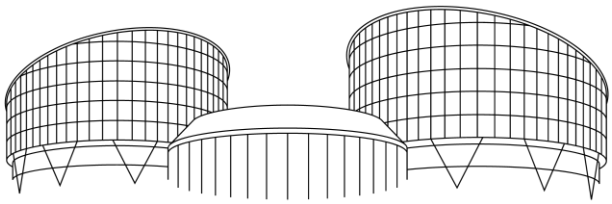

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

**CASE OF SHCHUKIN AND OTHERS v. CYPRUS**

*(Application no. 14030/03)*

JUDGMENT

STRASBOURG

29 July 2010

**FINAL**

*29/10/2010*

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

**In the case of Shchukin and Others v. Cyprus,**

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

Christos Rozakis, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 July 2010,

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

# PROCEDURE

1. The case originated in an application (no. 14030/03) 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 ten Ukrainian nationals – Mr Oleg Aleksandrovich Shchukin, Ms Anna Ivanovna Chaplyga, Ms Marina Ivanovna Stankova, Mrs Yelena Leonidovna Punt, Mr Anatoliy Mikhaylovich Mikitin, Mr Aleksandr Ivanovich Korotnian, Mr Yaroslav Vladimirovich Onopriyenko, Mr Vadim Alekseyevich Rossokhan, Mr Nikita Vladimirovich Dombrovskiy and Miss Diana Punt – and an Estonian national, Mr Toomas Punt, on 26 March 2003.

2. The applicants were represented by Mr M.V. Slusarevskiy, the Head of the Legal Department of the Ukrainian Marine Trade Unions Federation. The Cypriot Government ("the Government") were represented by their Agent, Mr P. Clerides.

The Ukrainian Government, who had made use of their right to intervene under Article 36 of the Convention, were represented by their Agent, Mr Y. Zaytsev. The Estonian Government, having been informed of their right to intervene in the proceedings (Article 36 § 1 and Rule 44 of the Rules of Court), indicated that they did not wish to exercise that right.

3. The applicants alleged a violation of their rights under Article 3, Article 5 §§ 1 and 2, and Articles 6 and 13 of the Convention, Article 1 of Protocol No. 1, Article 3 of Protocol No. 4 and Article 1 of Protocol No. 7 concerning their detention and deportation from Cyprus.

4. On 20 November 2006 the President of the First Section decided to communicate part of the application to the Government. It was also decided

to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:
   (1) Mr Oleg Aleksandrovich Shchukin, who was born in 1962;
   (2) Ms Anna Ivanovna Chaplyga, born in 1969;
   (3) Ms Marina Ivanovna Stankova, born in 1963;
   (4) Mrs Yelena Leonidovna Punt (at the material time Yelena Leonidovna Lavrentyeva), born in 1971;
   (5) Mr Anatoliy Mikhaylovich Mikitin, born in 1959;
   (6) Mr Aleksandr Ivanovich Korotnian, born in 1960;
   (7) Mr Yaroslav Vladimirovich Onopriyenko, born in 1971;
   (8) Mr Vadim Alekseyevich Rossokhan, born in 1974;
   (9) Mr Nikita Vladimirovich Dombrovskiy (at the material time Oleg Vladimirovich Sokolenko), born in 1977;
   (10) Mr Toomas Punt, born in 1967; and
   (11) Miss Diana Punt, born in 2002.

6. The fifth applicant lives in Khrystynivka and all the remaining applicants live in Odessa.

7. The eleventh applicant, Diana Punt, is the daughter of the fourth and tenth applicants, Mrs Yelena Leonidovna Punt and Mr Toomas Punt, who have brought the application on her behalf. She was born in Cyprus on 25 October 2002 and at the material time she was 3 months and 24 days old.

### A. Background to the case

8. The applicants were employed by a Ukrainian travel company as catering and hotel staff on the cruise ship Primexpress Island, a vessel registered in Ukraine. On 7 September 2001 the ship arrived and anchored in Limassol Port in Cyprus with 142 crew members and 112 passengers aboard.

9. On 10 September 2001 the ship was placed under arrest and forbidden from sailing by a court order, pending proceedings brought by crew members before the Supreme Court (Court of Admiralty jurisdiction; hereinafter “the Admiralty Court”) claiming unpaid wages from the ship and its owners. The fifth, sixth, seventh and ninth applicants also instituted like proceedings in February 2002. They were represented by a Cypriot lawyer.

It appears that the crew members who had initiated proceedings before the Admiralty Court were not represented by the same lawyers and that the crew members, including the four applicants, who were working as hotel and casino staff were represented by a different lawyer from the captain and other crew members who were employed by the ship's owners.

10. Following the ship's arrest the applicants and other crew members were issued with landing permits allowing them to disembark. These stated that they were revocable at any time.

11. The ship's passengers were repatriated in the initial days following the arrest.

12. As the owners of the ship were unable to bear the expense of running the ship and meeting their financial obligations to the crew, on 11 February 2002 the Admiralty Court issued an order for the sale of the ship.

13. On 18 December 2002 a public auction was held for the ship's sale. Only one offer was made. The Admiralty Marshal, who was responsible for supplying the remaining crew with the necessary facilities for their upkeep, considered, however, that the offer was far too low. Consequently, on the same day, he applied to the Admiralty Court for directions. He suggested that the offer be rejected and raised the question of the crew's stay on the ship as it was no longer possible to continue their upkeep in view of the cost involved.

14. By that time most of the crew members, who had instituted legal proceedings in Cyprus in respect of their wages, had been repatriated. In addition to the ship's captain, 53 crew members, including the applicants, continued to remain on board following the ship's arrest.

15. By a decision of 23 December 2002, the Admiralty Court rejected the offer that had been made for the purchase of the ship at the public auction as too low and gave directions concerning the matters raised by the Admiralty Marshal. In particular, it directed the Admiralty Marshal to terminate by 30 December 2002 at the latest, the State-sponsored supply of food to all persons aboard the ship with the exception of four crew members who were considered by him and the ship's captain to constitute the "minimum security crew". It further instructed that, with the exception of these four crew members, the Admiralty Marshal should make the necessary arrangements for the remaining crew's repatriation. The relevant part of the court record provides as follows:

> "...
>
> Court: ... Further, [the Admiralty Marshal] raises a question about the stay of the crew, since their continued maintenance will no longer be possible in view of the cost involved. You have been informed as interested parties, so you can express your views.
>
> (The advocates are heard)

Court: In view of all the facts before me, the offer of USD 250,000 is too low to be accepted. Consequently it is rejected.

Further, having taken into consideration everything that has been said, I will conclude with instructions to the Admiralty Marshal not to incur any further expenses for the maintenance or otherwise of any persons on the ship, with the exception of four crew members who are considered by the Admiralty Marshal, in cooperation with the captain, to constitute the minimum security crew. For them the payment of maintenance expenses will continue. I would not say that I did not have some reservations in connection with the question of the costs of repatriation.

The Admiralty Marshal shall proceed with the necessary arrangements to provide and effect repatriation by 30/12/02. It is understood that the claimants in action no. 33/02 will pay to the Admiralty Marshal in connection with the proposal of [the lawyer] the sums which are needed and which will include apart from the ticket a sum in the order of USD 50-100 for use as the Admiralty Marshal thinks fit. It must be understood that after 30/12/02 payments by the Admiralty Marshal will cease in respect of any person on the ship over and above the four [minimum safety crew], regardless of the question of the progress of the matter of repatriation."

16. On 24 December 2002 thirty-four of the remaining crew members left for Ukraine. The captain and nineteen crew members, including the applicants and the four members constituting the "minimum safety crew", stayed on.

17. By a letter dated 17 January 2003, the ship's captain informed the Admiralty Marshal that fifteen of the crew members (including the first to tenth applicants) who had remained on the ship, despite the directions of the Admiralty Court, were misbehaving (by refusing to obey orders and drinking alcohol almost every evening) and creating problems. He stated that the situation on board was becoming worse every day and expressed his concerns about the risk of fire or other damage. He further informed the authorities that there were two women on board, one of whom was eight months pregnant while the other had a two-month-old baby. Finally, he requested the repatriation of the fifteen above-mentioned crew members. This included the applicants.

18. By a letter dated 29 January 2002, the Director of the Limassol Port Authority informed the Admiralty Marshal of the problems the ship had caused to the port's operation and the difficulties that were likely to arise in relation to the crew's welfare (such as with the organisation of food supplies and heating). He requested the Marshal to find a solution to the problems to avoid any untoward developments.

19. In a letter dated 30 January 2003 to the Director of the District Aliens and Immigration Branch of the Limassol Police, the Admiralty Marshal stated:

"... I would inform you that 20 crew members remain on board the ship Primexpress Island (which has been under arrest since October 2001), despite the Supreme Court's instructions that only 5 should remain. Repatriation tickets were offered to the

additional 15 crew members but they refused to leave the ship, thus causing serious problems for the captain, whose letter I enclose for your reference.

The 15 [crew members] still unlawfully on the ship are referred to by name in the captain's letter.

Please examine whether there are grounds for their expulsion from Cyprus, with costs to be covered by the law office which undertook this responsibility before the court...".

20. On 1 February 2003 the applicants' landing permits were renewed until the end of the month.

21. By a letter dated 3 February 2003 the District Aliens and Immigration Branch of the Limassol Police informed the Director of the Aliens and Immigration Unit that the lawyer acting for the captain and other crew members who were employed by the ship's owners had, in view of the Admiralty Court's decision, offered to purchase tickets for the repatriation of fifteen of the crew members who had stayed on board, including the applicants, and to give them 100 United States dollars (USD) each before their repatriation. The lawyer was now waiting for instructions from the immigration authorities on this. In the letter it was also stated that in order to facilitate the daily disembarkation of the remaining crew, their passports were being held at the port office and landing permits had been issued, which they could use whenever they disembarked or boarded the ship. Further, the Limassol immigration authorities had suggested that detention and deportation orders be issued against the remaining crew members for notification as close as possible to the proposed date for deportation, in order to secure their repatriation. They had noted that the above-mentioned fifteen crew members were causing serious problems on board the ship on a daily basis and would certainly not accept any of the authorities' suggestions with regard to their disembarkation and repatriation without a violent reaction.

