2014 the President of the Section decided under Rule 54 § 2 (c) of the Rules of Court, that the parties should be invited to submit further written observations on the admissibility and merits of the applications, in particular concerning the applicant's complaint under Article 5 § 1 (f) of the Convention as well as concerning a new complaint raised in his observations under Article 5 § 4 of the Convention following new developments in his case. The applicant submitted claims under Article 41 of the Convention concerning these additional observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant, who is of Kurdish origin, was born in 1979 in Syria and is currently living in Northern Iraq. He is married with three children.

A. The applicant's asylum claim, all relevant asylum proceedings and the applicant's first arrest and detention

11. The applicant left Syria on 7 January 2005 and entered Cyprus illegally on 10 February 2005 after travelling from Turkey.

12. He applied for asylum on 17 February 2005.

13. On 15 October 2007 the applicant married in Cyprus a Kurdish woman from Turkey. His wife had applied for asylum in 2004 when she came to Cyprus with her parents and siblings.

14. The Asylum Service held an interview with the applicant on 1 August 2008.

15. His application was dismissed by the Asylum Service on 13 August 2008 on the ground that the applicant did not fulfil the requirements of the Refugee Law of 2000-2004 (as amended up to 2004), namely, he had not shown a well-founded fear of persecution for reasons of

race, religion, nationality, membership of a particular group or political opinion or a well-founded fear of serious and unjustified harm for other reasons. The Asylum Service noted that the reason for which the applicant had left Syria was not at all relevant to the conditions set out in Article 3 of the Refugee Law and Article 1 of the Geneva Convention relating to the Status of Refugees (1951). Further, the Asylum Service considered that there was no possibility that the applicant would be subjected to inhuman or degrading treatment if he returned to Syria. It observed that contradictions had been identified between the applicant's written application and the statements he had made during his interview which affected the credibility of his claims. In particular, he had given different reasons for leaving Syria in his interview from those given in his application.

16. On 2 September 2008 the applicant lodged an appeal with the Reviewing Authority for Refugees against the Asylum Service's decision.

17. It appears that on 20 May 2009 the applicant applied for a temporary residence permit.

18. On 5 June 2009 the Asylum Service's decision was upheld and the appeal dismissed.

19. The Reviewing Authority observed that the applicant had not given the same reasons for leaving Syria in his written application and in his interview. In the former he had stated that he had come to Cyprus "for living" whereas in his interview he claimed that he had left Syria because he had been persecuted by the family of a girl with whom he had eloped and had a sexual relationship. She had been killed by her family and they were after him. The applicant had also claimed that someone else had filled in the asylum application form on his behalf but then had stated that he had filled it in himself. He had also stated that he did not remember the contents of his application. The Reviewing Authority considered that if the applicant's life was in danger he would have remembered the reasons for which he left Syria and thus what he had written in his application form. As the Reviewing Authority considered that the applicant's claims were not credible they did not accept the documents he submitted concerning his claim of persecution by the girl's family. It therefore found that the application was unsubstantiated.

20. The Reviewing Authority concluded by observing that the applicant had not established that he was at risk of persecution if he returned to Syria. Nor did he satisfy the conditions for temporary residence on humanitarian grounds.

21. It appears that his wife's asylum application was also rejected by the authorities and her appeal thereto was dismissed by the Reviewing Authority on 5 August 2009.

22. On 13 August 2009 the applicant brought a recourse before the Supreme Court (first-instance revisional jurisdiction) under Article 146 of the Constitution challenging the decision of the Reviewing Authority.

23. On 28 August 2009 deportation and detention orders were issued against the applicant and his wife pursuant to section 14 (6) of the Aliens and Immigration Law on the ground that they were "prohibited immigrants" within the meaning of section 6(1)(k) and (l) of that Law (see *M.A. v. Cyprus*, no. 41872/10, §§ 62-63, ECHR 2013 (extracts)). The applicant was arrested and detained on the basis of these orders. However, as at the time, the applicant had two children that were still infants, his wife was not arrested on humanitarian grounds and the deportation order against her was suspended.

24. On 12 October 2009 instructions were given by the Minister of the Interior to proceed with the deportation of the applicant and his family.

25. By a letter dated 15 October 2009, the Civil Registry and Migration Department informed the applicant that following the negative decision of the Reviewing Authority, his application of 20 May 2009 for a residence permit (see paragraph 17 above) had been rejected and that he was requested to proceed to all necessary arrangements so as to depart from the territory of the Republic of Cyprus at once.

26. By a letter dated 29 October 2009 the District Aliens and Immigration Branch of the Larnaca Police requested instructions from the Ministry of the Interior concerning the deportation of the applicant and his family as it transpired, following consultation with the Syrian Embassy, that it was not possible to issue a permit to the applicant's wife to enter Syria due to the fact that she did not have a passport.

27. By letter dated 13 November 2009, the NGO "Future World Centre", complained to the Minister of the Interior and the Director of Social Services, of the living conditions of the applicant and his family and requested that a temporary residence permit be granted to them so they could receive benefits and have access to health care, at least until the Supreme Court gave judgment in the applicant's recourse. According to the documents in the file this request was rejected.

28. On 10 December 2009 the Minister of the Interior revoked the deportation and detention orders and the applicant was released. According to the documents in the file, it appears that the applicant was requested to formalise his residence in Cyprus but he did not take any steps in this respect.

29. On 7 May 2010 the applicant applied to the Reviewing Authority for the reopening of his file.

30. By letter dated 11 May 2010 the Reviewing Authority informed him that it did not have the competence to take a decision as to the reopening of the file as the recourse proceedings concerning its decision of 5 June 2009 were still pending before the Supreme Court. The applicant had to wait for the Supreme Court to give judgment in those proceedings.

31. The applicant lodged an application with the Court on 14 June 2010. In his application form he stated that on 13 March 2004 he had taken part in

a demonstration in his village in Derit. The purpose of the demonstration was to go to Qamishli to show solidarity with the Kurdish demonstrators following the events of 12 March 2004. Following the intervention of the authorities this had not been possible. The applicant stated that the police had attacked the demonstrators killing two persons. After going into hiding for a month in a neighbouring village, the applicant was arrested in Qamishli. He was detained for fourteen days and subjected to ill-treatment. He was subsequently transferred to the central prison of Damascus where he was detained for two and a half months. After bribing the authorities he was released on the condition that he would present himself to the authorities in Damascus every fifteen days. He did not do so, however, out of fear of being detained and tortured again. He subsequently found out that an arrest warrant had been issued against him. He submitted that after these events he had asked the girl he loved to marry him but her family had not consented. She then left her family to be with him. On 29 December 2004 the family managed to track her down. They killed her because she had dishonoured the family and were looking for him. The applicant decided to leave Syria as he feared that he would either be detained or ill-treated by the police or killed by the girl's family.

32. It appears subsequently that the Reviewing Authority decided to examine the applicant's request for the reopening of his asylum application despite the ongoing proceedings before the Supreme Court. In his application the applicant relied on a document in Arabic which had been translated into Greek by the Government's Press and Information Office ("PIO"). The translation had a stamp that the PIO could not guarantee the authenticity of the document. According to the Government, the document was a copy. The applicant, however, stated that he had submitted the original document to the Reviewing Authority the day after his interview. According to the contents of the document, it was from the Department of Civil Security of Al-Hasakah of the Syrian Ministry of the Interior. It was dated 15 May 2005 and was addressed to the Directorate of Immigration and Passports in Damascus. It instructed the latter Service to arrest and surrender four individuals, including the applicant. It stated that all immigration departments and border check controls should be mobilised to prevent these four persons, who were sought by the authorities, from fleeing.

