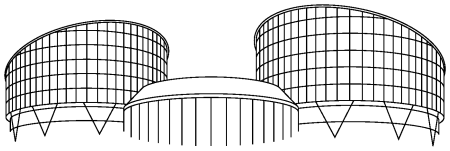

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF A.H. AND J.K. v. CYPRUS

(Applications nos. 41903/10 and 41911/10)

JUDGMENT

STRASBOURG

21 July 2015

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

In the case of A.H. and J.K. v. Cyprus,

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

Guido Raimondi, *President,*
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Yonko Grozev, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 30 June 2015,

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

PROCEDURE

1. The case originated in two applications (nos. 41903/10 and 41911/10) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by A.H. and J.K. ("the applicants"), on 14 June 2010.

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

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

4. On 14 June 2010 the President of the First Section decided to apply Rule 39 of the Rules of Court, indicating to the respondent Government that the applicants should not be deported to Syria. The applications were granted priority on the same date (Rule 41). On 21 September 2010 the President of the First Section, following an examination of all the information received from the parties, decided to maintain the interim measure (see paragraph 46 below).

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

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

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

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

9. On 23 October 2014 the President of the Section decided, under Rule 54 § 2 (a) of the Rules of Court, to request the applicants to inform the Court, whether, following amendments in the domestic law, they had applied anew for asylum or for a re-opening of their asylum applications in view of the current situation in Syria.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicants, A.H. ("the first applicant") and J.K. ("the second applicant"), who are wife and husband, are Syrian nationals of Kurdish origin and were born in Syria in 1985 and 1979 respectively. They live in Paphos.

A. The applicants' asylum claims and all relevant proceedings

11. The second applicant left Syria on 25 August 2004 and entered Cyprus illegally on 9 September 2004 after travelling from Turkey.

12. He applied for asylum the next day.

13. The first applicant left Syria at a later date in order to join the second applicant in Cyprus as they had been engaged to be married. She entered Cyprus illegally on 29 November 2007 after travelling from Turkey.

14. The applicants married in Cyprus on 4 December 2007 and the first applicant applied for asylum on 6 February 2008.

15. The applicants' asylum applications were examined jointly by the Asylum Service.

16. The Asylum Service held an interview with the applicants on 3 March 2009.

17. Their applications were dismissed on 26 March 2009 on the ground that they did not fulfil the requirements of the Refugee Law of 2000-2007 (as amended up to 2007), in that they had not shown that they had a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group or political opinion or a well-founded fear of serious and unjustified harm for other reasons. The Asylum Service noted that there had been contradictions in the account of facts given by the second applicant with regard to his participation in a demonstration concerning the Qamishli events which raised doubts as to his credibility. Furthermore, it considered that there was no possibility of the second applicant being subjected to inhuman or degrading treatment if returned to Syria. Consequently, it held that the asylum applications had not been substantiated.

18. On 24 April 2009 the applicants lodged an appeal with the Reviewing Authority against the Asylum Service's decision.

19. On 26 March 2010 the Asylum Service's decision was upheld and the appeal dismissed.

20. The Reviewing Authority underlined the contradictions and inconsistencies in the second applicant's claims. It pointed out that he had not given the same reasons for leaving Syria in his written application and in his interview. In the former he had stated that he had come to Cyprus to find work whereas in his interview he claimed that he had left Syria because he feared arrest following his participation in a demonstration. Further, the Reviewing Authority gave weight to the fact that the second applicant had stated that following the demonstration he had allegedly participated in, nothing had actually happened to him and that he had not been sought by the authorities. In his asylum application he had stated that he had not been arrested, detained, harassed, persecuted or wanted by the Syrian authorities. He had also been able to leave Syria legally. The second applicant's claims were therefore unsubstantiated. No issue arose in respect of the first applicant as she had stated that she had left Syria in order to join the second applicant and marry him and had admitted that she did not face any problems in Syria.

21. The Reviewing Authority concluded by observing that the applicants had not established that they were at risk of persecution if they returned to Syria. Nor did they satisfy the conditions for temporary residence on humanitarian grounds.

22. On 15 May 2010 the second applicant brought a "recourse" (judicial review proceedings) before the Supreme Court (first-instance revisional jurisdiction) under Article 146 of the Constitution challenging the decision of the Reviewing Authority. A subsequent application to amend the recourse by adding the first applicant as a complainant was withdrawn as the time-limit of seventy-five days had in the meantime expired (see paragraph 89 below).

23. On 14 June 2010 the applicants filed the present applications with the Court. The second applicant, in his application form stated that on 13 March 2004 he had taken part in a demonstration in his village in Derit. The purpose of the demonstration was to go to Qamishli to show solidarity with the Kurdish demonstrators following the events of 12 March 2004. Following the intervention of the authorities this had not been possible. The second applicant stated that the police had attacked the demonstrators killing two persons. After going into hiding for a month in a neighbouring village, the second applicant was arrested in Qamishli. He was detained for fourteen days and subjected to torture. He was subsequently transferred to the central prison of Damascus where he was detained for two and a half months. After bribing the authorities he was released on the condition that he would present himself to the authorities in Damascus every fifteen days. He did not do so, however, out of fear to be detained and tortured again.

24. On 8 October 2013 the Supreme Court dismissed the second applicant's recourse. It upheld the Reviewing Authority's decision of 26 March 2010 after examining all the grounds of annulment put forward by the second applicant. The court noted, *inter alia*, that the main ground for which the second applicant's asylum claim had not been accepted was the lack of plausibility of his principal allegations and the existence of significant contradictions and omissions which had undermined his credibility. The second applicant had not substantiated that he was at risk of persecution if returned to Syria because he had allegedly participated in a demonstration. Furthermore, the fact that the second applicant was of Kurdish origin was not sufficient in itself to justify the granting of refugee status. The Supreme Court also held that new grounds and allegations concerning his detention, arrest and ill-treatment following the events could not be taken into account. Its jurisdiction under Article 146 of the Constitution was limited to reviewing his claim as it had been made before the Asylum Service and the Reviewing Authority (see paragraph 89 below). Grounds for annulment that had not been put before the Reviewing Authority could not be examined for the first time by the court.

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

B. The applicants' first arrest and detention (11 June 2010 – 20 May 2011)

26. In the meantime, on 17 May 2010 the Yekiti Party and other Kurds from Syria organised a demonstration in Nicosia, near the Representation of the European Commission, the Ministry of Labour and Social Insurance and the Government Printing Office. They were protesting against the restrictive policies of the Cypriot Asylum Service in granting international protection. About 150 Kurds from Syria, including the applicants, remained in the area around the clock, having set up about eighty tents on the pavement. According to the Government, the encampment conditions were unsanitary and protesters were obstructing road and pedestrian traffic. The encampment had become a hazard to public health and created a public nuisance. The protesters performed their daily chores on the pavement, including cooking and washing in unsanitary conditions. The sewage pits had overflown, causing a nuisance and offensive odours. The public lavatories were dirty and the rubbish bins of the Government buildings were being used and, as a result, were continuously overflowing. Furthermore, the protesters were unlawfully obtaining electricity from the Printing Office. Members of the public who lived or worked in the area had complained to the authorities. The Government submitted that efforts had been made by the authorities to persuade the protesters to leave, but to no avail. As a result, the authorities had decided to take action to remove the protesters from the area.

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

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

29. According to the Government, letters were sent by the Civil Registry and Migration Department to a number of failed Syrian-Kurdish asylum-seekers informing them that they had to make arrangements to leave Cyprus in view of their asylum applications being turned down (see *M.A. v. Cyprus*, no. 41872/10, § 32, ECHR 2013 (extracts)). They submitted a copy of such a letter which was dated 1 June 2010 and addressed to the applicants.

30. From documents submitted by the Government it appears that from 31 May until 7 June 2010 the authorities kept the area under surveillance and kept a record of the protesters' daily activities and of all comings and

goings. In the relevant records it is noted that invariably, between 1.30 a.m. and 5.30 a.m., things were, in general, quiet, and everyone was sleeping apart from those keeping guard. During the above-mentioned period a large-scale operation was organised by the Police Emergency Response Unit, "ERU" ("ΜΜΑΔ"), and a number of other authorities, including the Police Aliens and Immigration Unit, for the removal of the protesters and their transfer to the ERU headquarters for the purpose of ascertaining their status on a case-by-case basis.

31. In the meantime, between 28 May 2010 and 2 June 2010 orders for the detention and deportation of forty-five failed asylum seekers were issued following background checks. Letters were sent by the District Aliens and Immigration Branch of the Nicosia Police to the Director of the Aliens and Immigration Service and the Ministry of Justice and Public Order, containing a short paragraph with information as to the immigration status of each person. This information included the date of rejection of the asylum application or the closure of the asylum file by the Asylum Service, the date of dismissal of the appeal by the Reviewing Authority, where lodged, and the date some of those concerned had been included on the authorities' "stop list" (a register of individuals whose entry into and exit from Cyprus is banned or subject to monitoring). The letters recommended the issuance of deportation and detention orders. The Government submitted copies of two such letters with information concerning thirteen people.

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

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

of approximately half of the group had been completed and that the whole operation had ended by 4.30 p.m.

34. It was ascertained that seventy-six of the adults, along with their thirty children, were in the Republic unlawfully. Their asylum applications had either been dismissed or their files closed for failure to attend interviews. Those who had appealed to the Reviewing Authority had had their appeals dismissed. Some final decisions dated back to 2006. A number of people had also been included on the authorities' "stop list". Deportation orders had already been issued for twenty-three of them (see paragraph 31 above).

35. The authorities deported twenty-two people on the same day at around 6.30 p.m. (nineteen adults and three children). Forty-four people (forty-two men and two women), including the applicants, were arrested. The persons against whom deportation and detention orders had been issued on 2 June 2010 were detained under these orders. The remaining persons, including the applicants, were charged with the criminal offence of unlawful stay in the Republic under section 19(2) of the Aliens and Immigration Law (see paragraph 86 below). They were all arrested and transferred to various detention centres in Cyprus. The applicants were placed in the immigration detention facilities in the Nicosia Central Prisons (Blocks 9 and 10 respectively). Further, on humanitarian grounds, thirteen women whose husbands were detained pending deportation and who had a total of twenty-seven children between them were not arrested themselves.

36. According to the Government the applicants and their co-detainees were informed orally that they had been arrested and detained on the basis that they had been staying in the Republic unlawfully and were thus "prohibited immigrants" (see paragraph 84 below). They were also informed of their rights pursuant to the Rights of Persons Arrested and Detained Law 2005 (Law 163(I)/2005) (see paragraph 113 below) and, in particular, of their right to contact by phone, in person and in private, a lawyer of their own choice. The applicants submitted that they had not been informed of the reasons for their arrest and detention on that date.

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

letters concerning thirty-seven people (most of these letters referred to groups of people).

38. Deportation and detention orders were also issued in Greek on the same day in respect of the remaining fifty-three people detained (see paragraph 34 above), including the applicants, pursuant to section 14 (6) of the Aliens and Immigration Law on the ground that they were "prohibited immigrants" within the meaning of section 6(1)(k) of that Law. These were couched in identical terms. In respect of two people the orders also mentioned sections 6(1)(i) and 6(1)(l) of the Law.

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

The text of the letter reads as follows:

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

40. The only differences was that some letters referred to illegal stay rather than illegal entry and that the letters issued earlier referred to 2 June 2010 as the date of issuance of the deportation and detention orders (see paragraph 32 above).

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

42. The applicants submitted that they had never refused to receive any kind of information in writing. They claimed that it had only been on 14 June 2010 that they had been informed orally that they would be deported to Syria on the same day but that the deportation and detention orders were not served on them on that date or subsequently. They

submitted that they had eventually been informed by their lawyer, following the receipt of information submitted by the Government to the Court in the context of the application of Rule 39 of the Rules of Court, that deportation and detention orders had been issued against them.

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

C. Background information concerning the applicants' request under Rule 39 of the Rules of Court

44. On Saturday, 12 June 2010, the applicants, along with forty-two other persons of Kurdish origin, submitted a Rule 39 request in order to prevent their imminent deportation to Syria.