22. The Director of the Aliens and Immigration Unit agreed with the above recommendation and by a note dated 5 February 2003 referred the matter to the Civil Registry and Migration Department. In the note the Director recommended that since the immigration authorities had no right to intervene on the vessel, deportation and detention orders should be issued, provided that the opinion of the Attorney-General was obtained beforehand.

23. On 6 February 2003 the Director of the Civil Registry and Migration Department issued detention and deportation orders against the applicants on the basis of section 14(6) of the Aliens and Immigration Law (Cap. 105, as amended) on the ground that the applicants were prohibited immigrants under section 6(1)(k) of the Aliens and Immigration Law.[1] The copies of the

[1] Five of the deportation orders are dated 6 January 2003. On the basis of the documents before it, the Court considers the date to be the result of a clerical error.

orders submitted by the Government are in the Greek language. The opinion of the Attorney-General was not sought.

24. On the same date, letters were prepared in English by the Civil Registry and Migration Department informing the applicants individually of the authorities' decision to deport them and of the reasons for that decision, namely that their stay was illegal under section 6(1)(l) of the Aliens and Immigration Law.

### B. The applicants' version of the facts

25. On 11 February 2003 members of the immigration authorities visited the ship and invited the applicants to attend the immigration police offices at Limassol Port on 18 February 2003 so that photographs could be taken for the renewal of their landing permits.

26. On the latter date the applicants, who were accompanied by the ship's captain, went to the immigration police offices at the port, where they were arrested. The female applicants were taken to a separate room, where they were searched. Their personal items, documents and mobile phones were seized. The police also searched the eleventh applicant's pram. The male applicants were ordered to face the wall before being searched and handcuffed.

27. The applicants made several requests for permission to contact the Ukrainian Consul or their lawyer but their requests were either ignored or rudely rejected. Furthermore, they were not served with any document explaining the reasons for their arrest and expulsion.

28. The first, third, eighth, ninth and tenth applicants (Mr Shchukin, Ms Stankova, Mr Rossokhan, Mr Sokolenko and Mr Punt) all state that the first applicant was punched in the forehead, forcibly held by the neck, forced to the ground and kicked unconscious after asking the police officers to provide documents or an explanation for their actions. The first applicant says that he lost consciousness only for a while.

29. The three female applicants and the baby were taken by car to Larnaca Airport. Before leaving the immigration office, the fourth applicant pleaded with the police officers to be allowed to fetch warm clothes for her baby but her request was refused. She was taken to the ship to collect her marriage certificate. The officer accompanying her did not allow her to take any warm clothing for her baby. She was then taken to the airport.

30. The seven male applicants were handcuffed in pairs and taken to the airport in a vehicle with bars on the windows. The first applicant was taken to the airport in a separate vehicle in which he remained handcuffed and was forced to lie on the floor until his arrival at the airport.

31. The applicants repeatedly asked to be allowed to collect their personal belongings, including warm clothes, which had been left on board

the ship, but the authorities refused their requests. It was recorded on their tickets that they had no luggage.

32. The applicants were held for several hours at the airport and were then put on an aircraft bound for Kyiv in Ukraine. They were given back the documents and other items that had been taken from them at the immigration offices at the time of their arrest. They then immediately called their relatives in Ukraine and asked them to bring warm clothes to Odessa Airport.

33. During a stopover in Odessa, all the applicants apart from the tenth applicant, who is an Estonian national and did not live in that city, managed to persuade the airport and customs authorities to allow them to leave the plane in spite of the fact that they had been booked to fly to Kyiv. When they arrived in Odessa, where the outside temperature was well below zero, all of them, including the baby, were still dressed in the light clothes they had worn in Cyprus, where the temperature was around 18°C. As the airport was not equipped with movable passenger gangways the applicants left the aircraft via a ramp.

34. The tenth applicant was not allowed to leave the aircraft in Odessa and had to travel on to Kyiv. After the intervention of the Estonian Consul, he was allowed to enter Ukraine and to fly the next day to Estonia on a ticket paid for by his wife.

35. On 21 February 2003, after his return to Ukraine, the first applicant (Mr Shchukin) underwent a medical examination by a forensic medical expert. According to the report he had a head injury and ecchymosis (*ушибленная рана и кровоподтек головы*), neck ecchymoses and abrasions in the area of the wrist joints. The report stated that the injuries had been inflicted by a blunt object (*тупым предметом*) 3-4 days before the medical examination was carried out ("i.e. they might have been inflicted on 18 February 2003") and could be classified as minor bodily injuries (*относяться к легким телесным повреждениям*).

36. The applicants' belongings which had been left on board the ship were sent to them in August 2003 with the help of the Ukrainian Consul in Cyprus.

### C. The Government's version of the facts

37. Members of the District Aliens and Immigration Branch of the Limassol Police had visited the ship and requested the applicants to accept repatriation, but the applicants had refused.

38. On 12 February 2003 air tickets for Ukraine were secured for the applicants by the lawyer who was representing the captain and other crew members in the proceedings before the Admiralty Court (see paragraph 9 above). The applicants were booked on a flight from Larnaca to Kyiv on 18 February 2003.

39. The applicants were invited to attend the immigration police offices at Limassol Port between 7.30 and 8.30 a.m. on 18 February 2003. The Government did not state the reason for this.

40. The applicants went to the immigration police offices on the above date accompanied by the ship's captain.

41. At the request of the police, the captain explained the Admiralty Court's decision to the applicants and the reasons why their repatriation was necessary. The applicants had refused to be repatriated and reacted to the suggestion aggressively. In this connection, the Government relied on two letters/reports prepared by the District Aliens and Immigration Branch of the Limassol Police dated 19 February 2003 and 16 April 2003 describing the relevant events (see paragraphs 47 and 50 below).

42. The authorities had then proceeded with the execution of the deportation orders. They had shown the applicants the deportation and detention orders from a distance in order to avoid their destruction and, with the help of the ship's captain, a Ukrainian national, and a Russian-speaking member of the police, had explained the reasons for their issue. The female applicants had then been taken to a separate room as there had been indications of an imminent violent reaction by the first applicant, Mr Shchukin. He had become furious and attacked the police officers and, as a result, had been immobilised with handcuffs.

43. The applicants had then been searched and all their belongings, including their mobile phones, had been removed to prevent them from causing harm to the police, themselves or property.

44. All these items were returned to the applicants before they embarked on the aircraft.

45. The female and male applicants were separated. They were driven to the ship, from which they collected all their personal belongings. This included the baby's belongings. The applicants had then been taken to Larnaca Airport, from where they were deported at 12.55 p.m. One of the crew members, who had complained of chest pains, was not, however, deported but was taken to Larnaca Hospital for a medical examination. He was deported on 22 February 2003 after it was ascertained at the hospital that there was nothing wrong with him. The first applicant had at no stage before leaving Cyprus complained to the authorities of any injuries.

46. The ship had remained under arrest until 29 October 2003.

### D. Subsequent events

47. In a report to the Director of the Aliens and Immigration Unit dated 19 February 2003, the Aliens and Immigration Branch of the Limassol Police stated:

> "... On 6 February 2003 detention and deportation orders were issued against the ... crew members of the cruise ship Primexpress Island.

Between 7.30 and 8.30 a.m. on 18 February 2003 they came, at our invitation, to our office at the port together with their captain. The Admiralty Court's suggestion for them to be repatriated was explained to them. Their reaction was strong and after it had been explained to them that detention and deportation orders had already been made they left the authorities with no choice but to arrest them. One of the crew members, Oleg Shchukin, reacted violently and attacked and injured police officers 1141 and 874. Following the use of such force as was absolutely necessary, he was immobilised with handcuffs and taken with the others to Larnaca Airport, from where they were deported to their country on flight VV 294 ...

It has to be mentioned that as a result of the attack by the alien (Oleg Shchukin) and the violent reaction to his arrest, policeman 1141 received superficial scratches whilst policeman 846 suffered a bruise and blood contusion on his right ankle, was unable to put weight [on that leg] and walked with a limp. He was transferred to hospital and after treatment was granted sick leave until 23 February 2002. Following your briefing about the event no criminal proceedings were instituted against the alien to avoid delaying his deportation...”

48. Following the applicants' deportation, the Estonian Consul and the Ukrainian Embassy in Cyprus sent two letters dated 3 and 4 March 2003 respectively to the Minister of Foreign Affairs of the Republic of Cyprus requesting information as to the reasons for and conditions of the deportation of the crew members.

49. An exchange of correspondence followed between the various authorities on this issue.

50. In a report dated 16 April 2003 to the Director of the Aliens and Immigration Unit, the Aliens and Immigration Branch of the Limassol Police stated:

“...

After the decision of the Supreme Court, acting as an Admiralty Court, to repatriate the aliens, the Admiralty Marshal and the ship's captain informed the crew members that they would have to be repatriated. On 17 January 2003 the Admiralty Marshal and the ship's captain informed our office that the crew members were refusing to comply with the captain's instructions concerning their repatriation and were acting in a provocative manner. Fears were expressed that damage would be caused and/or that they would set fire to the ship. He requested understanding on the part of our service and help with their repatriation.

Members of our office visited the ship and spoke to the members of the crew. They explained the reasons why they were to be repatriated and provided all possible help, but it became clear that the aliens did not intend to accept their repatriation.