33. The Reviewing Authority held an interview with the applicant on 11 May 2011 and on 26 May 2011 it dismissed the application.

34. In its decision the Reviewing Authority noted that the applicant had stated that the above document had made its way to him from Syria through Lebanon and that he had received it on 10 May 2010. He claimed that it referred to the Qamishli events and that the persons named in it were sought by the authorities for their participation in those events. The Reviewing Authority, however, pointed out that the document made no reference to

these events. It considered that the applicant was not aware of the actual contents of the document and had not produced the original document. Furthermore, the translation of the document had been certified by the PIO on 5 May 2010 and therefore had been in the applicant's hands before 10 May 2010. In addition, the Reviewing Authority noted the contradictions between the first interview with the Asylum Service and his second interview. In the former he had stated that he had left Syria legally but in the latter that he had left illegally, after having bribed officials to secure a passport and leave the country. Furthermore, the applicant had not claimed that he risked political persecution in his asylum application, interview or appeal. Overall, the Reviewing Authority held that the applicant's claims lacked coherence, were inconsistent and therefore were not credible.

35. The Reviewing Authority concluded that the applicant had not been able to show that he risked persecution on political grounds or that he was eligible for complementary protection. Nor did he satisfy the conditions for temporary residence on humanitarian grounds.

36. On 31 January 2012 the Supreme Court dismissed the applicant's recourse. The Supreme Court upheld the Reviewing Authority's decision of 5 June 2009. The court noted, *inter alia*, that the Reviewing Authority's conclusions as to the lack of credibility of the applicant's claims mainly due to the existence of significant contradictions were reasonable. As the applicant's claims were not plausible, the documents he submitted could not stand alone and substantiate his asylum application. There was therefore no need to give any weight to these documents. Further, the applicant had left Syria for personal reasons and that these did not fall within those provided by the relevant law for granting refugee status. The Supreme Court held that the applicant had failed to substantiate that he was at risk of persecution if returned to Syria.

37. No appeal was lodged against the first instance judgment.

B. The applicant's second arrest and detention

38. In the meantime, on 17 May 2010 the Yekiti Party and other Kurds from Syria organised a demonstration in Nicosia, near the Representation of the European Commission, the Ministry of Labour and Social Insurance and the Government Printing Office. They were protesting against the restrictive policies of the Cypriot Asylum Service in granting international protection. About 150 Kurds from Syria, including the applicant, remained in the area around the clock, having set up about eighty tents on the pavement. According to the Government, the encampment conditions were unsanitary and protesters were obstructing road and pedestrian traffic. The encampment had become a hazard to public health and created a public nuisance. The protesters performed their daily chores on the pavement, including cooking and washing in unsanitary conditions. The sewage pits

had overflown, causing a nuisance and offensive odours. The public lavatories were dirty and the rubbish bins of the Government buildings were being used and, as a result, were continuously overflowing. Furthermore, the protesters were unlawfully obtaining electricity from the Printing Office. Members of the public who lived or worked in the area had complained to the authorities. The Government submitted that efforts had been made by the authorities to persuade the protesters to leave, but to no avail. As a result, the authorities had decided to take action to remove the protesters from the area.

39. On 28 May 2010 instructions were given by the Minister of the Interior to proceed with the deportation of Syrian-Kurdish failed asylum seekers in the normal way.

40. On 31 May 2010 the Minister requested the Chief of Police, among others, to take action in order to implement his instructions. Further, he endorsed suggestions made by the competent authorities that deportation and detention orders be issued against Syrian-Kurdish failed asylum seekers who had passports and did not have Ajanib or Maktoumeen status and that the police execute the orders starting with the ones issued against the leaders of the protesters. The police were also directed to take into account the policy guidelines and to use discreet methods of arrest.

41. According to the Government, letters were sent by the Civil Registry and Migration Department to a number of failed Syrian-Kurdish asylum-seekers informing them that they had to make arrangements to leave Cyprus in view of their asylum applications being turned down (see *M.A.*, cited above, § 32)

42. From documents submitted by the Government it appears that from 31 May until 7 June 2010 the authorities kept the area under surveillance and kept a record of the protesters' daily activities and of all comings and goings. In the relevant records it is noted that invariably, between 1.30 a.m. and 5.30 a.m., things were, in general, quiet, and everyone was sleeping apart from those keeping guard. During the above-mentioned period a large-scale operation was organised by the Police Emergency Response Unit, "ERU" ("ΜΜΑΔ"), and a number of other authorities, including the Police Aliens and Immigration Unit, for the removal of the protesters and their transfer to the ERU headquarters for the purpose of ascertaining their status on a case-by-case basis.

43. In the meantime, between 28 May 2010 and 2 June 2010 orders for the detention and deportation of forty-five failed asylum seekers were issued following background checks. Letters were sent by the District Aliens and Immigration Branch of the Nicosia Police to the Director of the Aliens and Immigration Service and the Ministry of Justice and Public Order, containing a short paragraph with information as to the immigration status of each person. This information included the date of rejection of the asylum application or the closure of the asylum file by the Asylum Service,

the date of dismissal of the appeal by the Reviewing Authority, where lodged, and the date some of those concerned had been included on the authorities' "stop list" (a register of individuals whose entry into and exit from Cyprus is banned or subject to monitoring). The letters recommended the issuance of deportation and detention orders. The Government submitted copies of two such letters with information concerning thirteen people.

44. On 2 June 2010, letters were also prepared in English by the Civil Registry and Migration Department informing those concerned of the decision to detain and deport them. The Government submitted that, at the time, the authorities did not know whether those individuals were among the protesters.

45. The removal operation was carried out on 11 June 2010, between approximately 3 a.m. and 5 a.m. with the participation of about 250 officers from the Police Aliens and Immigration Unit, the ERU, the Nicosia District Police Division, the Traffic Division, the Fire Service and the Office for Combating Discrimination of the Cyprus Police Headquarters. The protesters, including the applicants, were led to buses, apparently without any reaction or resistance on their part. At 3.22 a.m. the mini buses carrying the male protesters left. The women, children and babies followed at 3.35 a.m. A total of 149 people were located at the place of protest and were transferred to the ERU headquarters: eighty-seven men, twenty-two women and forty children. Upon arrival, registration took place and the status of each person was examined using computers which had been specially installed the day before. The Government submitted that during this period the protesters had not been handcuffed or put in cells but had been assembled in rooms and given food and drink. It appears from the documents submitted by the Government that by 6.40 a.m. the identification of approximately half of the group had been completed and that the whole operation had ended by 4.30 p.m.

46. It was ascertained that seventy-six of the adults, along with their thirty children, were in the Republic unlawfully. Their asylum applications had either been dismissed or their files closed for failure to attend interviews. Those who had appealed to the Reviewing Authority had had their appeals dismissed. Some final decisions dated back to 2006. A number of people had also been included on the authorities' "stop list". Deportation orders had already been issued for twenty-three of them (see paragraph 43 above).