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

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

47. Rule 39 was subsequently lifted with regard to three cases, but remained in force in the present two applications.

D. Habeas corpus proceedings and the applicants' release

48. On 24 January 2011 the applicants filed habeas corpus applications with the Supreme Court claiming that their continued detention from 11 June 2010 had violated Article 15 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Members states for returning illegally staying third-country nationals, "the EU Returns Directive". The applicants, relying on the Court's judgment in *Chahal v. the United Kingdom*, 15 November 1996, (*Reports of Judgments and Decisions* 1996-V) and the Commission's report in *Samie Ali v. Switzerland* (no. 24881/94, Commission's report of 26 February 1997) also claimed that their detention had breached Article 11 (2) of the Constitution and Article 5 § 1 of the Convention (see *M.A.*, § 50, cited above).

49. The Supreme Court set the applications for directions for 31 January 2011. On that date the Government asked for a few days so they could file an objection to the applications. They were given until 4 February 2011 and the habeas corpus applications were set for hearing on 9 February 2011. The parties were also requested to prepare a short note with the issues they would address and to produce it on the day of the hearing.

50. The Government filed their objection on 4 February 2011.

51. On 10 February 2011 the parties appeared before the court and submitted their written addresses. The hearing of the applications was held. Judgment was reserved on the same day.

52. On 23 February 2011 the Supreme Court dismissed the applications. With regard to the preliminary issues raised, the Supreme Court first of all held that it had the competence to examine the applications as it was called upon to examine the lawfulness of the applicants' protracted detention and within the context of a habeas corpus application, examine the conformity of their detention with Article 15 (3) of the EU Returns Directive and Article 11 (2) not the lawfulness of the deportation and detention orders. The applicants were not estopped from bringing a habeas corpus application just because they had not challenged the deportation and detention orders issued against them. Even if the lawfulness of the detention was assumed, detention for the purpose of deportation could not be indefinite and the detainee left without the right to seek his release. The Supreme Court also rejected the argument that the applicants were estopped from bringing the application because their continued detention had been brought about by their own action, that is, by their application to the Strasbourg Court for an interim measure suspending their deportation.

53. The Supreme Court then examined the substance of the applications. It noted that the EU Returns Directive had direct effect in the domestic law, as the period for transposition had expired and the Directive had not been transposed. It could therefore be relied on in the proceedings. However, it went on to hold that the six-month period provided for in the Directive had not yet started to run. The applicants had been arrested on 11 June 2010 with a view to their deportation but had not been deported by the Government in view of the application by the Court on 14 June 2010 of Rule 39 and the issuing of an interim measure suspending their deportation. Consequently, the authorities had not been able to deport them even though, as they stated before the court, they had been ready to do so from 18 June 2010. As the applicants themselves had taken steps to suspend their deportation, the ensuing time could not be held against the Government and could not be taken into account for the purposes of Article 15 (5) and (6) of the Directive. The six-month period would start to run from the moment that the interim measure had been lifted. From that moment onwards the Government had been under an obligation in accordance with Article 15 (1) of the Directive to proceed with the applicants' deportation with due

diligence. The situation would have been different if the deportation had not been effected owing to delays attributable to the authorities.

54. In so far as the applicants' complaints under Article 11 (2) of the Constitution and Article 5 § 1 of the Convention were concerned, the Supreme Court distinguished the applicants' situation from those in the cases they relied on and in which responsibility for the protracted detention lay with the authorities. Further, it held that it had not been shown that the continued detention of the applicants had been arbitrary, abusive and contrary to the Court's case-law (see paragraph 48 above).

55. The applicants lodged two separate appeals with the Supreme Court (appellate jurisdiction) on 17 March 2011. Another two appeals were lodged at the same time by *M.A.* (see *M.A.*, §§ 54, cited above) and another Syrian of Kurdish origin (see *K.F. v. Cyprus*, no. 41858/10, § 62, 21 July 2015).

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

57. The applicants were released on 20 May 2011 following revocation of the deportation and detention orders of 11 June 2010 by the Permanent Secretary of the Ministry of the Interior. They were informed on 17 May 2011 by a letter dated 10 May 2011 that they would be issued with a special residence/employment permit under the Aliens and Immigration Law and the relevant Regulations for a period of six months from the date of their release with a possibility of further renewal. However, prior to the issuance of this permit they were obliged to sign a contract of employment with an employer indicated and approved by the Department of Labour. The applicants were also asked to report to the police once a month.

58. On 15 July 2011 the Supreme Court informed the applicants that one of the other appeals that had been filed at the same time as theirs was set down for hearing for 12 September 2011.

59. On 7 September 2011 the applicants' lawyer filed an application for joining the four appeals (see paragraph 55 above).

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

61. On 8 November 2011 the applicants filed an application requesting an extension of twenty days for filing their written addresses. These were filed on 28 November 2011.

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

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

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

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

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

E. The applicants' second arrest and detention

67. The applicants submitted that following their release on 20 May 2011 the authorities did not grant them residence permits. The applicants were not able to fulfil the terms and conditions imposed by the Ministry of Interior in order to have residence permits. Their issuing was subject to finding an employer approved by the Department of Labour and to present to the immigration authorities an approved contract of employment. The applicants could not find and/or were not referred by the Department of Labour to an approved employer despite their numerous attempts to that effect. Their situation was explained to the competent authorities in a letter dated 28 July 2011 to which they never received a reply. As a result they were not able to regularise their stay in Cyprus and had no access to any rights apart from a tolerated residence status.

68. On 24 November 2012, at 9.45 a.m., the applicants, along with another Syrian couple who had three children, were stopped at Paphos airport while they attempted to take a flight to Bergamo-Milano in Italy by using false Bulgarian passports. During passport control, the police officer in charge suspected that their passports were false because the colour of the page containing the biometric data differed to that used in genuine passports. The applicants were then requested to give a sample of their signatures. These did not correspond to those in the passports they had presented. After having being questioned by the officer they admitted that the passports were not their own and revealed their true personal details. An immigration officer carried out a search of their immigration status and ascertained that they were failed asylum seekers as their appeal to the Reviewing Authority been dismissed and they did not have valid residence permits.

69. According to the statement of the police officer taken on the same date, the applicants were arrested for committing the flagrant offences of personation and unlawful stay in the Republic (see paragraphs 86 and 114 below). The second applicant was arrested at 1 p.m. and the first applicant at 1.05 pm. In his statement the police officer stated that he had drawn their attention to the law and that the second applicant replied "I made a mistake". The officer also noted that their legal rights had been explained to them in the Arabic language by an interpreter. The other couple was also

arrested and the social welfare office was contacted concerning the children. Around 2 p.m. they were all taken to the Paphos Criminal Investigation Department (CID).

70. The second applicant along with the other man, was then arrested by virtue of an arrest warrant issued by the District Court of Paphos at 2.20 pm the same day pursuant to section 18 of Criminal Procedure Law (Cap. 155; see paragraph 116 below) on the ground that there had been reasonable suspicion based on evidence that he had been involved in a conspiracy to commit a felony, forgery, circulation of a forged document, personation and unlawful stay in the Republic between 15 September 2009 and 14 November 2012. There is a handwritten signed note on the warrant by the arresting police officer stating that he arrested the second applicant at 2.40 p.m. at Paphos CID and that with the assistance of an interpreter he had informed him of the reasons for his arrest, had drawn his attention to the law and that the second applicant had replied "I did it for a better life".

71. The second applicant also signed a document containing his rights to communication as set out in sections 3 and 4 of Law 163(I)/of 2005 (see paragraphs 36 above and 113 below). The copy of the document signed by him was in Arabic.

72. The second applicant was then questioned by a police officer with the assistance of an interpreter and gave a written statement. The statement was then translated into Arabic. The first part of the statement contains the information given to him by the police officer which reads as follows:

"I inform you that I am investigating a case of conspiracy to commit a felony, forgery, uttering false documents and personation and unlawful stay on the territory of the Republic, offences that were committed between 26 March 2010 and 24 November 2012 in Paphos, for which I have evidence which gives me reasonable suspicion that you are implicated. I wish to question you and to take your statement. You are not obliged to say anything unless you wish to do so but anything you say may be written down and used as evidence".

73. The second applicant signed next to this paragraph.

74. In his statement the second applicant stated that he had decided to leave Cyprus, as following his release and the expiry of the six-months, he was not given another residence and work permit (see paragraph 57 above). He also admitted that he had bought the passports from a Kurdish national for the amount of 1100 euros (EUR) and explained how these were secured. The applicants intended to leave Cyprus and go to Germany through Italy. He also apologised for what happened "today" and that he had done it because he could no longer live in Cyprus. The statement was read to the applicant by the interpreter; he confirmed it and signed it. A statement was also given by the interpreter.

75. According to the relevant police report of Paphos CID, the first applicant and the other woman stated that they did not know anything about the passports and that their husbands had organised everything.

76. At around 4.10 p.m. both women were released from custody as they were both pregnant and the one also had three children.

77. The following day, 25 November 2012, the second applicant was taken to the Paphos District Court and was remanded in custody for four days for the purposes of further investigation of the alleged commission of a number of offences by the applicants under the Criminal Code and the Aliens and Immigration Law; in particular, the offences of conspiracy to commit a felony, forgery, uttering false documents and personation (sections 371, 331, 333, 334, 337, 339 and 360 of the Criminal Code, Cap. 154) and unlawful stay in the Republic (section 19 (l) (l) of the Aliens and Immigration Law)(see paragraphs 86, 114 and 115 below).

78. On 28 November 2012, following the conclusion of the police investigation, the case file was transmitted to the office of the Attorney-General for the purposes of deciding whether the applicants would be subject to criminal prosecution. The Attorney-General at the time, decided not to prosecute the applicants because of the particularity of their cases. He gave instructions to the police to proceed with the deportation of the applicants when the situation in Syria would allow it.

79. On 29 November 2012, upon expiry of the second applicant's remand, detention and deportation orders were issued pursuant to section 14(6) of the Aliens and Immigration Law on the ground that the second applicant was a prohibited immigrant within the meaning of section 6 (1) (k) and (l) of that law (see *M.A.*, § 62, cited above). On the same day the second applicant was served with a letter informing him of the decision to detain and deport him on the ground that he was an illegal immigrant as he had stayed unlawfully in the Republic. It also informed him that he had the right to file a recourse against these orders before the Supreme Court.

80. The Government submitted that on the same day the execution of the deportation order was suspended as "it transpired" that the Court's interim measure under Rule 39 was still in force.

81. The second applicant was detained at Paphos Police Station Detention Facility until 21 December 2013 when he was released following a decision by the Permanent Secretary of the Ministry of the Interior to revoke the deportation and detention orders. The conditions attached to his release were set out in a letter dated 20 December 2013 given him on the date of his release. In particular, the second applicant was requested to hand over his passport to the Aliens and Immigration police. He would be given a certified copy of the passport which would allow the issuance of a residence permit or any other permit. A special residence/employment permit would then be issued for a period of six months. Prior to the issuance of this permit, however, the second applicant would have to sign a contract of employment with an employer indicated and approved by the Department of Labour. The second applicant was also obliged to report to the nearest police station once a month and to inform the authorities of a change of address.

82. The second applicant submitted that although he found employment he was informed by the Department of Labour that the employer in question did not fall within the categories entitled to employ him. The Department of Labour did not refer him to an eligible employer. The first applicant submitted that she was not given any terms or conditions of residence. They both therefore remained in an irregular situation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Entry, residence and deportation of aliens

1. The Aliens and Immigration Law and the Refugee Law

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

84. Under section 6(1) of the 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)), any person who was deported from the Republic either on the basis of the Law or on the basis of any other legislation in force at the time of his or her deportation (section 6(1)(i)) and any alien who wishes to enter the Republic as an immigrant, but does not have in his or her possession an immigration permit granted in accordance with the relevant regulations (section 6(1)(l)). Furthermore, a person can be considered to be a "prohibited immigrant" on, *inter alia*, grounds of public order, legal order or public morals or if he or she constitutes a threat to peace (section 6(1)(g)).