Taking into account the above and the captain's fears of damage being caused to the ship, and although our office tried to convince the aliens to accept voluntary repatriation, the conclusion was reached that the only option was to deport them on the basis of detention orders.

When informed of all the details – the decision of the Admiralty Court on the one hand, and the unacceptable, provocative behaviour of the 15 crew members and their threats to the captain to set fire to the ship if any attempt to arrest and deport them was

made, on the other – the Director of Immigration [Director of the Civil Registry and Migration Department] proceeded to issue orders for their arrest and detention. Following our explanations concerning the explosive situation the 15 crew members had created on the ship and their threats to set it alight, the lawyers' office representing them ..., [2] which was aware of the Admiralty Court's decision, secured tickets for their repatriation.

On 18 February 2003, in complete cooperation with the captain and after giving serious consideration to his concerns, our office asked the 15 people concerned together with the other 6 crew members and the captain to attend our office at the port. Following our request the captain explained to the assembled group that they did not have any other choice but to comply and accept repatriation.

I have to mention that, of the 15 crew members, 6 were women... One of them was the wife of [Toomas Punt], Olena Lavrentian. Immediately after they had been informed by the captain of the Admiralty Court's decision, they were led to a room some distance away because it became apparent that the intentions of the ship's masseur Oleg Shchukin did not exclude causing an incident involving the captain or our members; infuriated, he had attacked our members and in our efforts to immobilise him injured police officers 847 and 1141.

The five women were put in cars without being aware of the incident that had occurred, and left for the airport after first being taken to the ship to collect their personal belongings. Handcuffs were used for the 8 men; they were taken to the ship to collect their personal belongings and from there to the airport for their departure. At the airport, one of the men, Viktor Malyev, complained of chest pains and was transferred to Larnaca Hospital for tests and once it had been determined that he did not have anything was taken to the detention centre of the District Police Head Office until 22 February 2003, when he left for his country. He stated that he had done this to avoid being deported.

Following a careful reading of your letter, it is observed that the allegations of the alien who was deported to a foreign country (Ukraine) have no basis since he was given sufficient time after receiving adequate explanations and chose to travel to Ukraine, where his wife comes from.

His personal belongings, those of his wife and their baby and those of the rest of the crew who were deported, were collected by them when they were taken to the ship – first the group of women and then the men – once they had collected their personal belongings, they were taken to Larnaca Airport.

The members of our service, following the activation of the detention and deportation orders, and after being faced with violent and aggressive behaviour by the masseur, subjected all the members of the crew to a body search and took away any personal objects that could possibly be used for causing damage to themselves, us or the service cars. Among the objects that were taken were the mobile phones some had in their possession. All the objects were returned when the members of the crew

[2] It appears from the documents in the file that the lawyers' office referred to was that representing the captain and other crew members employed by the ship owners in the proceedings before the Admiralty Court and not that representing the four applicants (see paragraphs 9 and 38).

boarded the aircraft. ... the above-mentioned alien, claimed that he was not informed of the reasons for his detention and that the detention and deportation orders were not shown to him; these allegations are unfounded since the detention and deportation orders were shown to the crew members from a distance out of fear that they would be destroyed and the reasons for their deportation and arrest were explained to all of them by the Russian-speaking policemen ... from our unit whom they had injured and the captain. Their confinement to a detention room at Larnaca Airport was required as there was no other option in view of the violent and aggressive behaviour of the aliens.

The confinement of the men and women in two different groups until they boarded the plane was considered necessary under the circumstances."

### E. The Cypriot Ombudsman's inquiry and conclusions

51. Upon their arrival in Ukraine, the applicants lodged a petition with the Ukrainian Parliamentary Ombudsman (*Уповноважена Верховної Ради України з прав людини* – the Ukrainian Ombudsman) through the Ukrainian Marine Trade Unions Federation in which they complained of the degrading treatment they had received from the Cypriot authorities and a violation of their human rights.

52. By a letter dated 19 March 2003 the Ukrainian Ombudsman referred the applicants' complaints to the Commissioner for Administration of the Republic of Cyprus (hereinafter "the Cypriot Ombudsman"). The latter conducted an inquiry into the circumstances surrounding the applicants' deportation. To that end, she requested the Ukrainian Ombudsman to forward written statements from the applicants; she also considered, *inter alia*, the submissions and documents sent by the immigration and police authorities (including the documents referred to in paragraphs 47 and 50 above) and files from the Civil Registry and Migration Department, and met the applicants' lawyer.

In her report of 8 November 2004 the Cypriot Ombudsman came to the following conclusions:

(i) There were no legal grounds for the issuing of the deportation orders against the applicants. According to section 6(1)(k) of the Aliens and Immigration Law, an immigrant was considered a "prohibited immigrant" if he entered or resided in the Republic contrary to the above statute and the relevant Regulations (see paragraph 63 below). From the evidence before her it emerged that the applicants had never entered or resided in Cyprus illegally and that there had never been any report of a violation of the Aliens and Immigration Law or the Regulations. The applicants had been residing on a ship flying the Ukrainian flag and moored in Limassol Port, which suggested that for legal purposes they had been residing on Ukrainian territory. According to Regulation 29 (b) of the Alien and Immigration Regulations (see paragraph 63 below), ship crew members who remained in

a port of the Republic were not considered as residing in the Republic. The fact that the applicants had been coming ashore on a daily basis after being granted a landing permit did not affect this. Given that for a deportation order to be issued, an alien had to be physically present in the country, the question that had to be asked was what were the true reasons behind the issue of the deportation orders against the applicants, bearing in mind that what had actually been sought was the departure of the applicants from the Ukrainian ship, not from Cyprus.

(ii) Neither the captain's letter to the authorities nor the relevant police reports contained evidence to substantiate the allegations of disobedience on the part of the applicants *vis-à-vis* the local port authorities, the police or the law. The captain's letter described the crew's behaviour in a very general and broad manner. Although the possibility that the crew had committed disciplinary offences could not be excluded, there had been no mention of their having committed specific criminal offences which, under Cypriot law, would justify the involvement of the local authorities. Furthermore, in its decision of 23 December 2002, the Admiralty Court had not ordered the applicants' deportation but had merely required the food supplies to be stopped to all but four of the crew members, practical travel arrangements to be made for the applicants' repatriation and the relevant sums to be paid. The Admiralty Court's decision indicated that it had not excluded the possibility that the crew might not accept repatriation and had therefore ordered that their upkeep was to be terminated after 30 December 2002.

(iii) The manner in which the deportation orders had been executed had violated the applicants' rights to access to information, to be heard and to seek court or out-of-court protection (see, in particular section 14(6) of the Aliens and Immigration Law, and the Convention – paragraph 61 below). The letters of 6 February 2002 concerning the deportation orders had not been served on the applicants and they had therefore been unaware until 18 February 2003 that their deportation was pending. The applicants had never been informed in writing of the decision of 5 February 2002 to deport them, in breach of section 14(6) of the Aliens and Immigration Law [and Article 1 of Protocol No. 7 to the Convention].

(iv) Knowing that they had no right to board the vessel, the police had assembled the applicants at the immigration police office under the false pretence that photographs would be taken to enable their landing permits to be renewed. This had amounted to deception, given that from the moment the applicants were assembled they had been arrested and treated in a degrading manner as if they were common criminals. The Cypriot Ombudsman had no doubt that the applicants had not been allowed to contact their lawyer, their Embassy or any other person, despite their requests, and that it had been for this reason that their mobile phones had been taken away from them. She observed that it appeared that they had been immediately transferred to the airport in degrading conditions –

especially for the men – having being handcuffed and placed in a vehicle with bars on the windows, in order to be returned to their own country, with only the clothes they were wearing.

(v) The police had admitted using violence against the first applicant but had claimed that this had been justified, as he had reacted violently to his arrest, injuring two police officers. However, in view of the first applicant's absence abroad and the lack of a medical report concerning any injuries, the Cypriot Ombudsman stated that she had been unable to reach any objective or safe conclusion on whether the violence used against him had been necessary. In any event, she observed that what had taken place was wrong and that the decision to issue deportation orders which had no legal foundation had violated the applicants' fundamental rights to prior information, to be heard, to be treated with dignity, to be given time to collect their personal belongings, and to be deported to their native country or to a country of their choice (in the case of the tenth applicant only). It was for this reason that the applicants had reacted by resisting arrest and this had inevitably led to the use of violence by the police in order to arrest and deport them.

53. Lastly, the Cypriot Ombudsman expressed reservations as to whether the applicants had been allowed to take their personal belongings and other documents from the ship prior to their deportation as the police had claimed. The fact that the applicants' arrest had taken place a few hours before the departure of the flight on which they were put led her to conclude that, with the exception of the fourth applicant, Mrs Punt, who had been permitted to take certain things for her child and personal documents, none of the members of the crew had been allowed to take any of their personal belongings with them.

54. In accordance with the Commissioner for Administration Law of 1991 (Law 3/1991 as amended), the Cypriot Ombudsman decided to refer the applicants' case to the Attorney-General, whom she requested to examine the possibility of taking legal action. She indicated in this connection that she had no power to grant compensation for any damage incurred as a result of maladministration, as this came solely within the jurisdiction of the courts.

55. Amongst other documents, copies of seven written statements given by the first, second and fourth applicants on 2 June 2003, the third and ninth applicants on 3 June 2003 and the sixth and eighth applicants on 4 June 2003 were attached to her report.

In her statement the fourth applicant claimed that she had been taken to the ship by the authorities to collect her marriage certificate. The authorities had taken all her documents (her Ukrainian passports, her daughter's birth certificate and her marriage certificate) but had refused to allow her to take things for her and her baby (such as a medical card, nappies, baby food and

toys). She was only allowed to take milk for the baby. Her documents had been returned to her on the aircraft.

