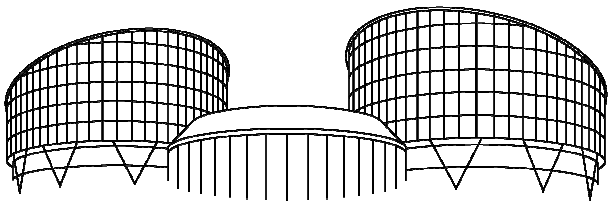

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 20198/05
by Morteza MOLLAZEINAL
against Cyprus

The European Court of Human Rights (First Section), sitting on 18 June 2009 as a Chamber composed of:

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Giorgio Malinverni,
George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 2 June 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Morteza Mollazeinal, is an Iranian national who was born in 1979. He was represented before the Court by Mr J.P. Erotocritou, a lawyer practising in Nicosia. The Cypriot Government ("the Government") were represented by their Agent, Mr P. Clerides, Attorney-General of the Republic of Cyprus.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Background to the case

The applicant arrived in Cyprus on 15 August 2001 as a visitor.

On 21 August 2001 the applicant applied to the office of the United Nations High Commissioner for Refugees in Cyprus ("UNHCR") for asylum.

On 4 October 2001 he was granted a temporary residence permit pending the examination of his asylum application. The permit was valid from 12 September 2001 to 21 November 2001 and was continuously renewed until 26 August 2003 on the basis of the UNHCR's instructions. He was, however, permitted to stay in Cyprus even after the latter date since his asylum application had not yet been decided.

On 23 September 2003 his application was dismissed. The UNHCR concluded that the applicant did not have "a well-founded fear of persecution" on the grounds laid down in the Geneva Convention relating to the Status of Refugees (1951).

On 30 September 2003 the applicant appealed against that decision.

His appeal was dismissed on 7 October 2003. The UNHCR considered that the reasons put forward by the applicant in his appeal did not warrant a departure from the first decision. The grounds for reconsidering the application did not contain any new elements that could alter their decision and he was not therefore a person of concern to the UNHCR. His file was thereupon closed, no further review being possible. The UNHCR informed the Civil Registry and Migration Department of their decision.

In the meantime, on 24 September 2003, the applicant applied for the renewal of his residence permit.

By a letter dated 18 December 2003 the immigration authorities informed the applicant that he had to leave Cyprus within fourteen days from receipt of the letter.

On 27 May 2004 the applicant submitted a new asylum application to the Asylum Service (see "Relevant domestic law and practice" below). On 3 August 2004 the Asylum Service decided to dismiss the application on the ground that the applicant did not fulfil the requirements of the Refugee Law of 2000-2004, namely, he had not shown "a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group or political opinion or a well-founded fear of serious and unjustified harm for other reasons". However, the authorities were not able to serve the applicant with the letter of dismissal as he could not be found at the address he had given them. As a result, further steps in the applicant's file were discontinued.

2. First arrest and detention with a view to deportation

On 23 November 2004, at about 9 p.m., the applicant was stopped for a police check while driving his car in Nicosia. The applicant, who had committed certain traffic offences, had no papers on him proving his identity. He was therefore taken to the police station where it was ascertained that he had been staying in Cyprus illegally.

On 24 November 2004 the applicant was arrested and taken to Nicosia Central Prisons.

On the same day detention and deportation orders were issued by the Director of the Civil Registry and Migration Department under section 6(1)(k) of the Aliens and Immigration Law (Cap. 105 as amended) on the ground that the applicant was a prohibited immigrant. The applicant was served with a letter informing him of these orders. However, he refused to sign the letter.

By a letter dated 24 November 2004, the Director of the Aliens and Immigration Service informed the Ministry of Justice that the applicant did not have a return ticket and that his passport had not been found. Furthermore, by a letter dated 13 December 2004, the Director informed the Ministry that the applicant had been taken to the Iranian Embassy but had refused to give the necessary information allowing the Embassy to issue travel documents. The Director requested the Ministry to contact the Iranian Embassy for the purpose of ensuring the prompt issuance of the required travel documents.

The applicant submitted that the authorities had taken him to the Iranian Embassy upon his arrest for the purpose of issuing him with travel documents and had unlawfully informed that Embassy about his asylum application.

According to the documents submitted by the Government, on 18 March 2005 the applicant was taken by two police officers to the Iranian Embassy for an interview for the purpose of securing travel documents. The applicant, however, refused to give the information required and the Embassy could not as a result issue travel documents.