85. Under the Law the deportation and, in the meantime, the detention of any alien who is considered "a prohibited immigrant" can be ordered by the Chief Immigration Officer, who is the Minister of the Interior (section 14). Section 14(6) provides that a person against whom a detention and/or deportation order has been issued shall 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 competent authorities and to request the services of an interpreter. In addition, Regulation 19 of the Aliens and Immigration Regulations of 1972 (as amended) provides that when the Immigration Officer 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 (see *M.A.*, §§ 63-64, cited above).

86. Unauthorised entry and/or stay (section 19(1)(l) of the Aliens and Immigration Law) in Cyprus are criminal offences. Until November 2011, they were punishable by imprisonment or a fine (section 19(2)) of the

Aliens and Immigration Law). Law 153(I)/2011, which entered into force in November 2011, removed the punishment of imprisonment but retained the criminal nature of the contraventions and their punishment with a fine (section 18). Such punishment is not applicable to asylum seekers.

87. Pursuant to section 7(1) of the Refugee Law a person who has entered the Republic illegally will not be subject to punishment solely on the basis of his illegal entry or residence, provided that he appears without unjustified delay before the authorities and gives the reasons for his illegal entry or residence. Section 7(4)(a) prohibits the detention of an asylum seeker for the sole reason of being an asylum seeker. Under section 7(4)(b) detention is allowed by a court order either for establishing his or her identity or nationality in a case where the asylum seeker is not in possession of valid travel or identity documents; or for the examination of new elements which he or she wishes to submit in order to prove his or her claim relating to his or her asylum application, when this has been rejected at first as well as at second instance and a deportation order has been issued against him or her. Section 7(5) provides that detained asylum seekers must be informed in a language they understand, of the reasons for their detention as well as their legal rights, including the right to appoint a lawyer. Under section 7 (6) the detention may not exceed eight days. The detention may be extended for further eight-day terms upon order of the court, but the total detention period shall in no case exceed thirty-two days.

2. Challenging deportation and detention orders

88. 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."

89. A recourse must be made within seventy-five days of the date when the decision or act was published or, if it was not published and in the case of an omission, when it came to the knowledge of the person making the recourse (Article 146(3)). Should the recourse succeed, the power of the Supreme Court is confined to declaring an act or decision null or void, or, in the case of an omission, that it ought not to have occurred, in that what had not been done should have been done (Article 146(4)).

The jurisdiction of the Supreme Court under Article 146 is limited to reviewing the legality of the act, decision or omission in question on the basis of the facts and circumstances existing at the time the act, decision or omission occurred. The Supreme Court will not go into the merits of the

decision and substitute the decision of the administrative authority or organ concerned with its own decision; it will not decide the matter afresh. If the Supreme Court annuls the act or decision in question, the matter is automatically remitted to the appropriate administrative authority or organ for re-examination (see the domestic case-law citations in *Sigma Radio Television Ltd v. Cyprus*, nos. 32181/04 and 35122/05, § 73, 21 July 2011).

90. Article 146 (6) provides for compensation as follows:

> "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".

91. The Supreme Court has held that the lawfulness of deportation and detention orders can only be examined in the context of a recourse brought under Article 146 of the Constitution and not in the context of a habeas corpus application (see, for example, the Supreme Court's judgment of 30 December 2004 in *Elena Bondar* appeal no. 12166 against the refusal of an application for a writ of habeas corpus, (2004) 1 (C) CLR 2075).

92. A recourse does not have automatic suspensive effect under domestic law. In order to suspend deportation an application must be made seeking a provisional order. The Supreme Court has the power to issue provisional orders, suspending the enforcement of the decision taken by the administrative authority, pending the hearing of the case on the merits. A provisional order is an exceptional discretionary measure and is decided on a case-by-case basis (rule 13 of the Supreme Constitutional Court Rules 1962). The Supreme Court will grant a provisional order if an applicant establishes that the contested decision is tainted by flagrant illegality or that he or she will suffer irreparable damage from its enforcement (see amongst a number of authorities, *Stavros Loizides v. the Ministry of Foreign* Affairs (1995) 3 C.L.R. 233; *Elpida Krokidou and others v. the Republic*, (1990) 3C C.L.R. 1857; and *Sydney Alfred Moyo & another v. the Republic (1988) 3 CLR 1203*).

93. Until recently, domestic law did not provide for legal aid in respect of a recourse under Article 146 of the Constitution against deportation and detention orders. In 2012 the Legal Aid Law (Law no. 165(I)/2002) was amended, enabling illegally staying third-country nationals to apply for legal aid (section 6C, Amending Law 8(I)/2012). However, legal aid is limited to first-instance proceedings and will be granted only if the recourse is deemed to have a reasonable chance of success (sections 6 C (2)(aa) and (bb)).

B. Asylum

94. The Cypriot Government assumed responsibility for assessing asylum claims from 1 January 2002. An Asylum Service was established for this purpose in the Migration Department of the Ministry of Interior. Prior to that, the UNHCR dealt with such claims.

95. Asylum seekers can appeal against decisions by the Asylum Service to the Reviewing Authority, which was established by the Refugee Law (Law 6 (I) of 2000, as amended). Procedures before the Asylum Service and the Reviewing Authority are suspensive: asylum seekers have a right under section 8 (1) of the Refugee Law to remain in the Republic pending the examination of their claim and, if lodged, their appeal. Although the authorities retain the power to issue deportation and detention orders against an applicant during this period, such orders can only be issued on grounds which are unrelated to the asylum application, for example, the commission of a criminal offence, and they are subject to the suspensive effect (see the Supreme Court's judgment of 30 December 2004 in the case of *Asad Mohammed Rahal v the Republic of Cyprus* (2004) 3 CLR 741).

96. The decision of the Reviewing Authority can be challenged before the Supreme Court by way of administrative recourse under Article 146 (1) of the Constitution (see paragraphs 88-91 above). According to section 8 of the Refugee Law, however, following the decision of the Reviewing Authority, an applicant has no longer the right to remain in the Republic. A recourse does not have automatic suspensive effect (see paragraph 92 above).

97. Section 6B of the Legal Aid Law (Law no. 165(I)/2002 as amended by Amending Law 132(I)/2009), provides that asylum-seekers may apply for legal aid in respect of a recourse brought under Article 146 of the Constitution against decisions by the Asylum Service and the Reviewing Authority. As in the case of deportation and detention (see paragraph 93 above), legal aid will only be granted in respect of the first-instance proceedings (section 6 B (2)(aa)) and if there is a prospect of success (section 6B(2)(bb)).

98. Amending Law 9(I)/2013 introduced amendments to the Refugee Law concerning the examination of a subsequent application or new elements after a final decision has been issued. According to section 16D such an application or new elements to the initial asylum claim, should be submitted before the administrative authority which issued the final decision on the claim, that is either the Asylum Service or the Reviewing Authority (section 16D (1)-(3)). Pursuant to section 16D (1) the competent authority examines such an application or elements as soon as possible. The competent authority does not treat these cases as new applications or administrative appeals but as further steps to the initial application or initial appeal (section 16D(4)). The competent authority carries out a preliminary

examination to see whether there were new elements which it had not taken into account when it had issued its decision (Section 16D 5(a)). If it decides that the subsequent application or new elements are admissible it will proceed to examine the substance after informing the applicant (section 16D 5(b)). The competent authority will only issue a new decision that can be executed if the elements increase the chances of the applicant receiving international protection, and if it is satisfied that the applicant could not have submitted these elements in the initial examination, due to no fault of his and her own (section 16D 5(b)). If the above requirements, however, are not satisfied then the decision refusing to admit the new elements or the new application is not considered a new decision but a confirmation of the previous decision taken. An appeal lies against the negative decision of the competent authority or its decision not to admit the new evidence, with the Supreme Court under Article 146 of the Constitution.

99. Section 8 (1) of the Refugee Law is not applicable to applicants during the procedure under section 16D (section 16D (6)(a)). If the competent authority considers that an examination of the substance is necessary, it will provide the applicant with an attestation. The applicant then has a right to remain in the Republic during the procedure (section 16D (6)(b) and (c)).

C. Detention pending deportation

100. At the material time, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, "the EU Returns Directive", had not been transposed into Cypriot domestic law. As the deadline for transposition expired on 24 December 2010 (see Article 20 of the Directive) the Directive had direct effect in domestic law and could therefore be relied on by an individual in court (see for example the Supreme Court judgments of 18 January 2011 in the case of *Shanmukan Uthajenthiran*, habeas corpus application no. 152/2010 and of 20 January 2011, and the case of *Irfam Ahmad*, habeas corpus application 5/2011).

101. In accordance with Article 15 §§ 5 and 6 of the Directive, detention may be maintained as long as the conditions laid down in subsection 6 are in place, but not longer than six months. Exceptionally, if a deportee refuses to cooperate with the authorities, or there are delays in the obtaining of the necessary travel documents, or the deportee represents a national security or public order risk, detention may be prolonged for a further twelve months, to a maximum of eighteen months (see *M.A.*, cited above, § 98). Article 15 § 2 of the Directive provides that Member States should either provide for a speedy judicial review of detention or grant the detainee the

right to apply for such a review. Article 15 § 3 provides for review of detention in every case at reasonable intervals of time either on application by the third-country national concerned or *ex officio* and in the case of prolonged detention periods, that reviews shall be subject to the supervision of a judicial authority. The Directive has been invoked before the Supreme Court in habeas corpus proceedings in which detainees challenged the lawfulness of their protracted detention for the purpose of deportation (see, for example, Supreme Court judgments of 12 March 2012 in the case of *Yuxian Wing*, habeas corpus application no. 13/2012; of 8 January 2011 in *the case of Shanmukan Uthajenthiran*, cited above; and of 22 December 2011 in the case of *Mostafa Haghilo*, habeas corpus application no. 133/2011).

102. In November 2011, Law 153(I)/2011 introduced amendments to the Aliens and Immigration Law with the aim of transposing the "EU Returns Directive". This Law expressly provides that habeas corpus applications before the Supreme Court challenging the lawfulness of detention with a view to deportation can be made on length grounds (for the previous situation, see *Kane v. Cyprus* (dec.), no. 33655/06, 13 September 2011). Further, pursuant to the above Law, the Minister of Interior should review detention orders on his or her own initiative every two months and at a reasonable time following an application by the detainee.

D. The Cypriot Ombudsman's report on the procedures for examination of asylum applications by Syrians

103. On 17 September 2014, the Commissioner for Administration of the Republic of Cyprus (hereinafter "the Ombudsman") in her capacity as the Independent National Authority for Human Rights issued a report with her position concerning the procedures for examination of asylum applications by Syrians (action 8/2014). According to her report, this was instigated by increasing complaints before her office concerning various problems in the asylum procedure in the case of Syrians.

104. In her report the Ombudsman noted that she had received about 100 complaints with regard, in particular, to delays in examining applications by the competent authorities, ranging from one up to three years, and in certain cases even more, and the consequences these delays had on the asylum seekers. The complaints concerned asylum applications lodged by Syrians who arrived in Cyprus after the war had begun in Syria, requests for reopening of asylum files by failed asylum seekers or persons whose asylum files had been closed invoking the new situation in Syria, and persons who were already in Cyprus at the time the war broke out on another status and had applied for asylum due to this situation (*sur place* asylum seekers).

105. The Ombudsman carried out meetings with the Asylum Service (on 30 May 2014) and the Reviewing Authority (27 May 2014) in the context of

the examination of the complaints. From the meeting with the Head of the Asylum Service it transpired that there had been an increase in the number of Syrian applicants both in relation to new applications but also with regard to reopening requests. Up to March 2014, 720 out of 1200 applications and requests pending had been introduced by Syrians. The Ombudsman was informed that Syrian applicants were considered prima facie eligible for complementary protection, unless it was ascertained after an interview and the examination of the application that the granting of refugee status was justified. For this reason applications by Syrians were subject to the normal examination procedure. The length of time required for the examination of the application or request depended on the particular circumstances of the cases. There were cases in which the examination was completed in fifteen days whilst in other cases more time was needed. An average period of six months was given as a rough estimate. Delays took place in more complex cases.