In his statement the first applicant stated:

> "...Two or three men came up to each of us and began to put handcuffs on us. I asked then about the causes of our arrest. One of them silently gripped my arms, but I had time to get it free, then the other grabbed my throat staying behind me, and the first hit me in the head. I tried to fence my head against blows, but there were many people in civilian [*sic*]; they did not introduce themselves, nor did they show the documents. I heard the screams of my friends but I saw nothing as far [*sic*] lost consciousness for a while. Afterwards my friends told me that I had been knocked off my feet and kicked. I regained consciousness laying [*sic*] on the floor with my hands in handcuffs locked after [*sic*] the back..."

The first applicant further stated that he had been transported to the airport in a police car with bars on the windows. He had been forced to lie down on the floor throughout the journey as one of the persons in civilian clothes had his knee on his chest to keep him down. His head ached because of the blows, his face was swollen and he could not see out of one of his eyes. No reference was made in the statement to the medical examination the first applicant had undergone in Ukraine or to the medical report drawn up following that examination.

In their statements the second, third, fourth, sixth, eighth and ninth applicants referred, with varying degrees of detail, to the first applicant's arrest and/or the force used against him by the officers.

The second, fourth and eighth applicants stated that the first applicant had been beaten by a number of people.

The third, sixth and ninth applicants stated that the first applicant had sought explanations concerning their arrest. Following this:

– the third applicant stated that the first applicant had been held by the neck, punched in the face, forced to the ground and kicked;

– the sixth applicant stated that the first applicant had had his arms pinned to the side and had been forced to the ground; his hands had been twisted behind his back and handcuffed and he had been kicked;

– the ninth applicant stated that the first applicant had been hit in the face, knocked off his feet and kicked by a number of people in civilian clothes.

56. In a letter dated 9 November 2004 the Cypriot Ombudsman transmitted her conclusions to the Ukrainian Ombudsman.

### F. Follow-up to the Cypriot Ombudsman's report by the Attorney-General's office

57. The Government submitted that, in the absence of medical evidence concerning the first applicant's allegations, no criminal investigation had been ordered by the Attorney-General's office following the Cypriot

Ombudsman's report. No observations were submitted by the Government concerning any follow-up by the Attorney-General's office with regard to the other complaints made by the applicants.

## G. Other relevant documents

58. The Admiralty Marshal, in a note to the Ministry of Communications and Works dated 31 January 2005, stated:

> "With regard to the deportation of the 15 alien sailors from the cruise ship under arrest Primexpress Island, which was flying the Ukrainian flag, I would inform you of the following:
>
> ...
>
> 4. During the first months the ship was in detention more than 50 sailors were repatriated... The rest of the sailors, more than 65, who remained on the ship, refused to work on it and, taking advantage of the authorities' patience, disembarked: the men, who were employed illegally in town... every morning, and the women, who engaged in various unlawful acts, including prostitution, at night. Essentially, the ship was used by the majority of the crew as a hotel and restaurant.
>
> 5. All the illegal activities of the crew, such as acts of violence, theft of items from the ship, unlawful employment of the sailors off the ship were covered up by the ship's captain Mr V. Dobranov, who according to confirmed evidence was taking percentages from the sailors for every unlawful transaction.
>
> The captain was repatriated on his own initiative and Mr Y. Valeriy took over; he immediately applied to the authorities through me as Admiralty Marshal and requested the removal from the ship and repatriation of the crew that was causing problems.
>
> 6. After hearing the concurring opinion of the sailors' lawyers, the Supreme Court, from which I had requested instructions on the matter, gave instructions for the sailors be to be repatriated and for only 5 members to remain on board, for security reasons.
>
> 7. More than 40 people complied with the Court's decision and only 15 chose to stay, creating problems continuously both on and off the ship, with the result that the captain requested their removal in writing.
>
> 8. In his letter to me and the police authorities, the ship's captain limited his request to the authorities to the repatriation of the crew, without going further and recording its punishable acts, as his aim was not the prosecution and conviction of the crew but simply its removal.
>
> 9. The captain of a ship of any nationality has the authority and the right to request police assistance from the authorities of the port where his ship is anchored and the police authorities are under an obligation to respond.
>
> The intervention of the police authorities on a ship is completely lawful when it has been requested by the captain, who is the highest authority on board. During my long

service on ships as a deck officer and a captain, I repeatedly encountered situations in respect of which we had requested police assistance from alien authorities (as regards the ship's nationality) and it was always given.

Referring to the above and without wanting to comment on the Ombudsman's report, I believe that in general the authorities of the Republic had tolerated to a significant extent the demands and also the unlawful actions of some of the members of the crew of the Primexpress Island during their stay in Cyprus.

In particular, having regard to the Supreme Court's decision, in response to the clear and completely lawful request of the captain for the removal of the 15 people on board, to repatriate all the crew bar the 5 sailors needed for the ship's security, and having regard also to the information provided by Cypriot citizens and their complaints of unlawful acts by the crew, I consider that the Cypriot police acted within the limits of their obligations to preserve public order and within their powers."

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The Aliens and Immigration Law (Cap. 105, as amended) and the Aliens and Immigration Regulations (242/72, as amended)

59. The entry, residence and expulsion of aliens are regulated by the Aliens and Immigration Law of 1959 (Cap. 105, as amended).

60. Under section 6(1) of the above Law, a person is not permitted to enter the Republic if he is a "prohibited immigrant". This category includes any person who enters or resides in the country contrary to any prohibition, condition, restriction or limitation contained in the Law or in any permit granted or issued under the Law (section 6(1)(k)) and any alien who does not have in his possession an immigration permit granted by the Director of the Civil Registry and Migration Department in accordance with the relevant regulations (section 6(1)(l)). A "prohibited immigrant" can be ordered to leave the Republic under section 13 of the same Law.

61. The Director of the Civil Registry and Migration Department has power under the Law to order the deportation and, in the meantime, the detention, of any alien who "is a prohibited immigrant" under the Law (section 14). Section 14(6) provides that a person against whom a detention and/or deportation order has been issued is to be informed in writing, in a language which he understands, of the reasons for this decision, unless this is not desirable on public-security grounds, and has the right to be represented before the Director of the Civil Registry and Migration Department or any other authority of the Republic and to request the services of an interpreter. Pursuant to section 14(2), an alien against whom a deportation order has been issued must be deported to the country to which he belongs or, with the consent of the Council of Ministers, to another

country, provided that both he and the Government of the country in question consent.

62. Section 10, provides that, even if not a prohibited immigrant, an alien has no absolute right to enter the Republic and may be refused entry in certain cases. Under section 11, employees and crew members of ships of a friendly State may be given permission by the Director of the approved port to enter the Republic subject to such conditions or limitations that may be imposed in the permit.

63. The Law is supplemented by the Aliens and Immigration Regulations of 1972 (as amended). Regulation 29(b) states that ship crew members who remain in a port of the Republic are not considered to be residing in the Republic. Regulation 26 provides for the issuing of landing permits to passengers on board ship for the time the ship remains in port. A landing permit is issued in exchange for the passenger's passport and allows him or her to disembark and stay in the Republic for as long as the ship remains in the Republic's territorial waters or for such other period that may be authorised by the immigration authorities. Passports are returned to the passengers when they re-embark. Regulation 19 provides that when the Director of the Civil Registry and Migration Department decides that a person is a prohibited immigrant, written notice to that effect must be served on that person in accordance with the second schedule of the Regulations.

### B. Relevant Constitutional provisions

64. Deportation and detention orders can be challenged before the Supreme Court by way of administrative recourse under Article 146 § 1 of the Constitution of the Republic of Cyprus. This provision provides as follows:

> "The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person."

65. Such a recourse must be made within 75 days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse (Article 146 § 3). Upon such a recourse the Supreme Court may (a) confirm, either in whole or in part, such decision or act or omission; or (b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever, or (c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed (Article 146 § 4). The jurisdiction of the Supreme Court is limited to the review of the legality of the act in question on the basis of the situation that existed at the time the act was issued; the

Supreme Court will not examine the merits of the decision under review and replace the decision of the administrative organ with its own decision.

66. Article 146 § 6 provides for compensation:

> "Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant. "

67. Part II of the Constitution contains provisions safeguarding fundamental human rights and liberties. Article 11 protects the right to liberty and security. It reads as follows, in so far as relevant:

**Article 11**

> "1. Every person has the right to liberty and security of person.
>
> 2. No person shall be deprived of his liberty save in the following cases when and as provided by law:
>
> ...
>
> (f) the arrest or detention of a person to prevent him effecting an unauthorised entry into the territory of the Republic or of an alien against whom action is being taken with a view to deportation or extradition.
>
> ...
>
> 4. Every person arrested shall be informed at the time of his arrest in a language which he understands of the reasons for his arrest and shall be allowed to have the services of a lawyer of his own choosing.
>
> ..
>
> 7. Every person 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.
>
> 8. Every person who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation".

68. Article 8 of the Constitution prohibits torture, inhuman or degrading treatment or punishment and Article 23 protects the right to property. Moreover, under Article 35, the legislative, executive and judicial authorities are required to secure, within the limits of their respective competences, the efficient application of the provisions of the Constitution. In the case of *Takis Yiallourou v. Evgenios Nicolaou* (judgment of 8 May 2001, civil appeal no. 9931), which concerned the violation of the right to

the plaintiff's private life and correspondence, the Supreme Court, sitting as a full bench, held that claims for human rights violations were actionable rights that could be pursued in the civil courts against those perpetrating the violation, with a view to recovering from them, *inter alia*, just and reasonable compensation for damage suffered as a result. The Supreme Court pointed out that the provisions of Article 13 of the Convention formed part of the domestic law and safeguarded the right to an effective remedy for a violation of rights guaranteed by the Convention. In the case of *Andreas Tsouloupa v. The Attorney-General of the Republic* (judgment of 13 September 2002, civil appeal no. 10714) the plaintiff had brought a civil action against the Government for unlawful arrest and unlawful detention and had relied on Article 5 of the Convention and Article 11 of the Constitution in his appeal before the Supreme Court. It was held, however, that his detention had been lawful.