47. The authorities deported twenty-two people on the same day at around 6.30 p.m. (nineteen adults and three children). Forty-four people (forty-two men and two women), including the applicant, were arrested. The persons against whom deportation and detention orders had been issued on 2 June 2010 were detained under these orders. The remaining persons, including the applicant, were charged with the criminal offence of unlawful stay in the Republic under section 19(2) of the Aliens and Immigration Law

(see *M.A.*, cited above, § 65). They were all arrested and transferred to various detention centres in Cyprus. The applicant was placed in the Larnaca Police Station Detention facility. Further, on humanitarian grounds, thirteen women whose husbands were detained pending deportation and who had a total of twenty-seven children between them were not arrested themselves.

48. According to the Government the applicant and his co-detainees were informed orally that they had been arrested and detained on the basis that they had been staying in the Republic unlawfully and were thus "prohibited immigrants" (see *M.A.*, cited above, § 62). They were also informed of their rights pursuant to the Rights of Persons Arrested and Detained Law 2005 (Law 163(I)/2005) (see *M.A*, cited above, § 93) and, in particular, of their right to contact by phone, in person and in private, a lawyer of their own choice. The applicant submitted that he had not been informed of the reasons for his arrest and detention on that date.

49. On the same day letters were sent by the District Aliens and Immigration Branch of the Nicosia Police to the Director of the Aliens and Immigration Service and the Ministry of Justice and Public Order, recommending the issuance of deportation and detention orders. The letters contained a short paragraph in respect of each person with information as to his or her immigration status. This included the date of rejection of the asylum application or the closure of the asylum file by the Asylum Service and the date of dismissal of the appeal by the Reviewing Authority where lodged. Some letters also referred to the date the asylum application had been lodged and the date some of the individuals concerned had been included on the authorities' "stop list". The Government submitted copies of letters concerning thirty-seven people (most of these letters referred to groups of people).

50. Deportation and detention orders were also issued in Greek on the same day in respect of the remaining fifty-three people detained (see paragraph 46 above), including the applicant, pursuant to section 14 (6) of the Aliens and Immigration Law on the ground that they were "prohibited immigrants" within the meaning of section 6(1)(k) of that Law. These were couched in identical terms. In respect of two people the orders also mentioned sections 6(1)(i) and 6(1)(l) of the Law.

51. Subsequently, on the same date, letters were prepared in English by the Civil Registry and Migration Department informing all the detainees individually, including the applicant, of the decision to detain and deport them. The Government submitted thirty-seven copies of these letters, including that addressed to the applicant, the text of which was virtually identical, a standard template having been used.

The text of the letter reads as follows:

> "You are hereby informed that you are an illegal immigrant by virtue of paragraph (k). section 1, Article 6 of the Aliens and Immigration law, Chapter 105, as amended until 2009, because you of illegal entry [sic]
>
> Consequently your temporary residence permit/migration permit has been revoked and I have proceeded with the issue of deportation orders and detention orders dated 11th June 2010 against you.
>
> You have the right to be represented before me or before any other Authority of the Republic and express possible objections against your deportation and seek the services of an interpreter."

52. The only differences were that some letters referred to illegal stay rather than illegal entry and that the letters issued earlier referred to 2 June 2010 as the date of issuance of the deportation and detention orders (see paragraph 44 above).

53. On the copy of the letter to the applicant provided by the Government, there is a handwritten signed note by a police officer stating that the letter was served on the applicant on 18 June 2010 but that he had refused to receive and sign it. The other letters had a similar note or stamp on them with the same date, stating that the person concerned had refused to sign for and/or receive the letter. In a letter dated 7 September 2010 the Government stated that the applicant had been served on 18 June 2010. In their subsequent observations the Government submitted, however, that this was the second attempt to serve the letters, the first attempt having been made on 11 June 2010, that is, the day of the arrest.

54. The applicant submitted that he had never refused to receive any kind of information in writing. He claimed that it had only been on 14 June 2010 that he had been informed orally that he would be deported to Syria on the same day but that the deportation and detention orders were not served on him on that date or subsequently. He submitted that he had eventually been informed by his lawyer, following the receipt of information submitted by the Government to the Court in the context of the application of Rule 39 of the Rules of Court, that deportation and detention orders had been issued against him.

55. From the documents submitted by the Government, it appears that at least another fourteen of the detainees were to be deported on 14 June 2010 (this figure is stated in documents submitted by the Government with no further details).

56. On 10 March 2011 the applicant escaped from Larnaca Police Station Detention facility. The applicant submitted that he fell during his escape and suffered injuries. He went to hospital for treatment and then gave himself up to the police. The Government submitted that the applicant had been found on the same day and was taken to hospital as he had suffered injuries. The applicant remained in hospital until 31 March 2011 and was then transferred back to Larnaca Police Station Detention facility. The police investigation file concerning the applicant's escape was sent to

the Attorney-General who decided not to bring criminal proceedings against him. The applicant submitted that in the context of the investigation, the authorities arrested and detained his wife at the above facility and that their children were placed under the care of the Welfare Services.

57. The applicant was released on 20 April 2011 following revocation of the deportation and detention orders of 11 June 2010 by the Permanent Secretary of the Ministry of the Interior. The applicant submitted that his wife had been released on the same day. The applicant also submitted that he had not been given any information as to his residence status or the conditions of his release apart from having to report to the police once a month. The applicant's representative sent a number of letters to the authorities in this connection.

C. Habeas corpus proceedings and the applicant's release

58. In the meantime, on 17 January 2011 the applicant filed a habeas corpus application with the Supreme Court claiming that his continued detention from 11 June 2010 had violated Article 15 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, "the EU Returns Directive". The applicant, relying on the Court's judgment in *Chahal v. the United Kingdom*, 15 November 1996, (*Reports of Judgments and Decisions* 1996-V) and the Commission's report in *Samie Ali v. Switzerland* (no. 24881/94, Commission's report of 26 February 1997) also claimed that his detention had breached Article 11 (2) of the Constitution and Article 5 § 1 of the Convention. The application was made on the same grounds as those made by *M.A.*, § 50, cited above).

59. The Supreme Court set the application for directions for 25 January 2011. On that date the Government asked for leave until 1 February 2011 to file, if they decided to do so, an objection to the application. The habeas corpus application was set for directions for the above date. In the end, the Government filed an objection and the application was set for hearing on 10 February 2011. On that date the Government requested the hearing to be postponed as three other similar habeas corpus applications filed were pending before another judge before the Supreme Court and judgment had been reserved (see *M.A.*, cited above, §§ 50-51 and *A.H. and J.K v. Cyprus*, nos. 41903/10 and 41911/10, § 51, 21 July 2015). The applicant objected. The Supreme Court accepted the request and postponed the hearing until 24 February 2011. Although it acknowledged that this type of application should be tried as quickly as possible, it held that it was in the interests of justice in view of the applications pending before another judge with similar issues, to give some time in the event judgment was given in the other cases. It noted, however, there would be no more adjournments and if the

judgments in the other applications were not given by the above date it would proceed with the hearing of the application before it.

60. On 24 February 2011 the parties appeared before the court. Although judgments had been delivered on 23 February 2011 dismissing the other applications, the applicant decided to go ahead and maintain his application. The parties submitted their written addresses and the hearing of the application was held. Judgment was reserved on the same day.