106. With regard to the proceedings with the Reviewing Authority, although it was acknowledged that the situation in Syria was in itself sufficient for the granting of at least complementary protection to applicants, the Authority still carried out a thorough examination of the application or request in order to ascertain whether the person concerned fulfilled the criteria for refugee status. The Reviewing Authority carried out a preliminary examination of the elements within ten days. If it considered that an examination of the substance was required it provided the person concerned with a confirmation which gave him the right to stay in the country until the final decision. In certain cases examination was discontinued when the application was without object, for example, when the person in question refused to co-operate, did not show up for the interview or had been deported. The Ombudsman was informed that in the recent months applicants had principally been given complementary protection. It was also noted that in all re-opening requests made since 2011 when the unrest in Syria started, no application by a Syrian had been dismissed. Although the authority tried to finish the proceedings within a year, there had been some cases in which there was a delay of two or three years.

107. The Ombudsman noted that according to the statistics of the Asylum Service, from 2011 until March 2014, 1044 applications and requests concerning 1494 persons, were lodged by Syrians for international protection. At the end of March 2014 about 720 applications were still pending. In 2011 and 2012 one Syrian was granted refugee status and three protection on humanitarian grounds whilst in 2013 and 2014 one Syrian was granted refugee status and complementary protection was given in 164 cases concerning 259 persons.

108. In her conclusions and suggestions the Ombudsman noted, *inter alia*, that the accumulation of applications and requests resulted in the

persons concerned and their families to live in uncertainty and in some cases found themselves in danger of arrest, detention or deportation. They also were deprived of fundamental rights. The absence of status or a certificate as proof of their status led to various problems, such as lack of access to public and private services or to the job market. She observed that delays also occurred during the preliminary examination of new elements put forward in the context of a re-opening request. She recommended, in this regard, that despite the fact that section 16D provided for a preliminary examination of the elements, in the case of applications by Syrians, this could be confined to a confirmation of the Syrian origin of the applicants, as the situation in the country was in itself a ground for re-opening, irrespective of any other elements which might exist. Furthermore, even though the Refugee Law did not set a time-limit for the examination of applications and requests, it did provide that this should take place as soon as possible. It also appeared or could be implied that the legislator considered six months was an adequate time frame. This was confirmed by Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection which would become binding for Cyprus from 21 July 2015. The Ombudsman considered that the delays in the processing of applications and requests were not justified in light of the situation in Syria especially since Syrians were considered prima facie eligible for complementary protection. She recalled in this respect that the rights of asylum seekers (for example, access to the job market and certain social rights) were limited in comparison to those who had received international protection.

109. In conclusion, the Ombudsman recommended the following:

> "- The competent authorities acknowledge the need for immediate, fast and effective response to the applications by Syrians, adopting different, faster and more flexible procedures, within the framework of the Law.
>
> - The possibility to be examined of a fast track procedure for examining the data, for carrying out the interview within a shorter period of time or even omitting the interview, as and when permitted by the Law, in particular in the cases where the only – new – element is the unsettled situation in Syria, which could in itself constitute grounds for granting humanitarian protection status.
>
> -The authorities involved to re-examine the possibility of granting refugee status to a larger number of applicants, having in mind the position of the UNHCR and also the recent practice of the abovementioned countries.
>
> -All the authorities (including the Police) to find ways of immediate issuance and granting of confirmation that an application has been submitted – whether this concerns a new application or a reopening of a file - so that the rights of those concerned and affected are given immediate protection.
>
> -The services to secure co-operation with translators to be of service in the immediate expediting of carrying out interviews and, by extension, faster decision making, for the length of time required.

-The possibility to be investigated of increasing, for a certain amount of time, the number of staff of the Asylum Service who examine applications, or even of restructuring the existing system as well, so that pending applications may be dealt with immediately and a larger number of officers is involved in the main competence of the Service, which is the examination of applications for asylum."

E. Relevant Constitutional provisions

110. 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:

...

(b) the arrest or detention of a person for non-compliance with the lawful order of a court;

(c) the arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

(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.

3. Save when and as provided by law in case of a flagrant offence punishable with death or imprisonment, no person shall be arrested save under the authority of a reasoned judicial warrant issued according to the formalities prescribed by the law.

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.

5. The person arrested shall, as soon as is practicable after his arrest, and in any event not later than twenty-four hours after the arrest, be brought before a judge, if not earlier released.

6. The judge before whom the person arrested is brought shall promptly proceed to inquire into the grounds of the arrest in a language understandable by the person arrested and shall, as soon as possible and in any event not later than three days from such appearance, either release the person arrested on such terms as he may deem fit or where the investigation into the commission of the offence for which he has been arrested has not been completed remand him in custody and may remand him in custody from time to time for a period not exceeding eight days at any one time:

Provided that the total period of such remand in custody shall not exceed three months of the date of the arrest on the expiration of which every person or authority having the custody of the person arrested shall forthwith set him free.

Any decision of the judge under this paragraph shall be subject to appeal.

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".

F. Other relevant domestic law

111. The cases relied on by the parties regarding "suspensiveness" and "speediness" in deportation and detention cases are set out in detail in *M.A.* (§§ 77-84, cited above) as are the relevant provisions of the Police Law, the Public Roads Law and the Prevention of Pollution of Public Roads and Places Law (ibid., §§ 89-92).

112. In addition, the following provisions of domestic law as applicable at the material time are relevant for the purposes of the present applications.

1. The Law on the Rights of Persons who are Arrested and Detained

113. The Law on the Rights of Persons who are Arrested and Detained (Law 163(I)/2005) introduced a number of provisions regulating the rights and treatment of arrestees held in custody. It provides, *inter alia*, for the right of a person who is arrested by the police to a private telephone call to a lawyer of his or her choice immediately after his or her arrest (section 3 (1) (a), to a relative or other person (section 3(1)(b) and, for foreign nationals to a consular or diplomatic representative in Cyprus of his country (section 4).

2. The Criminal Code (Cap. 154)

114. The relevant sections of the Criminal Code provide as follows:

Section 35 - General punishment for misdemeanour.

"When in this Code, no punishment is specially provided for any misdemeanour, it shall be punishable with imprisonment for a term not exceeding two years or with a fine not exceeding one thousand five hundred pounds or with both such punishments."

Section 331 - Forgery

"Forgery is the making of a false document with intent to defraud."

Section 333 - Making a False Document

" Any person makes a false document who-

(a) makes a document purporting to be what in fact document it is not;

(a) alters a document without authority in such a manner that if the alteration had been authorised it would have altered the effect of the document;

(c) introduces into a document without authority whilst it is being drawn up matter which if it had been authorised would have altered the effect of the document;

(d) signs a document-

(i) in the name of any person without his authority whether such name is or is not the same as that of the person signing;

(ii) in the name of any fictitious person alleged to exist whether the fictitious person is or is not alleged to be of the same name as the person signing;

(iii) in the name represented as being the name of a different person from that of the person signing it and intended to be mistaken for the name of that person;

(iv) in the name of a person personated by the person signing the document provided that the effect of the instrument depends upon the identity between the person signing the document and the person whom he professes to be."

Section 334 - Intent to Defraud

"An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person ascertained or unascertained capable of being defrauded thereby and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such person from being defrauded in fact; nor by the fact that he had or thought he had a right to the thing to be obtained by the false document."

Section 337 - Imprisonment for ten years

"Any person who forges any judicial or official document shall be liable to imprisonment for ten years."

Section 339 - Uttering false documents

"Any person who knowingly and fraudulently utters a false document is guilty of a criminal offence of the same kind, and is liable to the same punishment as if he had forged the thing in question."

Section 360 - Personation

"Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanour.

If the representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property or possession thereof, he is liable to imprisonment for seven years."

115. Part IX of the Criminal Code deals with attempts and conspiracies to commit crimes. Section 371 provides as follows:

Section 371 - Conspiracies

"Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in the Republic would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a felony, and is liable,- if no other punishment is provided, to imprisonment

for seven years, or, if the greatest punishment to which a person convicted of the felony in question is liable is less than imprisonment for seven years, then to such lesser punishment."

3. The Criminal Procedure Law (Cap. 155)

116. The relevant sections of the Criminal Procedure Law provide as follows:

Section 14

"14. (1) Any police officer may, without warrant, arrest any person-

(a) whom he suspects upon reasonable grounds of having committed an offence punishable with death or imprisonment for a term exceeding two years;

(b) who commits in his presence any offence punishable with imprisonment;

..."

Section 18

"18. (1) When a judge is satisfied by a written affidavit that there is reasonable suspicion for belief that a person has committed an offence or when the arrest or detention is considered reasonably necessary to prevent the commission of an offence or absconding after its commission, the judge may issue a warrant (which shall be referred to in this Law as a warrant of arrest) which shall authorise the arrest of the person against whom the warrant is directed.

(2) A warrant of arrest may be issued on any day including a Sunday or public holiday."

Section 19

"19. (1) Every warrant of arrest shall bear the signature of the judge issuing the same, the date and time of issue, as well as confirmation by the judge that he has been reasonably satisfied as to the existence of the need to issue the warrant.

(2) Every such warrant shall state shortly the criminal offence or matter for which it is issued, shall name or otherwise describe the person to be arrested and shall order the police officer or other person to whom it is directed to apprehend the person against whom it is issued and bring him before the Court issuing the warrant or before some other Court having jurisdiction in the case, to answer to the statement of the criminal offence or matter therein mentioned and to be further dealt with according to law.

(3) Every such warrant shall normally be directed generally to all police officers; but any Judge issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same, and when a warrant is directed to more police officers or persons than one, it rnay be executed by all or by any one or more of them.

(4) Every such warrant shall remain in force until it is executed or until it is cancelled by a Judge."

Section 24

"Where it shall be made to appear to a Judge that the investigation into the commission of an offence for which a person has been arrested has not been completed, it shall be lawful for the Judge, whether or not he has jurisdiction to deal with the offence for which the investigation is made, upon application made by a police officer, not below the rank of an inspector, to remand, from time to time, such arrested person in the custody of the police for such time not exceeding eight days at any one time as the Court shall think fit, the day following the remand being counted as the first day."

III. INTERNATIONAL TEXTS AND DOCUMENTS

117. A number of relevant international texts and documents, are set out in *M.A.* (cited above, §§ 94-105).

118. In addition, the following material is relevant for the purposes of the present applications.

A. The situation in Syria

119. Since unrest gripped the country in March 2011, the situation in Syria has severely deteriorated.

120. In October 2014 the United Nations High Commissioner for Refugees (UNHCR) updated his information on International Protection Considerations with regard to people fleeing the Syrian Arab Republic (Update III of 27 October 2014). This constitutes the fourth update following his position paper on 2 March 2012 in which he had recommended that States adopt a moratorium on all returns to Syria, pending an assessment of when the changed situation in the country would permit return in safety and dignity (UNHCR *"International Protection Considerations with regard to people fleeing the Syrian Arab Republic"*, June and December 2012 and October 2013). According to the paper, the situation in Syria had severely deteriorated in terms of security, human rights, displacement and humanitarian needs. Nearly all parts of the country were now embroiled in violence, which was playing out between different actors in partially overlapping conflicts and was exacerbated by the participation of foreign fighters on all sides. As international efforts to find a political solution to the Syria situation had so far not been successful, the conflict, continued to cause further civilian casualties, displacement and destruction of the country's infrastructure. The paper noted that by April 2014 the number of persons killed as a result of the conflict had reportedly surpassed 191,000 and hundreds of thousands of people wounded. The conflict in Syria had caused the largest refugee displacement crisis of our times, with Syrians now the world's largest refugee population under UNHCR's mandate. It continued to generate increasing levels of

displacement each day with an average of 100,000 refugees arriving in host countries in the region every month in 2014.