69. Finally, Article 32 of the Constitution provides that the provisions of Part II of the Constitution do not preclude the Republic from regulating by law any matter relating to aliens in accordance with international law.

### C. Commissioner of Administration Law 1991

70. Section 8(3) of the Commissioner of Administration Law 1991 (Law no. 1991 as amended) reads as follows:

> "If at any stage during the investigation or after its completion, the Commissioner decides that a criminal or disciplinary offence may have been committed by any officer, the Commissioner shall refer the matter to the Attorney-General of the Republic or to the competent authority, as the case may be, so that the appropriate measures may be taken."

### D. The Attorney-General of the Republic of Cyprus

71. Article 113 of the Constitution provides:

**Article 113**

> "1. The Attorney-General of the Republic assisted by the Deputy Attorney-General of the Republic shall be the legal adviser of the Republic and of the President and of the Vice President of the Republic and of the Council of Ministers and of the Ministers and shall exercise all such other powers and shall perform all such other functions and duties as are conferred or imposed on him by this Constitution or by law.
>
> 2. The Attorney-General of the Republic shall have power, exercisable at his discretion in the public interest, to institute, conduct, take over and continue or discontinue any proceedings for an offence against any person in the Republic. Such

power may be exercised by him in person or by officers subordinate to him acting under and in accordance with his instructions."

### E. The Civil Wrongs Law (Cap. 148, as amended)

72. The law of tort provides, *inter alia*, for actions in damages in respect of false imprisonment, unlawful detention and assault, and conversion and trespass to movable property (sections 26, 27, 29, 30, 37, 39 and 44 of the Civil Wrongs Law).

### F. The Criminal Code (Cap. 154, as amended)

73. Section 5 of the Criminal Code provides as follows, in so far as relevant:

"The Criminal Code and any other law that constitutes an offence, applies to all offences which were committed:

...

(e) in any foreign country by any person if the offence:

(i) is treason or an offence against the security of the Republic or the Constitutional order, or

(ii) constitutes piracy, or,

(iii) is connected to the coinage or banknote of the Republic, or

(iv) concerns unlawful trading of dangerous drugs, or,

(v) is one of the offences for which the Laws of the Republic are applicable under any International Treaty or Convention binding the Republic."

### G. The Civil Registry Law no. 141 (I) / 2002 Code (as amended)

74. By section 109 of the Civil Registry Law, a person who was born in Cyprus on or after 16 August 1960 is a Cypriot citizen if, at the time of his birth, either of his parents was a Cypriot citizen.

## III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

75. The Explanatory Report to Protocol No. 7 (ETS No. 117) defines the scope of application of Article 1 of Protocol No. 7 in the following manner:

"9. The word 'resident' is intended to exclude from the application of the article any alien who has arrived at a port or other point of entry but has not yet passed through

the immigration control or who has been admitted to the territory for the purpose only of transit or for a limited period for a non-residential purpose...

The word lawfully refers to the domestic law of the State concerned. It is therefore for domestic law to determine the conditions which must be fulfilled for a person's presence in the territory to be considered 'lawful'.

[A]n alien whose admission and stay were subject to certain conditions, for example a fixed period, and who no longer complies with these conditions cannot be regarded as being still 'lawfully' present."

76. The Report further cites definitions of the notion of "lawful residence" contained in other international instruments:

**Article 11 of the European Convention on Social and Medical Assistance (1953)**

"a. Residence by an alien in the territory of any of the Contracting Parties shall be considered lawful within the meaning of this Convention so long as there is in force in his case a permit or such other permission as is required by the laws and regulations of the country concerned to reside therein...

b. Lawful residence shall become unlawful from the date of any deportation order made out against the person concerned, unless a stay of execution is granted."

**Section II of the Protocol to the European Convention on Establishment (1955)**

"a. Regulations governing the admission, residence and movement of aliens and also their right to engage in gainful occupations shall be unaffected by this Convention insofar as they are not inconsistent with it;

b. Nationals of a Contracting Party shall be considered as lawfully residing in the territory of another Party if they have conformed to the said regulations."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

77. The first applicant complained under Article 3 of the Convention that the immigration police officers had used violence against him causing him bodily injury. This provision provides as follows:

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

## A. Admissibility

### *1. The parties' submissions*

78. The Government argued that the first applicant's complaint was inadmissible for non-exhaustion of domestic remedies. They submitted, firstly, that the first applicant could have brought a civil action for assault in respect of his complaint. In the context of such proceedings he could have complained that he had been subjected to treatment contrary to Article 8 of the Constitution and Article 3 of the Convention and could have sought, in addition to damages, a declaratory judgment that there had been a violation of his constitutional and Convention rights.

79. Secondly, they pointed out that the applicant had not provided the Cypriot Ombudsman with the report of the medical examination he had allegedly undergone three days after his return to Ukraine nor had he referred to that examination in his subsequent statement to the Cypriot Ombudsman dated 2 June 2003. Consequently, in the absence of a medical report, the Cypriot Ombudsman had been unable to reach any safe conclusions on the matter. For the same reason, no criminal investigation had been ordered by the Attorney-General.

80. No submissions were made on behalf of the first applicant or by the Ukrainian Government on this complaint.

### *2. The Court's assessment*

81. The Court reiterates that the aim of the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention is to afford Contracting States an opportunity to put matters right through their own legal system before having to answer before an international body for their acts. However, although Article 35 § 1 requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that recourse should be had to remedies that are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, cited above, §§ 65-67, *Reports* 1996-IV).

82. Turning to the present case, the Court firstly points out, with regard to the civil remedy of assault put forward by the Government, that, as it has already found in a number of cases, a civil action, which is aimed at awarding damages, cannot by itself be regarded as an effective remedy in the context of claims brought under Article 3 of the Convention (see, among other authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, § 85, *Reports* 1998-VIII). The notion of an "effective remedy" under this provision entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the

identification and punishment of those responsible (see, among many other authorities, *Aşan and Others v. Turkey*, no. 56003/00, § 82, 31 July 2007). The Court also points out that a civil court is itself unable to pursue any independent investigation and is not capable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings as to the identity of the perpetrators of assaults, still less of attributing responsibility (see, *mutatis mutandis*, *Yaşa v. Turkey*, 2 September 1998, § 74, *Reports* 1998-VI, and *Khashiyev and Akayeva v. Russia*, nos. 57942/00, §§ 119-21, 24 February 2005).

83. Furthermore, the Court observes that the first applicant raised his complaint before the Ukrainian Parliamentary Ombudsman, who transmitted it to the Cypriot Ombudsman. In his subsequent statement of 2 June 2003 to the Cypriot Ombudsman, he gave an account of the events and provided details as to the force used by the police in their attempt to arrest him. He also stated that at the time, after he had regained consciousness, which he had lost temporarily, his head had ached, his face had become swollen and he had not been able to see out of one of his eyes (see paragraph 55 above).

84. It is true that the first applicant did not provide the Cypriot Ombudsman with a copy of the medical report or refer to the medical examination in his statement (see paragraphs 52 and 55 above). The Cypriot Ombudsman refrained from drawing any conclusions on this matter in the absence of medical evidence and of the first applicant abroad. It appears that there was no follow-up to her report by the Attorney General's office. With regard to the first applicant's complaint, the Government submitted that this was due to the lack of medical evidence. They have not, however, provided the Court with any formal decision by the Attorney-General to this effect.

85. The first applicant's complaint to the Cypriot Ombudsman concerning the use of police violence and his reference to his injuries in his statement should, in the Court's opinion, have been sufficient in themselves to alert the authorities to the need to investigate his allegations, in spite of his failure to submit the medical report. This is particularly so in view of the circumstances in which the deportation operation was carried out and the admission by the police in their reports that they had used force in order to effect the first applicant's arrest. In this connection, the Court notes that the domestic-remedies rule must be applied with some degree of flexibility and without excessive formalism (see *Akdivar and Others*, cited above, § 69).

86. The Court therefore finds that in the circumstances of the case the applicant can be considered to have sufficiently brought the substance of his complaint to the notice of the authorities with a view to obtaining an investigation into his allegations.

87. Accordingly, this complaint cannot be rejected for failure to exhaust domestic remedies. Furthermore, the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the

Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

88. No further submissions were made on behalf of the first applicant.

89. The Government denied any ill-treatment of the first applicant although they admitted that the immigration police had "had to use the force necessary for effecting his arrest". They submitted that the first applicant had become infuriated and had assaulted the police. In the ensuing attempt to immobilise him, two police officers had been injured, one of whom was taken to hospital for treatment and was granted sick leave for five days. The first applicant had not at the time complained of any injuries. In this connection they pointed out that one of the crew members had been taken to the hospital for a medical examination after complaining of chest pains (see paragraph 45 above).

90. The Government were of the view that, in the circumstances, and bearing in mind, in particular, the Cypriot Ombudsman's conclusions and the lack of any evidence as to any injuries sustained during his arrest, the first applicant had not laid the basis before the authorities of an arguable claim that he had been subjected to ill-treatment.

91. The Ukrainian Government did not make any submissions on this complaint.

### *2. The Court's assessment*

#### (a) Recourse to physical force during the arrest of the first applicant

92. The Court notes at the outset that Article 3 enshrines one of the most fundamental values of democratic societies, making no provision for exceptions and with no derogation from it being permissible, as provided by Article 15 § 2 (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others*, cited above, § 93).