In the meantime, by a letter dated 14 December 2004 the applicant's lawyer informed the authorities that his client's asylum application was still pending and requested the applicant's release.

On 12 January 2005 the Asylum Service informed the applicant's lawyer that the examination of the applicant's file had been discontinued since the applicant, without good reason, had not informed the authorities, as required, that he had changed address and had not notified them of his new one. Therefore they had been unable to serve the letter concerning his application.

On 31 January 2005 the applicant lodged an appeal with the Reviewing Authority of Refugees against the Asylum Service's decision. This was dismissed on 4 July 2005.

(a) Proceedings brought by the applicant concerning his asylum application

(i) Recourse no. 124/04 (Morteza Mollazeinal v. the Republic of Cyprus and the Asylum Service)

On 4 February 2005 the applicant brought a recourse before the Supreme Court (first-instance revisional jurisdiction) under Article 146 of the Constitution challenging the decision of the Asylum Service to close his asylum file.

This was dismissed on 3 July 2006 as in the meantime the applicant had lodged his appeal with the Reviewing Authority of Refugees (see above) and then a recourse against the dismissal of that appeal (no. 995/05; see below). The Supreme Court added that, in any event, the applicant's recourse was out of time and that it was completely unsubstantiated.

(ii) Recourse no. 995/05 (Morteza Mollazeinal v. the Reviewing Authority of Refugees)

On 29 August 2005 the applicant brought a recourse before the Supreme Court (first-instance revisional jurisdiction) under Article 146 of the Constitution challenging the decision of the Reviewing Authority of Refugees of 4 July 2005. He also challenged the lawfulness of the detention and deportation orders issued against him pursuant to that decision.

On 7 September 2007 the Supreme Court dismissed the recourse. First it upheld the Refugee Reviewing Authority's decision to close the applicant's file. It observed that it had been for the applicant to inform the Asylum Service of any change of address and not for the authority to try to find him for the purpose of serving any relevant documents. Second, the court noted that it could not examine the lawfulness of the detention and deportation orders of 3 August 2005 (see below) as the recourse had only been filed against the Reviewing Authority of Refugees which was not the authority that had issued the orders.

The applicant did not appeal.

(b) Proceedings brought by the applicant concerning his detention and deportation

(i) Recourse no. 123/05 (Morteza Mollazeinal v. the Republic of Cyprus, the Asylum Service, the Director of the Civil Registry and Migration Department)

On 4 February 2005 the applicant had also brought a recourse before the Supreme Court (first-instance revisional jurisdiction) under Article 146 of the Constitution challenging the detention and deportation orders of 24 November 2004. He claimed, *inter alia*, that the orders had been issued unlawfully and contrary to the Constitution and the Geneva Convention as the right facts had not been taken into account. He further maintained that if deported to Iran he would be tortured and killed due to his

past involvement in student meetings condemning the Iranian Government for human rights violations.

In his affidavit the applicant stated that he had been a student in Iran at the Sahib Bethesda University in the city of Khorramabad. In July 2000 he had participated in a meeting held by students, concerning human rights violations, which the authorities had violently dissolved. Many students had been arrested and some had disappeared. The applicant had been injured but had managed to get away and had gone into hiding in Teheran since the secret police were looking for him. Subsequently the applicant had learned that he had been dismissed from University. The applicant also claimed that he had been on the Iranian authorities' "stop list" but had managed, after secretly bribing an official, to have his name taken off and get a passport.

Finally, in his affidavit, the applicant stated that since the Iranian Government did not allow Iranian nationals to apply for asylum, he was in even more danger, the Iranian authorities now being aware, after being informed by the immigration authorities, that he was in Cyprus. This was disputed by the respondents. In his affidavit one of the officers stated, on behalf of the respondents, that the police had not mentioned anything about the applicant's asylum application to the personnel of the Iranian Embassy.

On 13 February 2005 the applicant filed an application seeking an interim order to suspend the decision taken concerning his detention and deportation.

On 17 February 2005 the Director of the Civil Registry and Migration Department suspended the execution of the deportation order pending the examination of the above application.

On 10 June 2005 the Supreme Court dismissed the application for an interim order. As the execution of the deportation order had already been suspended, the court focused on the applicant's request concerning his detention. In this connection, the court found that the applicant had not established "manifest illegality" in his detention or shown that it had caused him irreparable damage. It therefore held that his application had been unsubstantiated. It also observed that the applicant had not shown that his allegation that the authorities had informed the Iranian Embassy about his asylum application was connected with the lawfulness of the orders that had already been issued by that time.