121. The paper points out that according to the UN Secretary-General, "[T]*he conflict continues to be characterized by horrendous violations of international humanitarian law and human rights abuses, with a total disregard for humanity*" and the Independent Commission of Inquiry summarised in its most recent report the impact of the conduct of the warring parties on civilians as "*immeasurable suffering*". Parties to the conflict were reported to commit war crimes and gross violations of human rights, including acts amounting to crimes against humanity, with widespread impunity. UNHCR characterised the flight of civilians from Syria as a refugee movement. Syrians, and Palestine refugees who had their former habitual residence in Syria, required international protection until such time as the security and human rights situation in Syria improved significantly and conditions for voluntary return in safety and dignity were met.

122. The UNHCR urged countries to ensure that persons fleeing Syria, including Palestine refugees and other habitual residents of Syria, were admitted to their territory and were able to seek asylum. The entry and admission of persons having fled Syria needed to be dealt with in a protection-sensitive manner, regardless of whether they resorted to seeking entry without appropriate documentation or in an otherwise irregular manner. UNHCR appealed to all States to ensure that Syrian civilians were protected from *refoulement* and afforded international protection, the form of which might vary depending on the processing and reception capacity of countries receiving them, while guaranteeing respect for basic human rights.

123. UNHCR considered that most Syrians seeking international protection were likely to fulfil the requirements of the refugee definition contained in Article 1A(2) of the 1951 Convention relating to the Status of Refugees, since they would have a well-founded fear of persecution linked to one of the Convention grounds. It also considered that it would not be appropriate to return nationals or habitual residents of Syria to neighbouring and non-neighbouring countries in the region of Syria. It also noted that in light of the developments and changed circumstances in Syria, it may be appropriate to reopen case files of Syrians whose asylum claim were rejected in the past, to the extent that has not yet been done, so as to ensure that those who as a result of changed circumstances have a valid *sur place* claim have it appropriately adjudicated, enabling them to benefit from protection and entitlements flowing from refugee recognition.

124. The United Kingdom Home office's Information and Guidance Note on Syria of December 2014 summarised its policy as follows:

> "Case-law has established that it is likely that a failed asylum seeker or forced returnee would, in general, on return to Syria face a real risk of arrest and detention and of serious mistreatment during that detention as a result of imputed political

opinion. The position might be otherwise in the case of someone who, notwithstanding a failed claim for asylum, would still be perceived on return to Syria as a supporter of the Assad regime.

Most Syrian nationals are therefore likely to qualify for refugee protection unless excluded (this regards persons in respect of whom there are serious reasons for considering that they were involved in or associated with war crimes and attacks against civilians or with the groups concerned (paragraph 1.3.9 of the Note).

Where a person is excluded from refugee protection they will also be excluded from Humanitarian Protection but may be entitled to Discretionary leave or Restricted Leave.

The humanitarian crisis, which continues to deteriorate, is such that for most returnees removal would be a breach of Article 3 ECHR.

The level of indiscriminate violence in the main cities and areas of fighting in Syria is at such a level that substantial grounds exist for believing that a person, solely by being present there for any length of time, faces a real risk of harm which threatens their life or person."

125. Last but not least, in his twelfth report issued on 19 February 2015 on the implementation of Security Council resolutions 2139 (2014), 2165 (2014) and 2191 (2104) on Syria, the Secretary-General of the United Nations observed, *inter alia*, that widespread conflict and high levels of violence continued throughout the country and that the conduct of hostilities by all parties continued to be characterised by widespread disregard for the rules of international humanitarian law and for the protection of civilians.

B. Amnesty International

126. In its press release of 18 March 2014, "*Cyprus, abusive detention and migrants and asylum seekers flouts EU law*" stated, *inter alia*, the following:

"Cypriot immigration authorities routinely detain hundreds of migrants and asylum-seekers in prison-like conditions for extended periods while awaiting deportation, said Amnesty International. Those detained include Syrian refugees and women separated from their young children.

Evidence gathered by researchers during a recent visit to Cyprus indicates that the authorities are exploiting European Union (EU) laws – imposing automatic detention of migrants and asylum-seekers without implementing the required safeguards, which make detention a last resort. The practice is also a breach of international law.

"By detaining scores of people for months at a time, Cyprus is displaying a chilling lack of compassion and a complete disregard for its international obligations," said Sherif Elsayed-Ali, Head of Refugee and Migrants' Rights at Amnesty International.

"It is shameful to think that within the EU people who have committed no crime are being held in harsh prison-like conditions for prolonged periods, in some cases for up to 18 months or longer. Amnesty International is concerned that Cyprus is using the systematic detention of migrants to intimidate and deter potential immigrants and asylum-seekers," said Sherif Elsayed-Ali.

...

At least one person at the Menogia detention centre, the main immigration detention facility in Cyprus, had been held for 22 consecutive months while awaiting deportation. Under EU law, the maximum detention period on immigration grounds is 18 months.

...

Detention as a means of immigration control should only be used as a last resort. Detention may only be used after the authorities have demonstrated that it is both necessary and that less restrictive measures are insufficient. In Cyprus it appears to have become standard practice.

"The Cypriot authorities, seemingly eager to portray themselves as taking a tough stance on immigration, have displayed a ruthless and arbitrary attitude to locking up migrants. Many people have not received adequate information about the reasons for their detention and what is going to happen to them," said Sherif Elsayed-Ali.

"The fact that EU laws allow people who have not committed a criminal offence to be effectively imprisoned for up to 18 months is appalling. The EU has – rightly - criticized prolonged detention without charge in other countries, but has legalised it in the EU. Current policies on dealing with migrants and asylum-seekers shame the EU."

Although Cyprus' immigration authorities told Amnesty International that alternatives to detention are available, the organization's research indicates that these are seldom offered. Instead, deportation orders are issued at the same time as detention orders without considering alternatives. The Cypriot authorities have admitted to this practice.

Alternatives should always be explored before resorting to detention - anyone who is detained for immigration purposes should also undergo a regular and automatic judicial review of their detention.

Since Amnesty International last assessed detention conditions of migrants and asylum-seekers in Cyprus in 2011, the only positive development has been that they are no longer held in Nicosia's central prison.

Amnesty International also found that nine Syrian refugees were among those detained at Menogia, during a visit on 6 March. At least one of them had applied for asylum.

"It is incomprehensible that the Cypriot authorities are detaining Syrian nationals in Menogia when it is Cyprus' official policy not to return Syrians to Syria," said Sherif Elsayed-Ali.

This is despite the fact that Cypriot authorities told Amnesty International that all Syrian nationals are provided with international protection status or humanitarian visas.

"We can only conclude that the detention of Syrian nationals is intended to send a message to other Syrians that they are not welcome in Cyprus."

"Locking up migrants and asylum-seekers - including people who should be assumed to be refugees - for months, and treating them like prisoners is unacceptable," said Sherif Elsayed Ali."

THE LAW

I. JOINDER

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

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

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

Article 3

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

Article 13

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

129. The second applicant claimed that he had been previously detained, tortured and ill-treated by the authorities because of his origin and his participation in the Qamishli events in 2004. The applicants also invoked a number of common reasons why they faced a risk of ill-treatment or torture in Syria. First of all they raised the general situation for the Kurdish ethnic minority in Syria. In particular, they claimed that they were at risk of persecution by reason of their Kurdish origin, as Kurds in Syria were members of a generally oppressed minority whose human rights were systematically violated. Secondly, the applicants claimed that as failed asylum seekers, they ran the risk of being imprisoned upon return to Syria. Thirdly, the applicants relied on their connections with the Yekiti party or other political activities. They had both participated in the demonstration of 17 May 2010 organised by the Yekiti party and Syrian Kurds in Cyprus. They believed that their activities were well known to the Syrian Embassy in Cyprus and the Syrian authorities in general. Fourthly, in their observations dated 12 August 2011 the applicants invoked the deterioration in the human rights' situation in Syria.

130. Finally, relying on Article 13 of the Convention, the applicants complained that a recourse challenging the decisions of the Reviewing

Authority and the deportation and detention orders did not have automatic suspensive effect and did not entail an examination of the merits of the administrative decisions.

A. The parties' submissions

1. The Government

131. The Government submitted that the applicants' complaints should be declared inadmissible for failure to exhaust domestic remedies. In particular, the applicants had not taken any steps in light of the new situation in Syria. The applicants could have filed a new administrative appeal or submitted new information before the authorities concerning their asylum appeal or lodged fresh claims for asylum under the Refugee Law invoking the current situation in Syria which was now very different to that at the time their asylum applications had been rejected. The Refugee Law had been amended in 2013 by Law 9(I)/2013 and section 16D now provided for this possibility. According to section 16D (2) the Reviewing Authority examined a request or new application as soon as possible. If it considered that the information or evidence provided had not been taken into account when the competent authority issued its decision, it proceeded to examine the substance of the claim and grant a new decision which constituted an executory administrative act (section 16D 5 (b)).

132. The Government pointed out that the Reviewing Authority had received numerous requests by failed Syrian asylum seekers. In some of these cases the authorities had afforded the persons in question international protection. They also noted that even before these amendments, the asylum authorities, as a matter of practice and pursuant to the general principles of administrative law used to receive requests for re-examination of asylum applications based on new information submitted by rejected asylum seekers. The Government submitted a table concerning 300 applications by Syrians, who had, from 15 January 2009 until 30 April 2014 put forward new elements or submitted new applications to the authorities.

133. The Government also observed that the first applicant had failed to file a recourse with the Supreme Court against the decision of the Reviewing Authority dismissing her appeal and that the second applicant had not appealed against the Supreme Court's judgment of 8 October 2013.

2. The applicants

134. The applicants accepted that they had not applied anew for asylum or for a reopening of their asylum application under section 16D of the Refugee Law on the basis of the current situation in Syria. They submitted that this had been for a number of reasons. They had come to realise that they had no future in Cyprus and the only way that they could have

protection and live in security and with dignity was to leave. This is why they had attempted to leave via illegal means in November 2012. The other family that had been arrested at the airport with them had subsequently managed to leave Cyprus irregularly and had gone to Austria where they had been immediately given refugee status on the sole ground that they were Syrians. The applicants observed that the second applicant had been detained until 20 December 2012, *inter alia*, on deportation and detention orders, as the authorities considered that he had been an illegal immigrant and even though his deportation had been suspended. Upon his release he had been informed that he would be given a residence permit for six months on the condition that he would sign a contract of employment with an employer approved by the Department of Labour. Although the second applicant had found employment he had been informed that the employer in question did not have a right to employ him. The Department of Labour did not refer him to an eligible employer. The first applicant had not been given any possibility to have a residence permit. Therefore they both remained in an irregular situation and risked detention again.

135. Furthermore, at no point had the applicants been informed by the authorities that they had the right to submit a new asylum application or to request a reopening of their file because of the deteriorating situation in Syria. At the time the new amendments had not been introduced and therefore it had not been open to them to file a new asylum application. Nor had the authorities informed them of the existence of an administrative practice in this respect. Although, the applicants admitted that they had heard from other Syrians in Cyprus that there was such a possibility, they also considered that taking such a step would not change their situation in Cyprus. The authorities had not believed them in the context of their first asylum application and they considered that a new application would only suffer the same fate and they would end up in detention. The shortcomings in the asylum proceedings, including their lengthy nature, had also been a deterrent. Other Syrian Kurds had been involved in asylum proceedings for more than eight or nine years with no final decision yet taken, despite the situation in Syria and the fact that they should be recognised as refugees in line with the policy of all other Member States of the European Union. In addition, the applicants believed that having an asylum application pending before the Cypriot authorities, would prevent them from applying for asylum in another country, if they managed to leave Cyprus, albeit irregularly, that they would run the risk to be returned to Cyprus under the

"Dublin Regulation" (Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national).

136. The applicants observed that the situation of Syrians but also asylum seekers in general in Cyprus was very precarious and rendered them

vulnerable to detention, insecurity and discrimination whilst access to the majority of social and economic rights was restricted. The applicants referred, *inter alia*, to a press release by Amnesty International dated 18 March 2014 concerning the detention of migrants and asylum seekers in Cyprus (see paragraph 126 above). They noted that asylum seekers' rights and access to material reception conditions, after the economic crisis, had been cut down by discriminatory laws, providing for a different level of social welfare than those paid to Cypriots. The authorities had been trying to make it clear, through various means, to Syrian Refugees that they were not welcome. The applicants drew the Court's attention to a report by the Ombudsman dated September 2014 on the procedures for the examination of asylum applications by Syrians (see paragraphs 103-109 above).