61. On 8 March 2011 the Supreme Court dismissed the application. It adopted the reasoning in the judgments given by the Supreme Court on 23 February 2011 in the other applications (see *M.A;* cited above, §§ 50-53 and *A.H. and J.K.,* §§ 48-54).

62. The applicant lodged an appeal with the Supreme Court (appellate jurisdiction) on 17 March 2011. Another three appeals were lodged at the same time (see *M.A.,* §§ 54 and *A.H. and J.K.,* cited above, § 55).

63. The applicant sent a letter along with the other appellants dated 13 April 2011 to the Registrar of the Supreme Court requesting that the appeals be fixed for pre-trial within a "short period of time" and then for hearing.

64. The applicant was released on 20 April 2011 (see paragraph 57 above).

65. On 15 July 2011 the Supreme Court informed the applicant that his appeal had been set down for hearing for 12 September 2011.

66. On 7 September 2011 the applicant's lawyer filed an application for joining the four appeals (see paragraph 62 above).

67. On 12 September 2011 the Supreme Court issued an order joining the appeals and also instructed the parties to file their written addresses. The applicant submitted that on this date the court was informed that he had been released.

68. On 8 November 2011 the applicant filed an application requesting an extension of twenty days for filing his written address. This was filed on 28 November 2011.

69. On 17 March 2012 the appeals were set for directions.

70. On 18 July 2012 the Government filed an application requesting the parties to appear before the Supreme Court and requested a forty-day extension for filing their written address. This was granted and the appeals were set down for hearing on 11 September 2012.

71. In the meantime, the Government filed their written address on 28 August 2012.

72. On 11 September 2012 the hearing was held and judgment was reserved.

73. The appeals were dismissed on 15 October 2012. The Supreme Court held that as the applicant had, in the meantime, been released, the application was without object (see *M.A.*, cited above, § 55).

D. Background information concerning the applicant's request under Rule 39 of the Rules of Court and subsequent developments

74. In the meantime, on Saturday, 12 June 2010, the applicant, along with forty-three other persons of Kurdish origin, submitted a Rule 39 request in order to prevent their imminent deportation to Syria.

75. On 14 June 2010 the President of the First Section decided to apply Rule 39, indicating to the respondent Government that the detainees should not be deported to Syria until the Court had had the opportunity to receive and examine all the documents pertaining to their claim. The parties were requested under Rule 54 § 2 (a) of the Rules of Court to submit information and documents concerning the asylum applications and the deportation.

76. On 21 September 2010 the President of the First Section reconsidered the application of Rule 39 in the light of information provided by the parties. He decided to maintain the interim measure in respect of five cases, including the present one. Rule 39 was lifted with regard to the thirty-nine remaining cases (for further details see *M.A.*, cited above, § 58).

77. By letter dated 12 June 2012 the applicant's representative informed the Court that the applicant had left Cyprus with his family and was living in the Kurdish area of Northern Iraq.

78. On the basis of the above information, on 14 June 2012, the President of the Section, decided to lift the measure indicated under Rule 39.

79. By letter dated 29 June 2012 the applicant's representative notified the Court that she had established contact with the applicant and that he had informed her that he wished to pursue the application.

80. By fax dated 6 November 2012 the applicant confirmed that he had left Cyprus with his family and was in Northern Iraq. He provided an asylum certificate from UNCHR in Iraq dated 23 September 2012.

81. Rule 39 was also lifted with regard to another two cases in the course of the proceedings before the Court (see paragraph 76 above).

II. RELEVANT DOMESTIC LAW AND PRACTICE

82. The relevant domestic law and practice, are set out in detail in *M.A.* (cited above, §§ 61-93) and *A.H. and J.K.*, cited above, §§ 87, 98-99, 101-102).

III. INTERNATIONAL TEXTS AND DOCUMENTS

83. The relevant international texts and documents, are set out in *M.A.* (cited above, §§ 94-105) and *A.H. and J.K.*, cited above, § 126).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 13

84. Relying on Article 3 of the Convention, the applicant complained that if deported to Syria, he would be exposed to a real risk of torture or inhuman or degrading treatment. He further complained, under Article 13 in conjunction with Article 3, that he did not have an effective domestic remedy against his intended deportation. These provisions read as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 13

"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."

A. The parties' submissions

85. With regard to his complaint under Article 3, the applicant's personal story for leaving Syria was that he had been previously detained, tortured and ill-treated by the authorities because of his origin and his participation in the Qamishli events in 2004. An arrest warrant had been issued against him and the authorites were still after him. In addition, he had been involved in a sad situation of honour killings amongst the Kurdish community in Syria from which he had tried to escape (see paragraph 31 above). He pointed to the delay in the examination of his asylum claim and a number of shortcomings in the proceedings. He also claimed that during the interview, when he had tried to tell his story relating to the Qamishli events, he had been interrupted by the officer in charge who had told him that he did not want to hear about these events again as all Syrian Kurds had the same story. As a result he had only been able to focus on the events surrounding his persecution by the girl's family. The applicant also criticised the procedure before the Reviewing Authority and contested its findings, including its conclusions concerning the arrest warrant he had submitted to it in May 2010.

86. The applicant also invoked a number of other reasons why he faced a risk of ill-treatment or torture in Syria. First of all, he raised the general situation for the Kurdish ethnic minority in Syria. In particular, he claimed that he was at risk of persecution by reason of his Kurdish origin, as Kurds in Syria were members of a generally oppressed minority whose human

rights were systematically violated. Secondly, as a failed asylum seeker, he ran the risk of being imprisoned upon return to Syria. Thirdly, he relied on his connections with the Yekiti party or other political activities. He had participated in demonstrations organized by the Yekiti party and Syrian Kurds in Cyprus, including that of 17 May 2010. He believed that his activities were well known to the Syrian Embassy in Cyprus and the Syrian authorities in general. Fourthly, in his observations dated 12 August 2011 the applicant invoked the deterioration in the human rights' situation in Syria.

87. Finally, relying on Article 13 of the Convention, the applicant complained that a recourse challenging the decisions of the Reviewing Authority and the deportation and detention orders did not have automatic suspensive effect and did not entail an examination of the merits of the administrative decisions.

88. Following his departure from Cyprus, the applicant informed his representative that he wished to continue with his application before the Court (see paragraph 79 above).

89. The Government, in their additional observations in reply to those of the applicant (see paragraph 9 above), submitted that the applicant could no longer claim to be a victim of the alleged violation of Article 3 of the Convention as he had left Cyprus illegally and had gone to Iraq. He therefore did not face a risk of deportation from Cyprus to Syria. Accordingly, they invited the Court to declare the applicant's complaint under this provision inadmissible on this ground. In the alternative, the Government argued that the applicant had failed to exhaust domestic remedies. They noted in this respect that the applicant had not filed a recourse against the second decision of the Reviewing Authority dated 26 March 2011 nor had he lodged an appeal against the first instance judgment of the Supreme Court of 31 January 2012. Last but not least, they argued that the applicant following his departure, could have had filed a new administrative appeal or submitted new information before the authorities concerning his asylum appeal or lodged a fresh claim for asylum under the Refugee Law which had, in the meantime been amended (see *A.H. and J.K.*, cited above, §§ 98-99).