On 27 July 2005 the Supreme Court upheld the applicant's recourse and annulled the detention and deportation orders. It held that these orders had been issued on the basis of an inadequate inquiry and misconception about the facts. In this respect, the court noted, amongst other things, that the applicant had not received the letter from the asylum authorities rejecting his application and that the authorities had not conducted an effective investigation in this connection. It further observed that the applicant was refusing to cooperate with the authorities for the issuance of travel documents.

The applicant was released on the same day.

(ii) Civil action no. 7720/05 (Morteza Mollazeinal v. the Attorney-General of the Republic)

Following the Supreme Court's judgment of 27 July 2005 the applicant, on 14 October 2005, brought civil proceedings against the Attorney-General before the District Court of Nicosia, claiming damages in respect of unlawful arrest and detention from 14 November 2004 until 27 July 2005.

These proceedings are still pending.

(iii) First set of habeas corpus proceedings before the Supreme Court – application no. 52/05 (application by Morteza Mollazeinal against the Republic of Cyprus, the Chief of Police and the Director of the Civil Registry and Migration Department)

In the meantime, on 29 June 2005, the applicant filed a habeas corpus application before the Supreme Court (first instance). This was dismissed on 20 July 2005. The court held that it did not have jurisdiction to examine the lawfulness of the detention and deportation orders; as decided by the court in numerous cases, this could only be examined in the context of an administrative recourse brought under Article 146 of the Constitution and not a habeas corpus application. The court noted that such a recourse was actually pending and that the judgment had been reserved (namely, recourse 123/05, see above). In these circumstances the court held that the application constituted an abuse of judicial procedure. Further, the court observed that the continuing detention of the applicant was due to the fact that there was a pending recourse against the deportation order and that he did not have the necessary travel documents.

The applicant did not appeal against this judgment.

3. Second arrest and detention with a view to deportation

On 3 August 2005, following the dismissal of the applicant's appeal by the Reviewing Authority of Refugees, the Director of the Civil Registry and Migration Department issued new detention and deportation orders against the applicant under section 6(1)(k) of the Aliens and Immigration Law, on the ground that he was a prohibited immigrant.

The applicant was arrested on 3 August 2005 while at the Civil Registry and Migration Department. The applicant has submitted that he had gone there in order to collect his new residence permit.

(a) Second set of habeas corpus proceedings before the Supreme Court – application no. 36/2006 (*application by Morteza Mollazeinal and the Chief of Police and the Director of the Civil Registry and Migration Department*)

On an unspecified date the applicant filed a habeas corpus application before the Supreme Court (first instance). The applicant claimed, *inter alia*,

that his protracted detention without deportation was unlawful, arbitrary and contrary to his fundamental human rights. He relied on the Supreme Court's judgment in the case of *Essa Murad Khlaief* (habeas corpus application 91/2003, judgment of 14 October 2003).

The application was dismissed on 17 July 2006. The Supreme Court held that it did not have jurisdiction to examine the lawfulness of the detention and deportation orders against him: these could only be examined in the context of an administrative recourse and not a habeas corpus application. The applicant would have the right to apply for a habeas corpus order in the event of his being successful in such a recourse but not released.

As to the length of the applicant's detention, the court found that on the basis of the evidence before it the delay in the applicant's deportation was solely due to the applicant himself, as he was deliberately refusing to cooperate with the authorities of his own country for the issuance of travel documents. Although the applicant had been taken to the Iranian Embassy he refused to apply for travel documents without giving any explanation in this regard. Noting that in her affidavit to the court the Director of the Civil Registry and Migration Department had suggested that the applicant's aim was that without travel documents his detention would be extended and at one point he would be released, the Supreme Court found that the respondents were doing everything possible to execute the applicant's deportation and did not bear any responsibility for the delay. It therefore concluded that it could not be said that the applicant's length of detention had exceeded what was reasonable.

The applicant did not appeal against this judgment.

(b) Applicant's complaint against the police in August 2005

On 3 August 2005 the applicant complained to the police that he had been ill-treated by police officers.

According to the relevant police report dated 11 August 2005 the applicant was arrested on 3 August 2005. On arrival at the central prisons, the applicant managed to run away and climb onto a metallic water-tower in the prison courtyard. The police officers succeeded in immobilising him on the tower's ladder and, eventually, the applicant climbed down.