93. It reiterates that Article 3 does not prohibit the use of force in certain well-defined circumstances, such as to effect an arrest. However, such force may be used only if indispensable and must not be excessive (see, among other authorities, *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007; *Rehbock v. Slovenia*, no. 29462/95, §§ 68-78, ECHR 2000-XII; *Krastanov v. Bulgaria*, no. 50222/99, §§ 52 and 53, 30 September 2004; and *Günaydın v. Turkey*, no. 27526/95, §§ 30-32, 13 October 2005).

94. The Court further reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, it has generally

applied the standard of proof "beyond reasonable doubt" (see *Talat Tepe v. Turkey*, no. 31247/96, § 48, 21 December 2004). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). Furthermore, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336).

95. The Court observes that the first applicant was arrested with the other applicants at the immigration police offices at Limassol Port so that they could be deported. It is common ground that the police officers used force against the first applicant during his arrest. The Government submitted that the officers had had to resort to force as a result of the first applicant's violent behaviour. In particular, they noted that he had become infuriated and had attacked the officers. In their attempt to immobilise him, two of the officers had been injured. One of them had suffered a bruise and blood contusion on his right ankle. He had been transferred to hospital for treatment and granted five days' sick leave (see reports of 19 February and 16 April 2003, quoted in paragraphs 47 and 50 above). The Government have not disputed that the applicant's injuries, as shown by the medical report of 21 February 2003, were caused by the force used by the police officers. From this report it appears that the first applicant suffered a head injury and ecchymosis, neck ecchymoses and abrasions in the area of the wrist joints. In his statement of 2 June 2003 to the Cypriot Ombudsman the first applicant maintained that the police officers had reacted violently when he had asked the reasons for the detention and deportation of all the applicants but admitted that, when they had tried to handcuff him, he had managed to free his arms. Further, the first applicant has not made any submissions contesting the Government's observations on his behaviour.

96. The Court further notes that although the first applicant did not have a medical examination until three days after the events complained of, the injuries described in this report match his description of the force used by the police: the head injury and ecchymosis could have resulted from a blow to the head and the neck ecchymoses from being grabbed by the neck. Furthermore, the abrasions in the area of the wrist joints could have been caused by the handcuffs which the authorities used. The descriptions given, in particular, in the statements of the third, and to a certain extent, the ninth applicants, corroborate that of the first applicant. The report, however, does not support the allegation that the first applicant was subsequently kicked by police officers (see paragraph 55 above).

97. In the light of the above, the Court finds that these injuries were sustained during his arrest. It must, therefore, now assess whether the use of force during the first applicant's arrest was excessive.

98. The Court notes that it was foreseeable that the applicants might react angrily to their arrest and deportation, taking into account their refusal to be repatriated and the fact that they had discovered, upon their arrival at the immigration police offices, that they had been misled. The Court therefore has no reason to doubt that the first applicant was angry and resisted arrest as stated in the relevant police reports. As he admitted, when the officers tried to handcuff him, he managed to free his arms. The Court notes that one of the officer's injuries rendered him unfit for work for five days. It further observes that the injuries suffered by the first applicant did not have lasting consequences.

99. The Court cannot overlook the fact that physical force – the exact nature of which cannot be established from the case file – was used against the first applicant in the present case in order to effect his arrest, which he resisted. In the light of the parties' submissions and taking into account in particular the nature and extent of the injuries mentioned in the medical reports issued in relation to the first applicant and one of the officers, the Court considers that the material in the case file does not enable it to conclude that the use of force against the first applicant was excessive or so extensive as to reach the threshold of treatment contrary to Article 3 of the Convention.

100. Accordingly there has been no substantive violation of this provision with regard to the alleged ill-treatment by the police.

**(b) The effectiveness of the investigation**

101. However, the Court reiterates that Article 3 of the Convention also requires the authorities to investigate allegations of ill-treatment when they are "arguable" and "raise a reasonable suspicion" (see *Assenov and Others*, cited above, §§ 101-102, and *Labita*, cited above, § 131).

102. In the circumstances of the present case, the Court has not found it proved that the police officers used excessive force when they attempted to carry out the applicant's arrest, which he resisted. Nevertheless, as it has held in previous cases, that does not preclude his complaint in relation to Article 3 from being "arguable" for the purposes of the positive obligation to investigate (see, for example, *Arat v. Turkey*, no. 10309/03, § 42, 10 November 2009). The Court considers that, taken together, the first applicant's complaint to the Cypriot Ombudsman concerning the use of police violence during his arrest at the immigration police offices, the reference in his statement to the injuries sustained and the admission by the police that force had been used gave rise to a reasonable suspicion that he might have been subjected to ill-treatment by the police. As such, his complaint constituted an arguable claim in respect of which the Cypriot authorities were under an obligation to conduct an effective investigation.

103. The Court notes that the Cypriot Ombudsman conducted an inquiry into the applicants' allegations, including those of the first applicant

concerning the use of force by the police during his arrest. Although she concluded that force had been used, as admitted by the immigration police in their reports, she did not draw any further conclusions owing to the lack of a medical report and the first applicant's absence abroad. As the Court has already observed, according to the Government there was no follow-up by the Attorney-General's office in respect of the first applicant's complaint for the same reason, although no formal decision has been provided to this end. The Court also observes that it appears that no steps whatsoever were taken by the Attorney General's office in response to the Cypriot Ombudsman's report as a whole, even concerning the complaints in respect of which she had found violations of the applicants' rights. The Government have been silent on the matter (see paragraph 57 above).

104. The Court further notes that any reports concerning the incident originate from the District Aliens and Immigration Branch of the Limassol Police, that is, the very authority which carried out the detention and deportation of the applicants and to which the officers who had allegedly inflicted the injuries on the first applicant organically belonged (see paragraphs 47 and 50 above). Moreover, the relevant reports are incomplete as they do not provide any information as to the exact nature of the force used on the first applicant for the purpose of effecting his arrest. In addition, there is no evidence, within the material submitted to the Court, to document any concrete steps taken by the police to investigate the applicant's allegations. The Court reiterates in this connection that the minimum standards as to effectiveness defined by the Court's case-law include the requirements that the investigation be independent, impartial and subject to public scrutiny, and that the competent authorities act with exemplary diligence and promptness (see, among other authorities, *Çelik and İmret v. Turkey*, no. 44093/98, § 55, 26 October 2004).

105. The Court considers that the appropriate authorities did not ensure that an effective investigation was carried out into the first applicant's complaint. No steps were taken to obtain further details from the first applicant or from the officers involved in his arrest.

106. Although the Court welcomes the inquiry held by the Cypriot Ombudsman, it nevertheless reiterates that in view of her limited competence the investigation carried out could not be considered sufficiently effective for the purposes of Article 3 of the Convention.

107. In this connection, the Court reiterates that where an individual has an arguable claim that there has been a violation of Article 3 of the Convention, the notion of an effective remedy entails, on the part of the State, "a thorough and effective investigation capable of leading to the identification and punishment of those responsible" (see *Aksoy*, § 98, and *Selmouni*, § 79, both cited above).

108. The Court considers that, in the circumstances, the applicant had laid the basis of an arguable claim that he had been subjected to police

violence during his arrest. The Attorney-General's Office, however, did not respond to these allegations. This inertia is inconsistent with the procedural obligation which devolves on the domestic authorities under Article 3 of the Convention.

In consequence, the Court finds that there has been a procedural violation of that provision.

## II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

109. The applicants complained that their arrest at the immigration offices at Limassol Port and their detention by the police entailed a violation of Article 5 §§ 1 and 2 of the Convention, the relevant parts of which read as follows:

> "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.
>
> 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."

110. The applicants further complained that because of their hasty expulsion they had been denied the possibility of claiming damages from the authorities for the latter's unlawful actions. In this connection, they complained under Article 6 and, with the exception of the third applicant, Ms Stankova, Article 13 of the Convention. The Court considers that this complaint falls to be examined under Article 5 § 5 of the Convention, this being the *lex specialis* in the case of proceedings for compensation for unlawful detention. It reiterates in this connection that once a case has been duly referred to it, it is entitled to examine every question of law arising in the course of the proceedings and concerning facts submitted to its examination in the light of the Convention and the Protocols as a whole (see, *inter alia*, *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports* 1998-I, and *Handyside v. the United Kingdom*, 7 December 1976, Series A no. 24). Article 5 § 5 of the Convention reads as follows:

> " Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

## A. The parties' submissions

### *1. The Government*

111. The Government submitted that the applicants' complaints under Article 5 should be declared inadmissible for non-exhaustion of domestic remedies. They maintained, firstly, that the applicants should have brought administrative proceedings under Article 146 of the Constitution against the Republic, challenging the lawfulness of the decisions to detain and deport them. In such proceedings the applicants could have claimed that the decisions in question had been made in excess or abuse of power and were contrary to the relevant provisions of the Aliens and Immigration Law and incompatible with the Constitution and the Convention. Had the applicants been successful the Supreme Court could have granted them effective declaratory remedies under Article 146 § 4 of the Constitution and they could have instituted civil proceedings for compensation under Article 146 § 6 of the Constitution.

112. Secondly, the Government maintained that a person claiming that he had been unlawfully arrested and detained could in addition or in the alternative bring a civil action under the Civil Wrongs Law against the Republic, seeking damages for false imprisonment. In such proceedings the applicants could have claimed that there had been no valid reason for their arrest and detention under the Aliens and Immigration Law and that their arrest and detention had also been contrary to the provisions of that statute and in violation of their rights both under Article 11 of the Constitution and Article 5 of the Convention. The Government relied on the case of *Andreas Tsouloupa v. The Attorney-General of the Republic* (see paragraph 68 above). The Government also noted that in such an action the applicants could have joined a claim for assault.