B. The Court's assessment

90. After the present application was communicated to the Government and while the interim measure under Rule 39 was in force, the Court was informed that the applicant had left Cyprus on his own accord and was living in Iraq. As a result Rule 39 was lifted on 14 June 2012. Consequently, the Court considers that it is necessary first of all to determine whether this development is such as to lead it to decide to strike this part of the application out of its list of cases in application of Article 37 § 1 of the

Convention. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that provision. Article 37 provides as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

91. In order to determine whether an application should be struck out of the list pursuant to Article 37 § 1 (c) the Court must consider whether the circumstances lead it to conclude that "for any other reason....it is no longer justified to continue the examination of [it]."

92. The Court recalls that it enjoys a wide discretion in identifying grounds capable of being relied upon in a strike out application on this basis; however, it also recalls that such grounds must reside in the particular circumstances of each case (see *M.H. and A.S. v. the United Kingdom* (dec.), nos. 38267/07 and 14293/07, 16 December 2008 and *Association SOS Attentats and de Boery v. France* [GC], (dec.), no. 76642/01, § 37, ECHR 2006-XIV).

93. In the Court's view, the particular circumstances of this part of the application are such that it is no longer justified in continuing its examination. The applicant's complaints under Articles 3 and 13 of the Convention are based on the consequences of his deportation to Syria by the Cypriot authorities. The applicant, however, in 2012 left Cyprus, from the occupied part, voluntarily and in spite of the fact that Rule 39 was in force. He is currently in Iraq. He is therefore no longer at risk of being deported to Syria from Cyprus.

94. Moreover, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the cases.

95. In view of the above, the Court finds it appropriate to strike out from the list this part of the application concerning Articles 3 and 13 of the Convention.

96. This conclusion renders it unnecessary for the Court to examine the pleas of inadmissibility raised by the Government, based on the loss of the applicant's victim status and a failure to exhaust domestic remedies.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

97. The applicant complained that he did not have an effective remedy at his disposal to challenge the lawfulness of his detention from 11 June 2010 until 20 April 2011. He relied on Article 5 § 4 of the Convention, which provides as follows:

Article 5 § 4

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Complaints concerning recourse proceedings

1. The parties' submissions

98. The parties' submissions were the same as those made in the case of *M.A.* (cited above, §§ 146-147, 150-159).

2. The Court's assessment

99. The Court notes that the issue raised under this provision concerning judicial review proceedings is identical to that examined in the case of *M.A.* (cited above).

100. The Court recalls that in that case it declared this complaint admissible (ibid., §§ 148-149) and held that there had been a violation of that provision as a recourse under Article 146 of the Constitution did not comply with the requirement of "speediness" (ibid., §§ 160-170).

101. The Court finds no reason in the instant case to depart from the above findings made in the *M.A.* judgment. As in *M.A.*, in view of the above finding, the Court does not consider it necessary to examine the remainder of the applicant's complaints concerning the judicial review proceedings (ibid., § 171).

B. Complaints concerning the habeas corpus proceedings

1. The parties' submissions

(a) The applicant

102. The applicant submitted that the proceedings in his habeas corpus application did not comply with the requirements of Article 5 § 4 of the Convention and were not an effective remedy. First of all, the proceedings had been excessively long and did not respect the requirement of speediness. The first instance proceedings had lasted on one month and nineteen days and the appeal proceedings one year and seven months.

Furthermore, at the appeal level, despite the fact that the applicant having requested an early hearing, the appeal had been set for directions five and a half months later and following his release. The hearing of the appeal had been fixed a year later, even though when the Supreme Court had set the appeal for directions, it had been informed of the applicant's release.

103. Secondly, the applicant maintained that habeas corpus proceedings were generally ineffective in practice, since even if a detainee was successful, the authorities immediately issued new detention orders and re-arrested the person concerned. He relied on a case in which a detainee had succeeded in obtaining a habeas corpus order from the Supreme Court (case of *Osman Kane*, habeas corpus application no. 95/2011, 2011 (1) CLR 1548) on the ground that he had been detained with a view to his deportation for more than the six months provided by the EU Returns Directive (see *M.A*, cited above, §§ 85-86). Despite this, new deportation and detention orders were then issued on the same day by the authorities and he was kept in detention.

(b) The Government

104. The Government submitted that the habeas corpus proceedings complied with the speediness requirement of Article 5 § 4 of the Convention. During the first instance proceedings, the Supreme Court had heard the parties four times, on 25 January, and on 1, 10 and 24 February 2011. The hearing had been postponed to give the opportunity to another judge of the Supreme Court to give judgment in respect of three other applications which had similar factual and legal issues. The Supreme Court did, however, note that if the judgments were not delivered by 24 February 2011 it would go ahead with the application. Furthermore, there had been no element of urgency in the case nor had such an issue been raised during the proceedings (in contrast to *Sarban v. Moldova* (no. 3456/05, §§ 121-122, 4 October 2005 where the applicant had, *inter alia*, based his habeas corpus request on his poor state of health and absence of medical care in the remand centre). The applicant had challenged the lawfulness of his prolonged detention which was based on detention and deportation orders; the deportation orders, however, could not be enforced due to the application of the interim measure by the Court. In the light of the circumstances of the cases, the Government argued that the length of the first instance proceedings which amounted to one month and nineteen days had been reasonable.

105. Insofar as the appeal proceedings were concerned, the Government submitted that bearing in mind, firstly, that the applicant had been released one month and four days following the filing of his appeal and therefore long before judgment had been given, the length of these proceedings had not had real bearing on his detention.

2. The Court's assessment

(a) Admissibility

106. To the extent that the applicant complains about the speed of the habeas corpus proceedings, the Court notes that his 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

107. The Court refers to the general principles set out in *M.A.*, (§§ 160-163, cited above) concerning Article 5 § 4 of the Convention and, in particular, the requirement of speediness. It further recalls that in order to determine whether the requirement that a decision be given "speedily" has been complied with, it is necessary to effect an overall assessment where the proceedings were conducted at more than one level of jurisdiction (see amongst many authorities, *Mooren v. Germany* [GC], no. 11364/03, § 106, 9 July 2009). Although Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention and for hearing applications for release, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance (see *Allen v. the United Kingdom*, no. 18837/06, § 39, 30 March 2010, with further references).

108. Turning to the present case, the Court notes that the period to be taken into consideration started on 17 January 2011 when the applicant filed his habeas corpus application and ended on 20 April 2011 when he was released. Although judgment on appeal was not given until 15 October 2012, the applicant was not detained throughout the entire appeal proceedings. In assessing the question of speed, the Court will only have regard to the period of the habeas corpus proceedings during which the applicant remained in detention. This lasted three months and two days.

109. The first instance proceedings lasted one month and nineteen days. The habeas corpus application was filed on 17 January 2011 and was set for directions for 25 January 2011. The Government was given until 1 February 2011 to file their objection and the application was set for directions for that date. The application was then set for hearing on 10 February 2011 and on that date the hearing was postponed until 24 February 2011 given that other similar applications were pending before the court and judgment was due to be given. The hearing was held on that date and judgment dismissing the application was given on 8 March 2011.

110. The applicant then lodged an appeal on 17 March 2011. This period amounting to nine days was attributable to the applicant.

111. However, following the lodging of the appeal and until the date of the applicant's release, that is, for a period amounting to one month and four

days, there was complete inactivity in the proceedings. Although the applicant sent a letter dated 13 April 2011 to the Registrar of the Supreme Court requesting that the appeal be fixed for pre-trial within a short period of time", nothing happened until after his release. No explanation has been given by the Government for this inordinate delay. The Court considers that such a lapse of time is not compatible with the speed required by the terms of Article 5 § 4 and the strict standards the Court has laid in its case-law (see in *M.A.*, cited above, §§ 162-163, with further references).