137. The applicants concluded that although the Refugee Law now provided for a right to file a new application or reopen an asylum file, this was elusive in practice as the policies and administrative practice did not provide any guarantee that they would be treated in accordance with the law, that the procedure would be fair and efficient and that they would eventually obtain a secure legal status allowing them to live in dignity with full access to social and economic rights.

138. Last but not least, the applicants' representative noted that in a meeting she had with the applicants concerning the preparation of their observations on the question, she had advised them to lodge a new asylum application so that they did not remain in the country undocumented.

B. The Court's assessment

139. The Court reiterates that the rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the Court for their acts before they have had an opportunity to put matters right through their own legal system. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time, namely, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see principles set out in *Vučković and Others v. Serbia* [GC], no. 17153/11, § 69-74, 25 March 2014, with further references).

140. In some cases there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his or her disposal. However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Vučković,* cited above, § 74 and *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 52, ECHR 2013 (extracts)).

141. In the present case the applicants alleged that their removal to Syria would breach their rights under Article 3 of the Convention. Apart from the fear expressed by the second applicant due to his personal history, the applicants relied on a number of common grounds deriving from their Kurdish origin, the fact that they had sought asylum in another country, their subsequent participation in Yekiti events in Cyprus and the current situation in Syria. Their asylum applications, which were mainly based on fears of ill-treatment expressed by the second applicant, were dismissed by the Asylum Service and the Reviewing Authority in April 2009 and March 2010 respectively (see paragraphs 17, 19 and 20 above).

142. The Court observes that at the time the Syrian uprising and the ongoing armed conflict in Syria had not yet begun. It commenced around March 2011 with nationwide demonstrations as part of the wider protest movement known as the Arab Spring. Nearly all parts of the country are now embroiled in violence and the situation has continuously deteriorated in terms of security, human rights, displacement and humanitarian needs (see paragraphs 119-125 above).

143. The conditions in Syria have therefore significantly changed since the dismissal of the applicants' asylum applications. Although the second applicant's recourse was dismissed in October 2013, the Supreme Court's examination of asylum decisions in its revisional jurisdiction was confined to the grounds put forward by the applicants in their asylum claim (see paragraphs 24 and 89 above).

144. The Court notes that it is open to the applicants to file a new application or a request for reopening on the basis of the situation in Syria to the asylum authorities. Even though it appears that there was past practice by the authorities to accept such steps (see for example, *M.A.*, §§ 17 and 25, cited above), the Refugee Law since 2013 clearly provides for this possibility.

145. The Court has taken note of the shortcomings in the proceedings reported by the Ombudsman and in particular, the delays in processing claims by Syrians, whether new applications or reopening requests. The delays are also evident from the table given by the Government concerning 300 of these applications as from this it appears that in the majority of cases no decision had yet been taken by the authorities. In addition, it transpires that three persons had received negative decisions (between May 2011 and September 2013) whereas some applications had been withdrawn.

The Court finds however, that this does not indicate that the remedy in question would not be effective in practice. It notes in this respect that according to the report, the Cypriot Asylum authorities consider that Syrian applicants are prima facie eligible for at least complementary protection. The applicants have not substantiated their claim that this remedy would not have been effective in practice (contrast *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, §§ 206-210, 28 June 2011). Nor are

the reasons put forward by them sufficient to absolve them from exhausting this remedy. The Court points out, *inter alia*, that the Convention does not guarantee, as such, socio-economic rights such as the right to work (see, among other authorities, *K. v. the Netherlands* (dec.), no. 33403/11, § 46, 25 September 2012 and *Pančenko v. Latvia* (dec.), no. 40772/98, 28 October 1999)].

146. In these circumstances, the Court finds this part of the application to be inadmissible for failure to exhaust domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention. Consequently, the complaint under Article 13 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

147. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

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

148. The applicants complained that they did not have an effective remedy at their disposal to challenge the lawfulness of their detention. In this connection they complained both about recourse and habeas corpus proceedings before the Supreme Court. They relied on Article 5 § 4 of the Convention, which provides as follows:

Article 5 § 4

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

149. The Government contested that argument.

A. Complaints concerning recourse proceedings

1. The parties' submissions

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

2. The Court's assessment

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

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

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

B. Complaints concerning the habeas corpus proceedings

1. The parties' submissions

(a) The applicants

154. The applicants submitted that the proceedings in their habeas corpus applications did not comply with the requirements of Article 5 § 4 of the Convention and were not an effective remedy. First of all, the proceedings had been excessively long and did not respect the requirement of speediness. The first instance proceedings had lasted thirty days and the appeal proceedings one year and seven months. Furthermore, at the appeal level, despite the fact that the applicants had requested an early hearing, the appeals had been set for directions five and a half months later and following their release. The hearing of the appeals had been fixed a year later, even though when the Supreme Court had set the appeals for directions, it had been informed of the applicants' release.

155. Secondly, the applicants maintained that habeas corpus proceedings were generally ineffective in practice, since even if a detainee was successful, the authorities immediately issued new detention orders and re-arrested the person concerned. They relied on a case in which a detainee had succeeded in obtaining a habeas corpus order from the Supreme Court (case of *Osman Kane*, habeas corpus application no. 95/2011, 2011 (1) CLR 1548) on the ground that he had been detained with a view to his deportation for more than the six months provided by the EU Returns Directive (see paragraphs 100-101 above). Despite this, new deportation and detention orders were then issued on the same day by the authorities and he was kept in detention.

(b) The Government

156. The Government submitted that the habeas corpus proceedings complied with the speediness requirement of Article 5 § 4 of the Convention. During the first instance proceedings, the Supreme Court had heard the parties twice. Furthermore, there had been no element of urgency in the cases nor had such an issue been raised during the proceedings (in contrast to *Sarban v. Moldova* (no. 3456/05, §§ 121-122, 4 October 2005 where the applicant had, inter alia, based his habeas corpus request on his poor state of health and absence of medical care in the remand centre). The applicants had challenged the lawfulness of their prolonged detention which

was based on detention and deportation orders; the deportation orders, however, could not be enforced due to the application of the interim measure by the Court. In the light of the circumstances of the cases, the Government argued that the length of the first instance proceedings which amounted to thirty days had been reasonable.

157. Insofar as the appeal proceedings were concerned, the Government submitted that bearing in mind, firstly, that the applicants had been released two months and three days following the filing of their appeal and therefore long before judgment had been given, the length of these proceedings had no had real bearing on their detention.

2. The Court's assessment

(a) Admissibility

158. To the extent that the applicants complain about the speed of the habeas corpus proceedings, the Court notes that their complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

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

160. Turning to the present cases, the Court notes that the period to be taken into consideration started on 24 January 2011 when the applicants filed their habeas corpus applications and ended on 20 May 2011 when they were released. Although judgment on appeal was not given until 15 October 2012, the applicants were not detained throughout the entire appeal proceedings. In assessing the question of speed, the Court will only have regard to the period of the habeas corpus proceedings during which the applicants remained in detention. This lasted three months and twenty-four days.

161. The first instance proceedings lasted thirty days. The habeas corpus applications were filed on 24 January 2011 and were set for directions for 31 January 2011. The Government was given four days to file their objection which they did. Within this period, the parties also had to prepare a short note with the issues they would address at the hearing. On 10 February 2011 the parties submitted their written addresses and the hearing of the applications was held. Judgment dismissing the applications was given on 23 February 2011. Taking into consideration the complexity of the proceedings and in particular, the novel issues raised concerning the EU Returns Directive and the applicability of the maximum periods of detention provided therein in domestic law when Rule 39 had been applied by the Court (see paragraphs 52-54 above), the Court does not find the duration of the first instance proceedings, taken in isolation, excessive.

162. The applicants then lodged an appeal on 17 March 2011. This period amounting to twenty-two days was attributable to the applicants.

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

164. Given the delay in the appeal proceedings, the Court concludes that the habeas corpus proceedings were not conducted "speedily" within the meaning of Article 5 § 4 of the Convention.

C. The Court's conclusion on the merits

165. Accordingly, the Court finds a violation of Article 5 § 4 of the Convention as both the remedies available under domestic law did not comply with the requirement of speediness of that provision. In particular, pursuing a recourse would not have provided the applicants with a speedy review of the lawfulness of their detention and the habeas corpus proceedings in the present case were not conducted "speedily" (see paragraphs 151-153 and 160-164 above).

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

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

Article 5 § 1

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

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

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

A. The applicants' complaints under this provision

167. The Court notes that the applicants' complaint under Article 5 § 1 of the Convention can be divided into four parts that require separate examination:

- the first part concerns their transfer, along with the other protesters, to the ERU headquarters on 11 June 2010 and their stay there pending their identification on the same day;
- the second part concerns their detention on the basis of the deportation and detention orders issued against them on 11 June 2010 under section 6(1)(k) of the Aliens and Immigration Law and their detention until 20 May 2011;
- the third part concerns the second applicant's arrest on 24 November 2012 and ensuing detention on remand until 29 November 2012 pursuant to the order of the Paphos District Court; and
- the fourth part concerns the second applicant's detention from 29 November until 20 December 2012 on the basis of the deportation and detention orders issued against him on 20 August 2010 under section 6(1)(k) and (l) of the Aliens and Immigration Law.

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

1. The parties' submissions

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

2. The Court's assessment

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

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

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

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

C. The applicants' detention from 11 June 2010 until 20 May 2011 on the basis of the deportation and detention orders issued against them

1. The parties' submissions

(a) The applicants

173. The applicants submitted that their detention from 11 June 2010, following the issuance of the detention and deportation orders until 20 May 2011 had been arbitrary and contrary to Article 5 § 1 (f) of the Convention. The above orders had been issued against them on the basis that they had been unlawful immigrants pursuant to sections 6 and 14 of the Aliens and Immigration Law. This law was, however subject to the Refugee law under which they had asylum seeker status at the time as no final decision had

been taken on their asylum claims. The applicants pointed out that, at the time the orders were issued the second applicant's recourse against the decision of the Reviewing Authority was still pending before the Supreme Court. The provisions of the Refugee Law should have therefore prevailed. The applicants maintained that their detention could have only been justified under Section 7 of the Refugee Law which allowed for the detention of asylum seekers in specific circumstances. None of these, however, applied to the applicants. They had thus been detained for the sole reason of being asylum seekers contrary to Section 7 of the Refugee Law. Furthermore, they had not been taken before a court and their detention exceeded the maximum of thirty-two days provided by that section.

174. The applicants emphasised that at the time, that is, before 24 December 2010, the Aliens and Immigration Law did not provide a maximum detention period for detention with a view to deportation. Section 14 of that law provided a wide margin of discretion to the Chief Immigration Officer to detain indefinitely for the purpose of deportation. Although at the material time the Minister of the Interior had a policy of a six-month maximum detention period if asylum seekers or migrants could not be deported for any reason, unless there were other concerns, such as public order or security, this policy was not applied consistently. Once the deadline for transposition of the EU Returns Directive had expired on 24 December 2010 and it had direct effect in domestic law (see paragraphs 53 and 100 above), the applicants had brought habeas corpus applications on the ground that the maximum detention period of six months, had elapsed in their cases. The Supreme Court, however, then ruled that their detention had been lawful as the period during which deportation had been suspended by the Court, did not count when assessing the length of detention and that the six-month time-limit would start to run from the moment that the interim measure had been lifted. As a result, although the applicants had been detained for over eleven months the six-month time-limit did not apply to them. This was despite the fact that the specific circumstances provided for in Article 15 (6) of the Directive allowing the extension of detention with a view to deportation were not applicable in their cases (see paragraphs 53-54 above). Furthermore, the applicants pointed out that domestic law did not provide for periodic review of detention for the purpose of deportation as provided for in the Directive (see paragraph 101 above). Their lawyer had sent letters to the authorities requesting a review but these had remained unanswered.