113. As to the merits, the Government submitted that the applicants had been arrested and detained for the purpose of effecting their deportation and that, therefore, their deprivation of liberty had been permissible under the Convention. The Government relied on the Court's judgment in the case of *Chahal v. the United Kingdom* (15 November 1996, § 112, *Reports* 1996-V). The applicants' arrest and detention had been based on and in conformity with domestic law and procedure and there had been no arbitrariness in the exercise by the authorities of their powers of arrest. The applicant's landing permits had been revoked from the moment they had been asked by the immigration authorities to leave the Republic. At that point they had become prohibited immigrants under the Aliens and Immigration Law. Consequently, the immigration authorities had been entitled to proceed with the execution of the detention and deportation orders against them in accordance with section 14 of the Law. In the alternative, the Government claimed that as the applicants' conduct had

posed a risk to public order and safety, the immigration authorities had had the right to execute the orders under section 10 of the Aliens and Immigration Law (see paragraph 62 above) irrespective of whether they were prohibited immigrants or not. Furthermore, in compliance with the requirements of Article 5 § 2 of the Convention, the applicants had been informed of the reasons for their arrest and deportation from the outset, both by the Ukrainian captain of the ship and by a Russian-speaking member of the immigration police.

114. Even assuming that the applicants were right that the reason given to them for their attendance at the immigration offices had been to enable photographs to be taken for the renewal of their landing permits, in the Government's opinion it had been legitimate in the circumstances to use a stratagem in order to ensure that the applicants were assembled in one place in the Republic on the day their flights were scheduled so that they could be requested to leave. In the event of a refusal the deportation orders could then have been executed. If the authorities had requested the applicants to leave when they were still on board the ship, they would not have been able, in the event of a refusal, to arrest them or to proceed with the execution of the deportation orders. Criminal liability did not extend to offences committed by aliens on a vessel flying a foreign flag unless the offences fell within the ambit of section 5 of the Criminal Code (see paragraph 73 above). In connection with the above the Government stressed that the applicants, unlike the applicants in the case of *Čonka v. Belgium* (no. 51564/99, ECHR 2002-I), had no place of abode and/or work in the Republic. They also emphasised that this had not been an ordinary case of aliens residing and/or working in a State's territory where different possibilities existed for arresting and deporting those not lawfully resident. Calling the applicants to attend the immigration police offices at the harbour had been the only option left to the authorities to secure their deportation. It was not a course of action that had been used merely to facilitate their deportation or make it more effective.

*2. The applicants*

115. The applicants submitted that they had been denied the opportunity to bring a claim against the Cypriot authorities. They had been hastily expelled from Cyprus and had not, at the time, been allowed to contact a lawyer or their respective consulate. They had also been prohibited from entering Cyprus.

116. As to the substance of their complaints, the applicants asserted that the Government had not given an honest account of the facts of the case. First of all, they submitted that the Admiralty Court had not ordered or given any instructions for their deportation. This was confirmed by the Cypriot Ombudsman in her report. Since the ship had been flying the Ukrainian flag, the Cypriot authorities had not had the power to make or

execute a deportation order. Furthermore, there was no evidence that the applicants had represented a danger to public order. In that connection, they pointed out that they had not been accused at any time of breaching public order and there had been no evidence that they had disobeyed the captain. The authorities had never notified them of any objectionable conduct on their part which might have led to their expulsion. Furthermore, they had been in possession of valid landing permits and had the financial support of their relatives in Ukraine and Estonia.

117. The applicants contended that they had not been notified that they were to be deported and that the Government had not provided any evidence to the contrary. Nor had the Government submitted any evidence that they had contacted the Ukrainian Consul following their refusal to depart from Cyprus. Lastly, the applicants stated that they had not been given sufficient information about the reasons for their arrest and detention. In this connection, they submitted that they had not been served with any document justifying their arrest and expulsion.

*3. The Ukrainian Government*

118. The Ukrainian Government did not make any submissions on the exhaustion question.

119. As to the merits of the applicants' complaints, they submitted that, at least in part, the manner in which the applicants had been invited to the immigration offices on a false pretext was similar to the procedure used by the Belgian authorities in the *Čonka* case (cited above). The Cypriot authorities had gained the applicants' trust with a view to luring them to the immigration office in order to arrest and deport them. This, in the view of the Ukrainian Government, was incompatible with Article 5 § 1 of the Convention.

## B. The Court's assessment

120. The Court is satisfied that the applicants' deprivation of liberty fell within the ambit of Article 5 § 1 (f) of the Convention as the applicants were arrested and detained for the purpose of being deported from Cyprus.

121. The Government submitted that the applicants had not brought their complaints concerning their detention before the domestic courts. In particular, they claimed that the applicants could have brought an administrative recourse under Article 146 of the Constitution challenging the lawfulness of the decisions to detain and deport them, and/or a civil action for false imprisonment and assault, within the context of which they could have complained of a violation of their rights under Article 11 of the Constitution and Article 5 of the Convention (see paragraphs 111 and 112 above).

122. The Court reiterates that in the area of exhaustion of domestic remedies the burden of proof is on the Government to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success. Once this burden of proof is satisfied, it falls to the applicant to show that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate or ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement (see, for example, *Akdivar and Others*, cited above, § 68).

123. In the present case, and to the extent that the Government can be understood to be arguing that the applicants should have had recourse to the alleged remedies before being deported, the Court observes the following.

124. The detention and deportation orders were issued against the applicants on 6 February 2003. In the absence of any evidence or explanation to the contrary by the Government, the Court finds that the applicants were not given notice of the detention and deportation orders when they were issued. The applicants were then invited to attend the immigration police offices at Limassol Port on 18 February 2003 so that photographs could be taken for the renewal of their landing permits, which were due to expire at the end of the month. However, this was only a stratagem. The applicants' account is, in the Court's opinion, plausible in the absence of any evidence or explanation to the contrary and in the light of the Cypriot Ombudsman's conclusions on the matter. Air tickets were purchased by the lawyer who was representing other crew members in the proceedings before the Admiralty Court (see paragraph 21 above) and the applicants were booked on a flight on 18 February 2003. It does not appear that the applicants were aware that these tickets had been issued.

125. According to the Government, the applicants were informed of and shown the orders at the immigration police offices at Limassol Port at the last moment, when the orders were actually being enforced (see paragraph 41 above). The orders were printed in the Greek language and shown only from a distance. No information was given to the applicants about the remedies available to contest their detention and deportation and they were not allowed to contact a lawyer and/or their respective embassies. In this connection, it is noted that the authorities took the applicants' mobile phones away and only returned them when the applicants were aboard the plane. Furthermore, the authorities did not offer any form of legal assistance to the applicants at the immigration police offices.

126. The Court reiterates that the Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective (see, *mutatis mutandis*, *Matthews v. the United Kingdom* [GC], no. 24833/94, § 34, ECHR 1999-I). As regards the accessibility of a remedy within the

meaning of Article 35 § 1 of the Convention, this implies, *inter alia*, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy in question (see *Čonka,* cited above, § 46). However, this was not the position in the present case since, during their detention and before their deportation, the applicants were not afforded any such possibility.

127. Notwithstanding the above, and to the extent that the Government can be understood to be arguing that the applicants should have had recourse to the alleged remedies after their deportation, the Court observes the following. It appears from the material submitted to the Court that the applicants had a lawyer in Cyprus (see paragraphs 9 and 52 above). Furthermore, certain of the applicants had proceedings pending before the Admiralty Court (see paragraph 9 above). The Court considers, therefore, that it was feasible for the applicants, once in their respective countries,[3] to bring their complaints before the Cypriot courts. The Court cannot accept the applicants' claim that they were denied this possibility because they were not allowed to enter Cyprus. The Court reiterates that the object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address the allegation made of violation of a Convention right and, where appropriate, to afford redress before that allegation is submitted to the Court (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). In so far as there exists at national level a remedy enabling the national courts to address, at least in substance, the argument of violation of the Convention right, it is that remedy which should be used. The Court points out in this connection that applicants have been required to exhaust domestic remedies even where they are not within the jurisdiction of the respondent State (see for example, *Abbasi v. Cyprus* (dec.), no. 21713/06, 5 July 2007, and *Ostojić v. Croatia* (dec.), no. 16837/02, 26 September 2002). The Court further notes that the applicants have not put forward any arguments casting doubt on the effectiveness or adequacy of the remedies proposed by the Government. Finally, the Court observes that an examination of the case, such as it has been submitted, does not disclose the existence of any circumstances which might have absolved the applicants from availing themselves of these remedies.

128. It is true that the applicants, following their deportation, lodged a complaint with the Cypriot Ombudsman through the Ukrainian Parliamentary Ombudsman. However, given the domestic judicial remedies available, the applicants' petition cannot be regarded as an effective remedy for the purposes of Article 35 of the Convention (see, *mutatis mutandis*, *Leander v. Sweden*, 26 March 1987, §§ 80-84, Series A no. 116; *Montion v. France*, no. 11192/84, Commission decision of 14 May 1987, Decisions

[3] Ukraine and Estonia.

and Reports (DR) 52, p 235; and *Raninen v. Finland*, 16 December 1997, §§ 38-42, *Reports* 1997-VIII).

129. In view of the above, this part of the application must be rejected under Article 35 § 4 of the Convention for non-exhaustion of domestic remedies.

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

130. The applicants raised a number of complaints in their application concerning their detention and deportation. They complained under Article 3, Article 1 of Protocol No. 1, Article 3 of Protocol No. 4 and Article 1 of Protocol No. 7.

### A. Complaint under Article 3 of the Convention

131. The applicants complained under Article 3 of the Convention that the manner in which they had been deported, namely in the clothes they were wearing without being allowed to take their warm clothes, constituted inhuman and degrading treatment. In this connection they pointed to the considerable difference in the outdoor temperature at the time between Larnaca and Odessa.