112. In conclusion, the habeas corpus proceedings were not conducted "speedily" within the meaning of Article 5 § 4 of the Convention.

C. The Court's conclusion on the merits

113. Accordingly, the Court finds a violation of Article 5 § 4 of the Convention as both the remedies available under domestic law did not comply with the requirement of speediness of that provision. In particular, pursuing a recourse would not have provided the applicant with a speedy review of the lawfulness of his detention and the habeas corpus proceedings in the present case were not conducted "speedily" (see paragraphs 99-101 and 108-112 above).

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

114. The applicant further complained that his detention had been unlawful and therefore in breach of Article 5 § 1 of the Convention, which, in so far as relevant, reads as follows:

Article 5 § 1

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. The applicant's complaints under this provision

115. The Court notes that the applicant did not complain about his first arrest and detention (see paragraphs 23-28 above). His complaint under Article 5 § 1 of the Convention concerns the second arrest and detention by the authorities. This complaint can be divided into two parts that require separate examination. Firstly, the applicant complained about his transfer,

along with the other protesters, to the ERU headquarters on 11 June 2010 and his stay there pending his identification. Secondly, he complained about his detention from 11 June 2010 until 20 April 2011 on the basis of the deportation and detention orders issued against him on the former date under section 6(1)(k) of the Aliens and Immigration Law.

B. The applicant's transfer to and stay at the ERU headquarters on 11 June 2010

1. The parties' submissions

116. The parties' submissions in respect to this complaint were the same as those made in the case of *M.A.* (cited above, §§ 173, 177-180).

2. The Court's assessment

Admissibility

117. The Court notes that the applicant's complaint concerning this period arises from the same factual circumstances as those in *M.A.* (cited above) and that the issue at stake is identical to that examined in the above case. *M.A.* and the applicant in the present case were transferred to the E.R.U. headquarters together and stayed there for a number of hours pending their identification and ascertainment of their status.

118. The Court recalls that in the case of M.A. it declared this complaint admissible (§§ 185-196) finding that the applicant's transfer to and stay in the ERU headquarters during this period amounted to a *de facto* deprivation of liberty within the meaning of Article 5 § 1 and that this provision applied to the case *ratione materiae* . It further, held that the complaint was not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

119. The Court went on to find that M.A's deprivation of liberty during this period was contrary to Article 5 § 1 of the Convention in the absence of a clear legal basis for the deprivation of his liberty (§§ 197-203).

120. For the same reasons, as in the case, the Court finds that the applicant's complaint concerning the same period is admissible and that there has been a violation of Article 5 § 1 concerning the applicant's deprivation of liberty during this period.

C. The applicant's detention from 11 June 2010 until 20 April 2011 on the basis of the deportation and detention orders issued against him

1. The parties' submissions

(a) The applicant

121. The applicant submitted that his detention from 11 June 2010, following the issuance of the detention and deportation orders until 20 April 2011 had been arbitrary and contrary to Article 5 § 1 (f) of the Convention. The above orders had been issued against him, on the basis that he had been an unlawful immigrant pursuant to sections 6 and 14 of the Aliens and Immigration Law. This law was, however subject to the Refugee law under which he had asylum seeker status at the time as no final decision had been taken on their asylum claims. The applicant pointed out that, at the time the orders were issued his recourse against the decision of the Reviewing Authority was still pending before the Supreme Court. The provisions of the Refugee Law should have therefore prevailed. The applicant maintained that his detention could have only been justified under Section 7 of the Refugee Law which allowed for the detention of asylum seekers in specific circumstances. None of these, however, applied to the applicant. He had thus been detained for the sole reason of being an asylum seeker contrary to Section 7 of the Refugee Law. Furthermore, he had not been taken before a court and his detention exceeded the maximum of thirty-two days provided by that section (see paragraph 82 above)

122. The applicant emphasised that at the time, that is, before 24 December 2010, the Aliens and Immigration Law did not provide a maximum detention period for detention with a view to deportation. Section 14 of that law provided a wide margin of discretion to the Chief Immigration Officer to detain indefinitely for the purpose of deportation. Although at the material time the Minister of the Interior had a policy of a six-month maximum detention period if asylum seekers or migrants could not be deported for any reason, unless there were other concerns, such as public order or security, this policy was not applied consistently. Once the deadline for transposition of the EU Returns Directive had expired on 24 December 2010 and it had direct effect in domestic law (see *M.A.*, cited above, §§ 51 and 85-87 above), the applicant had brought a habeas corpus application on the ground that the maximum detention period of six months, had elapsed in his case. The Supreme Court, however, then ruled that his detention had been lawful as the period during which deportation had been suspended by the Court, did not count when assessing the length of detention and that the six-month time-limit would start to run from the moment that the interim measure had been lifted. As a result, although the applicant had been detained for over ten months the six-month time-limit

did not apply to him. This was despite the fact that the specific circumstances provided for in Article 15 (6) of the Directive allowing the extension of detention with a view to deportation were not applicable in his case (see *M.A.*, cited above, § 86). Furthermore, the applicant pointed out that domestic law did not provide for periodic review of detention for the purpose of deportation as provided for in the Directive (see paragraph 82 above). His lawyer had sent letters to the authorities requesting a review but these had remained unanswered.

123. The applicant submitted that even assuming that his detention had been compatible with the domestic law, it had ceased to be so because of its excessive duration. Unlike in the case of *Chahal* (cited above), the length of detention in his case could not be justified on the basis of any exceptional circumstances. The authorities had not been able to deport him because of the Court's interim measure. In addition, the maximum period of detention of six months, provided for in the EU Returns Directive which had been directly applicable in domestic law, had elapsed. Despite this the authorities had continued to detain him. The Government had not provided any evidence that they had taken any action after the interim measure had been adopted in respect of the applicant's deportation. Furthermore, as the Court had decided to maintain Rule 39 in this case, unlike in the majority of cases that had been filed at the same time with his (see paragraph 76 above), it should have been evident to the authorities that it would take some time for Rule 39 to be lifted.

124. Lastly, the applicant considered that there had been arbitrariness and bad faith. In the applicant's view, his continued detention could only be considered as a form of punishment (relying on *Saadi v. the United Kingdom* ([GC], no. 13229/03, §§ 69-70, ECHR 2008). He had been arrested and detained as punishment for demonstrating against the Government. The authorities had therefore acted in bad faith. Instead of treating him as an asylum seeker within the meaning of the Refugee Law, they had treated him as an illegal immigrant who did not comply with the residence requirements of the immigration law. The authorities could have released him and granted him a temporary residence permit on humanitarian grounds pending the examination of his case by the Supreme Court and by the Court. The applicant had not been convicted of an offence nor had he been considered as a public threat or dangerous to public order.