175. The applicants submitted that even assuming that their detention had been compatible with the domestic law, it had ceased to be so because of its excessive duration. Unlike in the case of *Chahal* (cited above), the length of detention in their case could not be justified on the basis of any exceptional circumstances. The authorities had not been able to deport the applicants because of the Court's interim measure. In addition, the

maximum period of detention of six months, provided for in the EU Returns Directive which had been directly applicable in domestic law, had elapsed. Despite this the authorities had continued to detain them. The Government had not provided any evidence that they had taken any action after the interim measure had been adopted in respect of the applicants' deportation. Furthermore, as the Court had decided to maintain Rule 39 in these cases, unlike in the majority of cases that had been filed at the same time with theirs (see paragraph 46 above), it should have been evident to the authorities that it would take some time for Rule 39 to be lifted.

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

(b) The Government

177. The Government maintained that the applicants had been detained lawfully during the relevant period with a view to their deportation under Article 5 § 1 (f) of the Convention within the meaning of the Court's case-law. In this respect the Government submitted that the applicants' arrest and detention on the ground of unlawful stay had been lawful as it had been in conformity with domestic law and procedure. The applicants had been "prohibited immigrants" within the meaning of 6 (1) (k) of the Aliens and Immigration Law as they had stayed in the Republic unlawfully after the rejection of their asylum applications. The Reviewing Authority had dismissed their appeal and they had therefore become illegal immigrants by virtue of section 6 (1) (k) of the above law .The applicants had been asked to leave Cyprus by a letter dated 1 June 2010. They had been charged with the criminal offence of unlawful stay which was a flagrant offence punishable by imprisonment under section 19 (2) of the Aliens and Immigration Law (see paragraph 86 above). Article 11 (4) of the Constitution permitted arrest without a warrant for flagrant offences carrying a term of imprisonment (see paragraph 110 above). Their detention continued on the basis of deportation and detention orders issued on the same day before the lapse of the twenty-four hour time-limit set by Article 11 (5) of the Constitution (see paragraph 110 above) pursuant to

Section 14(6) of the Aliens and Immigration Law on the ground that they had been "prohibited immigrants" within the meaning of section 6(1)(k) of that Law. Contrary to the applicants' submissions, the letters sent by the District Aliens and Immigration Branch of the Nicosia Police to the Director of the Aliens and Immigration Service and the Ministry of Justice and Public Order stated that after ascertaining that the applicants had been staying unlawfully in the Republic, the applicants had been arrested and charged with the commission of this offence and had been informed of their rights under Law 163(I)/2005 (see paragraph 113 above).

178. Furthermore, the Government pointed out that when Rule 39 had been applied by the Court on 14 June 2010, they had been prevented from deporting the applicants to Syria. The execution of the deportation orders was therefore temporarily suspended. They had subsequently been cancelled and the applicants released. In the meantime, the Supreme Court had ruled that the applicants' detention had been lawful and had dismissed their habeas corpus applications. The Supreme Court had noted that the authorities had stated that they had been ready to deport the applicants since 18 June 2010 but had suspended deportation due to the Court's interim measure. The Government, thus, emphasised that the applicant' detention had been lawful: they had been detained with a view to their deportation, their detention had been duly authorised in accordance with domestic law and reviewed by the Supreme Court.

179. Lastly, the Government submitted that the length of the applicants' detention, namely eleven months and nine days, bearing in mind that Rule 39 had been in force during that period, was reasonable and in line with the Court's case-law. They relied on a number of cases in which they pointed out that the Court had not found a violation of Article 5 (1) (f) with regard to longer periods of detention (*Al Husin v. Bosnia and Herzegovina*, no. 3727/08, 7 February 2012*; Umirov v. Russia*, no. 17455/11, 18 September 2012, and *Al Hanchi v. Bosnia and Herzegovina*, no. 48205/09, 15 November 2010*).*

2. The Court's assessment

(a) Admissibility

180. The Court notes that it is not disputed that the applicants were deprived of their liberty from 11 June 2010 until 20 May 2011 on the basis of deportation and detention orders issued under the Aliens and Immigration Law.

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

(b) Merits

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

183. The Court reiterates, however, that it falls to it to examine whether the applicants' detention was "lawful" for the purposes of Article 5 § 1 (f), with particular reference to the safeguards provided by the national system. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III). Compliance with national law is not, however, sufficient: any deprivation of liberty should, in addition, be in keeping with the purpose of protecting the individual from arbitrariness – and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and contrary to the Convention (see *Saadi v. the United Kingdom*, cited above, § 67).

184. The Court notes that Cypriot law allows for the possibility of detention with a view to deportation. The Court observes in this respect that the decision of 11 June 2010 ordering the applicants' detention and deportation were based on section 14 of the Aliens and Immigration Law, which permits the Chief Immigration Officer to order the deportation of any alien who is a prohibited immigrant and his or her detention in the meantime. The applicants were detained on the basis of deportation and detention orders which were issued pursuant to section 6(1)(k) of the Aliens and Immigration Law on the ground that they were "prohibited immigrants" staying in the Republic unlawfully. The applicants' asylum claim had been rejected by the Asylum Service and their appeal by the Reviewing Authority. Pursuant to section 8 of the Refugee Law, following the decision

of the Reviewing Authority, the applicants no longer had the right to remain in Cyprus (see *M.A*, cited above, § 75). The recourse to the Supreme Court against the Reviewing Authority's decision was still pending at that time but it did not have automatic suspensive effect.

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

186. The Court notes that the applicants' detention for virtually the whole period was attributable to the temporary suspension of the enforcement of the deportation orders due to the indication made by the Court under Rule 39 on the above date. The Court reiterates in that regard that the Contracting States are obliged under Article 34 of the Convention to comply with interim measures indicated under Rule 39 of the Rules of Court (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 99-129, ECHR 2005-I). However, the implementation of an interim measure indicated by the Court does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subjected complies with Article 5 § 1 (see *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 74, ECHR 2007-II). Detention should still be lawful and not arbitrary (see *Azimov v. Russia*, no. 67474/11, § 169, 18 April 2013).

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

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

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

190. It is true that that during the first six months of the applicants' detention, that is from 11 June until 24 December 2010, domestic law did not provide a maximum detention period whilst subsequently, as a result of the Supreme Court's judgment of 23 February 2011 the detention limit was not applicable in their case. Consequently, the applicants could have been kept in detention for an indeterminate period pending the determination by the Court of their application (see, *mutatis mutandis*, *Louled Massoud*

v. Malta, no. 24340/08, § 71, 27 July 2010). However, this did not happen as despite the outcome of their habeas corpus applications they were released by the authorities. The Court reiterates in this connection that in proceedings originating in an individual application it has to confine itself, as far as possible, to an examination of the concrete case before it (see *Schalk and Kopf v. Austria*, no. 30141/04, § 103, ECHR 2010). It also points out in this respect that, Article 5 § 1 (f) of the Convention does not require domestic law to provide a time-limit for detention pending deportation or extradition proceedings (see *Bordovskiy v. Russia*, no. 49491/99, § 50, 8 February 2005).

191. The Court further observes that during this period both the recourse and habeas corpus proceedings were pending before the Supreme Court. In view of all the above and given that the applicants' detention was in compliance with domestic law and that there is no indication that the authorities acted in bad faith or that the applicants were detained in unsuitable conditions or that their detention was arbitrary for any other reason (see *Saadi v. the United Kingdom*, cited above, §§ 67-74), the Court finds that there has been no violation of Article 5 § 1 (f) of the Convention.

D. The second applicant's detention from 24 November 2012 until 29 November 2012

1. Preliminary Remark

192. The Court observes that the first applicant did not complain about her arrest and detention on 24 November 2012.

2. The parties' submissions

(a) The Government

193. The Government submitted that the second applicant had not exhausted domestic remedies in relation to his complaint concerning his detention during this period. He had had the right to challenge the lawfulness of his remand in custody by filing an appeal before the Supreme Court under Article 11 (7) of the Constitution. They referred to the case of *Christodoulos Nicolaides v. Police* ((1999) 2 CLR 551) in which the complainant had filed a successful appeal to the Supreme Court against a remand order extending his detention.

194. As to the merits of the complaint, the Government maintained that the second applicant's detention was lawful within the meaning of Article 5 § 1 (c). He had been arrested and detained for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence. He had been arrested at Paphos airport by a police officer without a warrant for the offences personation and unlawful

stay which were both punishable with imprisonment. This had been done in accordance with section 14 of the Criminal Procedure Law which allowed a police officer to arrest a person without a warrant (a) whom he suspected upon reasonable grounds of having committed an offence punishable with imprisonment for a term exceeding two years or (b) who had committed in his presence any offence punishable with imprisonment. In addition Article 11 (3) of the Constitution permitted the arrest of a person without a warrant in the case of a flagrant offence punishable with imprisonment. Furthermore, when the second applicant had been arrested the police officer in charge had explained to him the reasons for his arrest and all his legal rights in accordance with Article 11 (4) of the Constitution.

195. An arrest warrant had then been issued on the same day by a judge of the Paphos District Court, in compliance with Article 11 (2) (c) of the Constitution and sections 18 and 19 of the Criminal Procedure Law, as on the basis of the evidence presented, there had been reasonable suspicion that the second applicant had committed the offences of conspiracy, forgery, circulation of a forged document, personation and unlawful stay in the Republic. The second applicant had then been remanded in custody on 25 November until 29 November 2012 by order of the same court. This had been pursuant to Article 11 (6) of the Constitution and section 24 of the Criminal Procedure Law. The Government observed that the applicant had been brought before a judge within twenty-four hours from his arrest as provided for by Article 11 (5) of the Constitution.

(b) The second applicant

196. The second applicant maintained that although the Government had submitted in their observations that he had been arrested at the airport for the offence of personation, they had not explained on what grounds he had been detained from 24 until 29 November 2012. Nor had he been informed of the grounds of his detention and therefore had not been sure whether he had been detained with a view to his deportation or for the offence of personation, for which in fact he had never been prosecuted. It was his view, therefore, that there had been a violation of Article 5 (1) as he had not been able to ascertain if any of the sub-paragraphs of the above provision applied and if the requirements provided for his lawful detention were complied with.

3. The Court's assessment

197. The Court notes that it is not disputed that the second applicant was deprived of his liberty from 24 until 29 November 2012. He was arrested at Paphos airport without a warrant. An arrest warrant was then issued on the same day by a judge of the Paphos District Court and the next day he was remanded in custody on 25 November until 29 November 2012 by order of the same court.

198. To the extent that the second applicant's complaint concerns his arrest on 24 November 2012 and detention on that day, the Court observes that it is common ground between the parties that at the time of his arrest, the second applicant was trying to leave Cyprus with a false passport and without a valid residence permit. The second applicant was then arrested at the airport without a warrant for committing the offences of personation and unlawful stay (see paragraph 69 above). The Government submitted that these were flagrant offences and the arrest was pursuant to section 14 of the Criminal Procedure Law and in accordance with Article 11(3) of the Constitution. The Court notes, that although this was no longer the case at the time for the offence of unlawful stay following the amendments in the domestic law (see paragraph 86 above), the offence of personation was punishable with imprisonment (see paragraph 114 above) allowing for an arrest without a warrant on the basis of the provisions relied on by the Government.

199. An arrest warrant was then issued on the same day by a judge of the Paphos District Court, pursuant to section 18 of the Criminal Procedure Law on the ground that there had been reasonable suspicion that the second applicant had been involved in a conspiracy to commit a felony, forgery, circulation of a forged document, personation and unlawful stay in the Republic between 15 September 2009 and 24 November 2012. The applicant was then arrested on the basis of this warrant. The next day he was remanded in custody until 29 November 2012 by order of the same court.