132. The Government submitted that the applicants had been allowed to go on board the vessel to collect their personal belongings. This included the fourth applicant, who, as the Cypriot Ombudsman had found in her report, had been taken to the ship to fetch things for her baby, the eleventh applicant. Furthermore, the fourth applicant had not complained to the Cypriot Ombudsman that her request to take warm clothes for her baby had been refused. The Government relied on the fourth applicant's signed statement of 2 June 2003 attached to the Cypriot Ombudsman's report (see paragraph 55 above).

133. The applicants disputed the Government's submissions.

134. The Ukrainian Government referred to the applicants' submissions under this provision. With regard to the eleventh applicant, they pointed out that the Government had not submitted any evidence proving that the fourth applicant had in fact been allowed to take warm clothes for her baby daughter. In addition, taking into consideration the baby's age at the time, the Ukrainian Government contended that warm clothes had not been the only items necessary for the trip. In view of the fact that the applicants had been invited to the immigration office to enable photographs to be taken so that new landing permits could be issued and had not expected to be deported on that date, it was doubtful that there had been sufficient time between the arrest and the deportation for the fourth applicant to collect everything she needed for her baby.

135. The Court notes that the facts are disputed between the parties. With regard to the eleventh applicant, the baby, the Cypriot Ombudsman observed in general terms that her mother, the fourth applicant, had been allowed to go to the vessel to collect some things for her (see paragraph 53 above). The Court finds, therefore, that the evidence before it does not allow it to conclude beyond all reasonable doubt that the fourth applicant was not able to take any warm clothing or any other covering for her baby. Further, it has not been shown that it was not possible to secure such clothing or covering on board the aircraft prior to disembarkation. With regard to the adult applicants, it would indeed appear, in view of the Ombudsman's conclusions on the matter, that they were deported in the clothes they were wearing at the time of their arrest. Assuming therefore that the applicants did not have sufficiently warm clothing when deported, there is no indication of any intention to humiliate or debase them; rather, this situation was due to the hastiness of the deportation. Further, it has not been claimed or shown that they were adversely affected to any substantial extent.

136. Accordingly, this complaint is manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

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

137. With the exception of the third applicant, the applicants complained that the authorities' refusal to allow them to collect their personal belongings before being deported amounted to an unlawful deprivation of property within the meaning of Article 1 of Protocol No. 1 to the Convention. This provision reads as follows:

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

138. The Government contended that, before being taken to the airport, all the applicants had been driven to the ship in order to pick up their personal belongings. They noted that the Cypriot Ombudsman had expressed reservations in her report on this account, except in respect of the fourth applicant. In any event the Government maintained that the applicants should have taken the appropriate steps with the owners and captain of the ship in order to retrieve their belongings as the authorities could not have gone aboard. Lastly, they observed that it had also been open to the applicants to bring civil proceedings for the unlawful withholding of

movable property, which amounted to conversion or trespass under the law of torts (see paragraph 71 above).

139. The applicants submitted that they had not been allowed to return to the ship to take their personal belongings. This was evident from the fact that no baggage had been registered on their air tickets. Their belongings had eventually been sent to them in August 2003 with the help of the Ukrainian Consul in Cyprus (see paragraph 36 above).

140. The Ukrainian Government endorsed the applicants' claims.

141. The Court notes that in August 2003, a few months after their deportation, the applicants regained possession of all the belongings that had remained on the ship.

142. Having regard to the above, the Court considers that this complaint does not disclose any appearance of a violation of Article 1 of Protocol No. 1. Thus, the Court finds that this complaint is manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention

### C. Complaint under Article 3 of Protocol No. 4 to the Convention

143. The fourth and tenth applicants alleged a violation of Article 3 of Protocol No. 4 to the Convention in respect of their baby daughter, the eleventh applicant, who had been born in Cyprus and was therefore a Cypriot citizen. This provision provides as follows:

> "1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.
>
> 2. No one shall be deprived of the right to enter the territory of the state of which he is a national."

144. The Court observes that Article 3 of Protocol No. 4 secures an absolute and unconditional freedom from expulsion of a national. However, the Court considers that for the purposes of Article 3 of Protocol No. 4 the applicant's "nationality" must be determined, in principle, by reference to the national law. A "right to nationality" similar to that in Article 15 of the Universal Declaration of Human Rights is not guaranteed by the Convention or its Protocols, (see *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 77, ECHR 2002-II).

145. In accordance with the Civil Registry Law (no. 141 (I) of 2002, as amended), Cypriot citizenship can only be passed on by the child's parents, regardless of the country of birth (see paragraph 74 above). Neither the father nor the mother of the eleventh applicant was a Cypriot citizen on the date of her birth. The fact that she was born in Cyprus does not confer Cypriot citizenship on her under the domestic law. She cannot therefore be regarded as a Cypriot "national" within the meaning of Article 3 of Protocol No. 4. It follows that this complaint is incompatible *ratione materiae* with

this provision and must be rejected under Article 35 §§ 3 and 4 of the Convention.

### D. Complaint under Article 1 of Protocol No. 7 to the Convention

146. Lastly, the applicants complained under Article 1 of Protocol No. 7 to the Convention that the deportation orders had been unlawful and that they had been denied the procedural guarantees required by this provision, which reads:

> "1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
>
> (a) to submit reasons against his expulsion,
>
> (b) to have his case reviewed, and
>
> (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority."

147. The Government submitted that the applicants had not been "lawfully resident" in the territory of Cyprus within the meaning of Article 1 of Protocol No. 7 and that, therefore, this provision was not applicable. The applicants had been staying aboard a Ukrainian ship and were not on the Republic's territory. The landing permits that had been granted to them did not authorise them to stay in the Republic but only to disembark for the period their ship remained in the territorial waters of Cyprus and provided they returned to the ship. These permits had been issued in exchange for their passports and had been granted subject to the condition that they could be revoked at any time. Upon revocation or expiry of the permits the applicants' presence would have been unlawful under domestic law. This would also have been the case if the applicants had attempted to reside in the Republic's territory, failed to re-embark or stayed in Cyprus after their ship had left. It could not therefore be said that the applicants had any legitimate expectation by virtue of the landing permits that they would be permitted to reside in Cyprus. In this connection the Government also pointed out that the applicants had never applied for or been granted any entry permit allowing them to lawfully reside in the Republic for some particular period or purpose.

148. In any event, the Government submitted that the applicants' deportation had been necessary in the interests of public order. Any derogation from the safeguards of this provision had therefore been justified in the light of the evidence concerning the applicants' conduct, including their disobedience of the captain's orders, and the potential threats this posed to the safety of other ships in Limassol Port and of the port itself.

149. The applicants disputed the Government's submissions and claimed that their deportation had been unlawful. Furthermore, they maintained that the Government's allegations that they had represented a danger to public order were totally unfounded.

150. The Ukrainian Government submitted that they doubted that the applicant's rights under this provision had been duly secured, taking into consideration the false reasons that had been given for inviting the applicants to the immigration offices and the extremely short period of time in which the arrest and deportation had taken place.

151. The Court notes that the scope of application of Article 1 of Protocol No. 7 applies only to aliens "lawfully resident" in the territory of the State in question (see *Sejdovic and Sulejmanovic* (dec.), no. 57575/00, 14 March 2002, and *Sulejmanovic and Sultanovic v. Italy* (dec.), no. 57574/00, 14 March 2002). So, for example, an alien whose visa or residence permit has expired cannot, at least normally, be regarded as being "lawfully resident in the country" (see for example, *Voulfovitch and Oulianova v. Sweden*, no. 19373/92, Commission decision of 13 January 1993, DR 74, p. 199, and *Bolat v. Russia*, no. 14139/03, § 76, ECHR 2006-XI).

152. It is therefore necessary to ascertain whether the applicants were lawfully resident in Cyprus at the time of their deportation.

153. The Court notes the definitions of the notion of "lawful residence" contained in the Explanatory Report to Protocol No. 7 and other international instruments (see paragraphs 75 and 76 above). It observes that in the present case the applicants had been staying aboard a Ukrainian ship and had only been granted landing permits for disembarkation purposes. This is common ground between the parties. In accordance with the domestic law, as confirmed by the Cypriot Ombudsman in her report (see paragraph 52 above), the applicants, as crew members of a ship remaining in port, were not considered to be resident in the Republic and the fact that landing permits had been granted to them did not alter this. In these circumstances it cannot therefore be said that the applicants had been admitted into Cypriot territory for the purposes of taking up residence.

154. In the light of the above considerations, the Court finds that Article 1 of Protocol No. 7 is not applicable in the present case. It follows that the applicants' complaint under this provision must be declared inadmissible as being incompatible *ratione materiae* with the provisions of the Convention and its Protocols, in application of Article 35 §§ 3 and 4.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

155. 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

156. The first applicant claimed 300,000 euros (EUR) in respect of non-pecuniary damage for the injuries he had suffered as a result of the force used against him by the police.

157. Having regard to the procedural violation found under Article 3 of the Convention (see paragraph 108 above), the Court finds it appropriate to award the first applicant the sum of EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

158. The first applicant did not make a claim with regard to costs and expenses.

159. Therefore, the Court will not make an award under this head.

### C. Default interest

160. The Court considers it appropriate that the default interest 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

1. *Declares* unanimously the complaint of the first applicant under Article 3 of the Convention admissible;

2. *Declares*, by a majority, the applicants' complaints under Article 5 inadmissible;

3. *Declares* unanimously the remainder of the application inadmissible;

4. *Holds* unanimously that there has been no substantive violation of Article 3 of the Convention in respect of the first applicant, Mr Oleg Aleksandrovich Shchukin;

5. *Holds* unanimously that there has been a procedural violation of Article 3 of the Convention in respect of the first applicant, Mr Oleg Aleksandrovich Shchukin;

6. *Holds* unanimously
(a) that the respondent State is to pay the first applicant, Mr Oleg Aleksandrovich Shchukin, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,000 (twelve thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Ukrainian hryvnias at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President