(b) The Government

125. The Government maintained that the applicant had been detained lawfully during the relevant period with a view to his deportation under Article 5 § 1 (f) of the Convention within the meaning of the Court's case-law. In this respect the Government submitted that the applicant's arrest and detention on the ground of unlawful stay had been lawful as it had been in conformity with domestic law and procedure. The applicant had been a

"prohibited immigrant" within the meaning of 6 (1) (k) of the Aliens and Immigration Law as he had stayed in the Republic unlawfully after the rejection of his asylum application. The Reviewing Authority had dismissed his appeal and he had therefore become an illegal immigrant by virtue of section 6 (1) (k) of the above law. The applicant had been asked to leave Cyprus by a letter dated 15 October 2009 (see paragraph 25 above). He had been charged with the criminal offence of unlawful stay which was a flagrant offence punishable by imprisonment under section 19 (2) of the Aliens and Immigration Law (see *M.A.*, cited above, § 65). Article 11 (4) of the Constitution permitted arrest without a warrant for flagrant offences carrying a term of imprisonment (see *M.A.*, cited above, § 181). His detention continued on the basis of deportation and detention orders issued on the same day before the lapse of the twenty-four hour time-limit set by Article 11 (5) of the Constitution pursuant to Section 14(6) of the Aliens and Immigration Law on the ground that he had been a "prohibited immigrant" within the meaning of section 6(1)(k) of that Law. Contrary to the applicant's submissions, the letters sent by the District Aliens and Immigration Branch of the Nicosia Police to the Director of the Aliens and Immigration Service and the Ministry of Justice and Public Order stated that after ascertaining that the applicant had been staying unlawfully in the Republic, the applicant had been arrested and charged with the commission of this offence and had been informed of his rights under Law 163(I)/2005 (see *M.A.*, cited above, § 93).

126. Furthermore, the Government pointed out that when Rule 39 had been applied by the Court on 14 June 2010, they had been prevented from deporting the applicant to Syria. The execution of the deportation order was therefore temporarily suspended. The order had subsequently been cancelled and the applicant released. In the meantime, the Supreme Court had ruled that the applicant's detention had been lawful and had dismissed his habeas corpus applications. The Supreme Court in its judgment of 23 February 2011 which had been entirely adopted by the Supreme Court in the applicant's case on 8 March 2011 had noted that the authorities had stated that they had been ready to deport the applicant since 18 June 2010 but had suspended deportation due to the Court's interim measure. The Government, thus, emphasised that the applicant's detention had been lawful: he had been detained with a view to his deportation, his detention had been duly authorised in accordance with domestic law and reviewed by the Supreme Court.

127. Lastly, the Government submitted that the length of the applicant's detention, namely ten months and nine days, bearing in mind that Rule 39 had been in force during that period, was reasonable and in line with the Court's case-law. They relied on a number of cases in which they pointed out that the Court had not found a violation of Article 5 (1) (f) with regard to longer periods of detention (*Al Husin v. Bosnia and Herzegovina*,

no. 3727/08, 7 February 2012; *Umirov v. Russia*, no. 17455/11, 18 September 2012, and *Al Hanchi v. Bosnia and Herzegovina*, no. 48205/09, 15 November 2010).

2. The Court's assessment

(a) Admissibility

128. The Court notes that it is not disputed that the applicant was deprived of his liberty from 11 June 2010 until 20 April 2011 on the basis of deportation and detention orders issued under the Aliens and Immigration Law. Although the applicant escaped from the detention facility on 10 March 2011, he was taken into detention the very same day. He was kept in detention at a hospital until 31 March 2011 and then at Larnaca Police Station Detention facility under the same orders. The Attorney-General had decided not to prosecute the applicant (see paragraph 56 above). In view of the fact that this incident was very brief, the applicant's detention continued on the same grounds and in the absence of specific information and submissions by the parties in this respect, the Court considers that the period of the applicant's detention should be regarded as a "continuing situation" and will examine the period as a whole.

129. The Court further notes that the applicant's complaint under this head 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.

(a) Merits

130. As in *M.A.* (cited above, § 206), the Court is satisfied that the applicant's deprivation of liberty from 11 June 2010 to 20 April 2011 fell within the ambit of Article 5 § 1 (f) of the Convention as he was detained for the purpose of being deported from Cyprus. This provision does not require that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary, for example to prevent his committing an offence or fleeing; in this respect Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c) (see *Chahal*, cited above, §§ 112-113 and *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I). All that is required under this provision is that "action is being taken with a view to deportation". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see *Chahal*, cited above, § 112).

131. The Court reiterates, however, that it falls to it to examine whether the applicant's detention was "lawful" for the purposes of Article 5 § 1 (f), with particular reference to the safeguards provided by the national system. Where the "lawfulness" of detention is in issue, including the question

whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III). Compliance with national law is not, however, sufficient: any deprivation of liberty should, in addition, be in keeping with the purpose of protecting the individual from arbitrariness – and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and contrary to the Convention (see *Saadi*, cited above, § 67).

132. The Court notes that Cypriot law allows for the possibility of detention with a view to deportation. The Court observes in this respect that the decision of 11 June 2010 ordering the applicant's detention and deportation were based on section 14 of the Aliens and Immigration Law, which permits the Chief Immigration Officer to order the deportation of any alien who is a prohibited immigrant and his or her detention in the meantime. The applicant was detained on the basis of deportation and detention orders which were issued pursuant to section 6(1)(k) of the Aliens and Immigration Law on the ground that he was a "prohibited immigrant" staying in the Republic unlawfully. The applicant's asylum claim had been rejected by the Asylum Service and his appeal by the Reviewing Authority. Pursuant to section 8 of the Refugee Law, following the decision of the Reviewing Authority, the applicant no longer had the right to remain in Cyprus (see *M.A*, cited above, § 75). The recourse to the Supreme Court against the Reviewing Authority's decision was still pending at the time but it did not have automatic suspensive effect.

133. In view of the foregoing, the Court finds that the applicant's detention had a legal basis in domestic law and that the authorities complied with its provisions.

134. The Court notes that the applicant's detention for virtually the whole period was attributable to the temporary suspension of the enforcement of the deportation orders due to the indication made by the Court under Rule 39 on the above date. The Court reiterates in that regard that the Contracting States are obliged under Article 34 of the Convention to comply with interim measures indicated under Rule 39 of the Rules of Court (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 99-129, ECHR 2005-I). However, the implementation of an interim measure indicated by the Court does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subjected complies with Article 5 § 1 (see *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 74, ECHR 2007-II). Detention should still be

lawful and not arbitrary (see *Azimov v. Russia*, no. 67474/11, § 169, 18 April 2013).

135. In a number of cases where the respondent States refrained from deporting applicants in compliance with a request made by the Court under Rule 39, the Court was prepared to accept that expulsion proceedings were temporarily suspended but nevertheless were "in progress", and that therefore no violation of Article 5 § 1 (f) had occurred (see *Al Hanchi*, §§ 49-51; *Al Husin*, §§ 67-69; and *Umirov*, §§ 138-42; all cited above).

136. That being said, suspension of the domestic proceedings due to the indication of an interim measure by the Court should not result in a situation where the applicant is in prison for an unreasonably long period.

137. In the present case the applicant was detained from 11 June 2010 until 20 April 2011. The Rule 39 was applied on 14 June 2010. In total he was detained for ten months and nine days. The Court finds that this period does not appear to be unreasonably long (see, for example the cases of *Al Hanchi* and *Al Husin*, both cited above, where periods of detention which lasted one year and ten months and slightly more than eleven months respectively were found compatible with Article 5 § 1 (f)).