200. Given all the above, the Court finds that the second applicant's arrest and detention on 24 November 2012 were "lawful" under domestic law and, in particular, "in accordance with a procedure prescribed by law". Furthermore, it considers that his arrest and detention fell within the ambit of Article 5 § 1 (c), having been effected for the purpose of bringing him before the competent legal authority on suspicion of having committed an offence. The fact that he was not charged at the expiry of the remand period does not necessarily mean that the purpose of his detention was not in accordance with Article 5 § 1 (c). The Court recalls that the existence of such a purpose must be considered independently of its achievement and that Article 5 § 1 (c) does not presuppose that the police should bring charges.

201. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and therefore inadmissible pursuant to Article 35 § 4.

202. Insofar as the second applicant complains about his detention from 25 November until 29 November 2012, the Court points out that the Government have raised a plea of non-exhaustion of domestic remedies maintaining that it was open to him to appeal to the Supreme Court against the remand order.

203. The Court first refers to the general principles on exhaustion of domestic remedies set out above (see paragraphs 139-140 above). It observes that in the present case the second applicant did not appeal against the remand order of the Paphos District Court even though it was open to him to do so. He has not explained why he did not bring such proceedings and did not question their effectiveness. In fact he did not comment on the Government's plea.

204. It follows that the second applicant has failed to exhaust domestic remedies in this respect.

205. The Court accordingly, finds that this part of the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

E. The second applicant's detention from 29 November 2012 until 20 December 2012

1. The parties' submissions

(a) The second applicant

206. The second applicant submitted that the issuance of deportation and detention orders on 29 November 2012 had been problematic. The Government had submitted that when issuing the orders the authorities had not realised that Rule 39 was in force. Despite suspending the second applicant's deportation, they continued to detain him even though it had been clear to them from that very same day that no measures could be taken with a view to his deportation. This was not just due to Rule 39 but also due the fact that as a matter of policy deportations to Syria were not taking place. Despite this, the Government had not provided any explanations for keeping the second applicant in detention until 20 December 2012. Nor had they explained why less severe measures had not been considered. It was his view that his detention had been a form of punishment. His detention therefore during this period had been unlawful.

(b) The Government

207. The Government submitted that the second applicant had been detained with a view to his deportation within the meaning of Article 5 (1) (f) of the Convention. Upon the expiration of the remand period on 29 November 2012, the authorities had issued orders for his detention and deportation pursuant to Section 14 (6) of the Aliens and Immigration Law on the ground that he had been a prohibited immigrant within the meaning of section 6(1)(k) and (l). When he had been released on 20 May 2011 this had been, inter alia, on the condition, that he would regulate his residence. He had not done this and had not obtained a valid residence permit. He had therefore remained unlawfully in the Republic. The second applicant had

been detained on the basis of the detention order for the purposes of effecting his deportation. He had been given notice of the deportation and detention orders in compliance with section 14 (6) of the Aliens and Immigration law. Even though deportation proceedings were suspended during this period due the Court's interim measure, the Government maintained that they had nevertheless been in progress.

2. The Court's assessment

(a) Admissibility

208. The Court notes that it is not disputed that the second applicant was deprived of his liberty from 29 November until 20 December 2012 on the basis of deportation and detention orders issued under the Aliens and Immigration Law.

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

(b) Merits

210. The Court observes that the second applicant was detained on the basis of deportation and detention orders issued against him on 29 November 2012 after the Attorney-General at the time decided not to prosecute him. The orders had been issued pursuant to section 6(1)(k) and (l) of the Aliens and Immigration Law on the ground that the second applicant was a "prohibited immigrant" staying in the Republic unlawfully. Following his release on 20 May 2011 the applicant had not obtained a valid residence permit and was therefore residing unlawfully in Cyprus.

211. The Court is therefore satisfied that the second applicant's detention during this period had a legal basis in domestic law and was ordered "in accordance with a procedure prescribed by law".

212. The Court observes, however, that according to the Government's submissions, deportation was suspended on 29 November 2012, namely the same day the orders were issued, as "it transpired" that the Court's interim measure was still in force. Furthermore, in his decision of 28 November 2012, the Attorney-General at the time, had also given instructions to the police to proceed with the deportation when the situation in Syria would allow it. Deportation and detention orders were issued regardless of the fact that the second applicant could not be deported to Syria due, not only to Rule 39 but also the situation in his home country and therefore even though no action for this purpose could be taken during this period (see paragraph 120 above). Despite this the second applicant was kept in detention for twenty-two days "with a view to his deportation".

213. The Court notes that under Article 5 (1) (f) of the Convention the authorities were not entitled to keep the second applicant in detention where no meaningful "action with a view to deportation" was under way and actively pursued. As no deportation was possible at the time and there was no indication when it would indeed be possible, the Court finds that his detention was not justified under Article 5 (1) (f). As no charges were brought and no proceedings were instituted against the second applicant, his detention during this period was not covered by sub-paragraph c of Article 5. The other sub-paragraphs of Article 5 § 1 are obviously not relevant.

214. Accordingly, the Court finds that the second applicant's detention from 29 November until 21 December 2012 was contrary to Article 5 § 1 (f) of the Convention.

215. There has, therefore, been a violation of this provision in relation to this period of detention.

F. The Court's conclusion on the merits

216. In conclusion, the Court finds the following:

(a) a violation of Article 5 § 1 of the Convention in respect of the applicants' arrest and detention on 11 June 2010 (transfer to and stay at the ERU headquarters) (see paragraphs 169-172 above);

(b) no violation of Article 5 § 1 (f) of the Convention in respect of the applicants' detention from 11 June 2010 until 20 May 2011 (see paragraphs 182-191 above); and

(c) a violation of Article 5 § 1 (f) of the Convention in respect of the second applicant's detention from 29 November until 20 December 2012 (see paragraphs 210-215 above).

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

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

Article 5 § 2

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

A. The applicants' complaint concerning their arrest on 11 June 2010

1. The parties' submissions

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

2. Admissibility and Merits

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

220. The Court recalls that in that case it declared this complaint admissible (ibid., § 220) and held that there had not been a violation of Article 5 § 2 (ibid.,§§ 234-236). It found that it had no reason to doubt, in the circumstances, that M.A. was informed at the time that he had been arrested on the ground of unlawful stay or that he at least understood, bearing in mind the nature of the identification process, that the reason for his arrest and detention related to his immigration status. In this connection, the Court also noted that M.A. had filed a Rule 39 request, along with a number of other protesters, the very next day, seeking the suspension of their deportation. A reading of this request indicates that they were all aware of the fact that they were detained for the purpose of deportation.

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

B. The second applicant's complaint concerning his arrest on 24 November 2012 and detention until 29 November 2012

222. The second applicant complained that he was never informed promptly of the reasons of his arrest and detention from 24 until 29 November 2102 in breach of the requirements of Article 5 § 2 of the Convention.

223. The Court refers to the general principles set out in *M.A.*, (§§ 227-230, cited above) concerning Article 5 § 2 of the Convention.

224. In the present case, the Court observes that at Paphos airport the second applicant underwent an identification procedure and questions were asked about his passport which was false. The Court has no reason to doubt, in the circumstances, that the second applicant was informed at the time of his grounds of arrest or that he at least understood, taking into account the factual context in which he was arrested, that the reason for his arrest and detention related to the false passport and his immigration status.

Furthermore, the Court notes that according to the handwritten signed note on the warrant by the arresting police officer, the second applicant had been informed, with the assistance of an interpreter of the reasons for his arrest and his attention had been drawn to the law. Shortly after, when questioned by the police officer, again with the assistance of an interpreter, he was informed of the subject matter of the questioning. This is incorporated in his statement which he confirmed and signed. The second applicant admitted in his statement that he had not obtained a residence permit and that he had false passport. On 25 November 2011 he was brought before the Paphos District Court which ordered his detention in remand. The second applicant has not complained about these proceedings.

225. In view of the above, the Court finds no support for the second applicant's contention that, during his arrest and detention, he was unaware of grounds of his arrest and detention or that the information furnished to him did not satisfy the requirements of Article 5 § 2 of the Convention

226. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. The Court's conclusion on the merits

227. Accordingly, the Court finds no violation of Article 5 § 2 of the Convention in so far as the applicants' arrest on 11 June 2010 and their ensuing detention on the basis of the deportation and detention orders issued on that date are concerned (see paragraphs 219-221 above).

VI. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 4 TO THE CONVENTION

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

Article 4 of Protocol No. 4

"Collective expulsion of aliens is prohibited."

A. The parties' submissions

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

B. Admissibility and Merits

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

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

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

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

234. 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

235. The applicants claimed EUR 10,000 each in respect of non-pecuniary damage.

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

237. Having regard to the nature of the violations found in the present case and the relevant case-law, the Court, ruling on an equitable basis as required under Article 41, awards the applicants jointly EUR 8,000 under this head.

B. Costs and expenses

238. In their first observations dated 12 August 2011 the applicants claimed EUR 1,700 each plus VAT for costs and expenses incurred before the Court, less the sum granted as legal aid by the Council of Europe. In this respect they submitted that this was the amount agreed upon with their representative and it represented the sum normally awarded for costs by the Supreme Court in successful recourse proceedings. Following the submission of additional observations dated 17 April 2014 the applicants also claimed costs and expenses incurred before the Supreme Court in the

habeas corpus applications. They claimed a total of EUR 2,558.50 for the habeas corpus proceedings: EUR 710.10 each in respect of the first instance proceedings and EUR 569.15 each in respect of the appeal proceedings. The second applicant also claimed the amount of EUR 699.76 in respect of the recourse proceedings before the Supreme Court against the Reviewing Authority's decision. The applicants submitted separate bills of costs with a detailed account of the work carried out. The applicants also claimed jointly the amount of EUR 396.66 for expenses incurred in preparation of their observations of 17 April 2014 before the Court. They provided a bill of costs containing an itemised breakdown of the work. All sums included VAT at 19%.

239. The Government contested the applicants' claims and maintained that they were unsubstantiated and excessive. They also point out that the second applicant claims' concerning the recourse proceedings should have been submitted in his first observations and that these costs did not relate to the complaints for which additional observations had been requested by the Court.

240. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

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

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

243. In so far as the remainder of the applicants' claims is concerned, regard being had to the violations found, the documents in its possession and the criteria set out above (see paragraph 240 above), the Court considers it reasonable to award the applicants, jointly and inclusive of VAT, the sum claimed in respect of the habeas corpus proceedings, which is to be rounded up to EUR 2,559, as well as the sum claimed in respect of the subsequent proceedings before the Court, which is to be rounded up to EUR 397. Therefore a total of amount of EUR 2,956 is awarded under this head, inclusive of any tax that might be chargeable to the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* admissible:
   (a) the complaints under Article 5 § 4 of the Convention;
   (b) the complaint under Article 5 § 1 of the Convention concerning the applicants' transfer to the ERU headquarters on 11 June 2010 and their stay there pending their identification;
   (c) the complaint under Article 5 § 1 (f) of the Convention concerning the applicants' detention from 11 June 2010 until 20 May 2011;
   (d) the second applicant's complaint under Article 5 § 1 (f) of the Convention concerning his detention from 29 November until 20 December 2012;
   (e) the complaint under Article 5 § 2 of the Convention concerning the applicants' arrest on 11 June 2010 and their ensuing detention on the basis of the deportation and detention orders issued on that date;
   (f) the complaint under Article 4 of Protocol No. 4 to the Convention;

3. *Declares* the remainder of the applications inadmissible;

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

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

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

7. Holds that there has been a violation of Article 5 § 1 of the Convention as regards the lawfulness of the second applicant's detention from 29 November 2012 until 20 December 2012;

8. Holds that there has been no violation of Article 5 § 2 of the Convention in so far as the applicants' arrest on 11 June 2010 and their ensuing detention on the basis of the deportation and detention orders issued on that date are concerned;

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

10. Decides to discontinue the application of Rule 39 of the Rules of Court;

11. Holds

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

(i) EUR 8,000 (eight thousand euros) jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,956 (two thousand nine hundred and fifty six euros) jointly, inclusive of any tax that might be chargeable to the applicants, in respect of costs and expenses;

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

12. Dismisses the remainder of the applicants' claim for just satisfaction.

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

Françoise Elens-Passos
Registrar

Guido Raimondi
President