138. It is true that that during the first six months of the applicant's detention, that is from 11 June until 24 December 2010, domestic law did not provide a maximum detention period whilst subsequently, as a result of the Supreme Court's judgment of 8 March 2011 the detention limit was not applicable in his case. Consequently, the applicant could have been kept in detention for an indeterminate period of time pending the determination by the Court of his application (see, *mutatis mutandis*, *Louled Massoud v. Malta*, no. 24340/08, § 71, 27 July 2010). However, this did not happen as despite the outcome of his habeas corpus application he was released by the authorities. The Court reiterates in this connection that in proceedings originating in an individual application it has to confine itself, as far as possible, to an examination of the concrete case before it (see *Schalk and Kopf v. Austria*, no. 30141/04, § 103, ECHR 2010). It also points out in this respect that, Article 5 § 1 (f) of the Convention does not require domestic law to provide a time-limit for detention pending deportation or extradition proceedings (see *Bordovskiy v. Russia*, no. 49491/99, § 50, 8 February 2005).

139. The Court further observes that during this period the Reviewing Authority examined the applicant's request for the reopening of his asylum file (see paragraph 32 above) and both the recourse and habeas corpus proceedings were pending before the Supreme Court. In view of all the above and given that the applicant's detention was in compliance with domestic law and that there is no indication that the authorities acted in bad faith or that the applicant was detained in unsuitable conditions or that his detention was arbitrary for any other reason (see *Saadi*, cited above,

§§ 67-74), the Court finds that there has been no violation of Article 5 § 1 (f) of the Convention.

D. The Court's conclusion on the merits

140. In conclusion, the Court finds the following:

(a) a violation of Article 5 § 1 of the Convention in respect of the applicant's arrest and detention on 11 June 2010 (transfer to and stay at the ERU headquarters) (see paragraphs 117-120 above); and,

(b) no violation of Article 5 § 1 (f) of the Convention in respect of the applicant's detention from 11 June 2010 until 20 April 2011 (see paragraphs 130-139 above).

IV. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

141. The applicant complained that the authorities had not complied with the requirements of Article 5 § 2 of the Convention. This provision reads as follows:

Article 5 § 2

" Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

A. The parties' submissions

142. The parties' submissions in respect to this complaint were the same as those made in the case of *M.A.* concerning the reasons of their arrest and detention on 11 June 2010 (cited above, §§ 221-222 and 224-225).

B. Admissibility and Merits

143. The Court notes that the applicant's complaint in the present case is identical and arises from the same factual circumstances with the first part of M.A.'s complaint concerning his arrest on the same date (*M.A.*, cited above, §§ 221 and 223).

144. The Court recalls that in that case it declared this complaint admissible (ibid., § 220) and held that there had not been a violation of Article 5 § 2 (ibid.,§§ 234-236). It found that it had no reason to doubt, in the circumstances, that M.A. was informed at the time that he had been arrested on the ground of unlawful stay or that he at least understood, bearing in mind the nature of the identification process, that the reason for his arrest and detention related to his immigration status. In this connection, the Court also noted that M.A. had filed a Rule 39 request, along with a

number of other protesters, the very next day, seeking the suspension of their deportation. A reading of this request indicates that they were all aware of the fact that they were detained for the purpose of deportation.

145. The Court finds, for the same reasons as in the above case, that there has been no violation of this provision.

V. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL Nº. 4 TO THE CONVENTION

146. The applicant complained of a violation of Article 4 of Protocol No. 4 in that the authorities were going to deport him and others collectively without having carried out an individual assessment and examination of his case. This provision provides as follows:

Article 4 of Protocol No. 4

"Collective expulsion of aliens is prohibited."

A. The parties' submissions

147. The parties' submissions in respect to this complaint were the same as those made in the case of *M.A.* (cited above, §§ 240-244).

B. Admissibility and Merits

148. The Court notes that this complaint arises from the same factual circumstances as those in *M.A.* (cited above) and that the issue at stake is identical to that examined in the above case.

149. The Court recalls that in that case it declared this complaint admissible (§ 239) and held that there had not been a violation of Article 4 of Protocol No. 4 as it was not persuaded that the measure taken by the authorities revealed the appearance of a collective expulsion within the meaning of this provision (§§ 245-255).

150. The Court sees no reason in the instant cases to depart from the conclusions which it reached in the *M.A.* judgment.

151. Accordingly, it concludes that there has not been no violation of Article 4 of Protocol No. 4.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

152. 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

153. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

154. The Government contested this claim which they considered excessive taking into account the Court's case-law.

155. Having regard to the nature of the violations found in the present case and the relevant case-law, the Court, ruling on an equitable basis as required under Article 41, awards EUR 4,000 to the applicant under this head.

B. Costs and expenses

156. In his first observations dated 12 August 2011 the applicant claimed EUR 1,700 plus VAT for costs and expenses incurred before the Court, less the sum granted as legal aid by the Council of Europe. In this respect he submitted that this was the amount agreed upon with his representative and it represented the sum normally awarded for costs by the Supreme Court in successful recourse proceedings. Following the submission of additional observations dated 17 April 2014 the applicant also claimed costs and expenses incurred before the Supreme Court in the habeas corpus application. He claimed a total of EUR 1,390.79 for the habeas corpus proceedings: EUR 710.10 in respect of the first instance proceedings and EUR 680.69 in respect of the appeal proceedings. The applicant submitted separate bills of costs with a detailed account of the work carried out. The applicant also claimed the amount of EUR 198.33 for expenses incurred in preparation of his observations of 17 April 2014 before the Court. He provided a bill of costs containing an itemised breakdown of the work. All sums included VAT at 19%.

157. The Government contested the applicant's claims and maintained that they were unsubstantiated and excessive.

158. 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.

159. The Court first notes that the applicant received EUR 170 in legal aid by the Council of Europe for the whole of the proceedings.

160. With regard to the claims made by the applicant in respect of the first part of the proceedings before the Court, namely up to and including his observations of 12 August 2011, the Court notes that the applicant has failed to provide any supporting documents – such as itemised bills or invoices – substantiating his claim (Rule 60 §§ 1 and 2 of the Rules of Court). The Court accordingly makes no award in this respect.

161. In so far as the remainder of the applicant's claims is concerned, regard being had to the violations found, the documents in its possession and the criteria set out above (see paragraph 158 above), the Court considers it reasonable to award the applicant, inclusive of VAT, the entire sums claimed in full, that is the sum claimed in respect of the habeas corpus proceedings, which is to be rounded up to EUR 1,391, as well as the sum claimed in respect of the subsequent proceedings before the Court, which is to be rounded up to EUR 199. Therefore a total of amount of EUR 1, 590 is awarded under this head, inclusive of any tax that might be chargeable to the applicant.

C. Default interest

162. 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. Decides, to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention in so far as it concerns the complaints under Articles 3 and 13 of the Convention;

2. Declares the remainder of the application admissible;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

4. Holds that there has been a violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's detention on 11 June 2010 (transfer to and stay at the ERU headquarters);

5. Holds that there has been no violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's detention from 11 June 2010 until 20 April 2011;

6. Holds that there has been no violation of Article 5 § 2 of the Convention;

7. Holds that there has been no violation of Article 4 of Protocol No. 4 to the Convention;

8. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,590 (one thousand five hundred and ninety euros), inclusive of any tax that might be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 21 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

Guido Raimondi
President