On the same day the applicant was taken to Omorfita police station where he was visited by his lawyer. In the presence of the officer in charge he showed his lawyer some scratches he had on his body and informed him that these had been inflicted on him at the immigration department and at the Police Detention Facilities at the Central Prisons.

The applicant was immediately taken to the first aid unit of the General Hospital of Nicosia where he was examined by a doctor, a forensic surgeon and, further, a private doctor who had been sent by the applicant's lawyer. According to the reports of the first two doctors, the applicant had some scratches on the chest and back, weals on the right arm and a scratch on the

left arm, weals on the chest and in the area in front of the neck and also swelling in the right part of the cheek-bone area.

On the same day the police took statements from the applicant and some of the police officers who had been involved.

Following an ill-treatment complaint by the applicant, through his lawyer, to the Attorney-General, the Ombudsman and the Chief of Police, an investigation was carried out by the police.

In their report of 11 August 2005 the police concluded that the applicant's complaint was unfounded and suggested that the file be closed.

In the meantime, on 11 August 2005, the applicant was transferred to the Lycavitos detention facilities in Nicosia.

On 12 August 2005 the file was transmitted to the Attorney-General, who instructed the police to close it.

The file was returned to the police and was closed.

In a letter dated 16 November 2005 the Ombudsman informed the applicant that she had been informed by the police that on the instructions of the Attorney-General the police had carried out the investigation. This had concluded that the applicant's allegations had been unsubstantiated and as a result the Attorney-General had closed the file. Consequently, the Ombudsman observed that she did not have the competence to intervene.

On 16 February 2006 the applicant was transferred to Nicosia Central Prisons.

(c) Applicant's complaint against the police in June 2006

On the night of 5 to 6 of June 2006 the police authorities of Nicosia carried out the transfer of certain detained aliens to various detention facilities in other districts.

On 6 June 2006, at about 5.30 a.m., police officers went to Nicosia Central Prisons in order to transfer the applicant to the detention facilities in Larnaca. At the time, the applicant had been on hunger strike from 1 June 2006.

In a statement given to the police on the same day the applicant claimed that he had been sleeping on a table in "an open space used by all the prisoners" when a group of police "commandos" had woken him up and asked him to follow them as they were going to take him to another detention centre. The applicant refused to be transferred and resisted. They then took him to an office and asked him to sign a document which was in Greek. When he refused, one of the officers attacked him and then the officers handcuffed him by using force and put him in a police car.

The applicant was transferred to the Larnaca detention facilities.

In his statement he alleged that when he arrived at the detention centre he spoke to another prisoner who told him that no force had been used against him as he had consented to his transfer. He also complained about his transfer and the force used against him by the police.

At 9.30 a.m. the applicant was taken to the first-aid unit of the Larnaca General Hospital where he was examined by a doctor. According to the entry in the hospital record the applicant had complained to the doctor who examined him for blows. The doctor noted that the applicant had superficial scratches on the "upper limbs and shoulder blade".

The applicant gave his statement to the police between 4 p.m. and 5.40 p.m. the same day.

On 8 June 2006 the applicant filed a complaint with the Independent Authority for Investigation of Allegations and Complaints against the Police ("IAIACAP") concerning the use of force by the officers in carrying out his transfer (complaint 27/06).

The Vice-President of the IAIACAP took over the investigation.

The applicant gave a supplementary statement to the police on 20 June 2006. In this the applicant stated that on 6 June 2006 he had been attacked by ten immigration and police officers because he wanted to stay in Nicosia and continue his hunger strike and had therefore resisted his transfer to Larnaca. He stated that the officers had insisted that he go with them and as he resisted they had resorted to violence and thus managed to transfer him to Larnaca.

On 12 January 2007 the Vice-President of the IAIACAP visited the applicant in the Central Prisons and took a statement from him.

In this statement the applicant stated that on 6 June 2006, at about 5.30 a.m. while he was sleeping in his "room", two police "commandos" had entered and asked him to get out of the "room". They took him downstairs to the common office on the ground floor where there were another 4 police officers and 12 "commandos". He was the only detainee in that office. They showed him a letter in Greek and asked him to sign it. When he refused one of the officers grabbed him by the hair and hit his head on a table. The officer then threw him to the ground and with another five to six persons started beating him on the back with their knees. While he was on the ground they handcuffed his hands behind his back. They pulled him up but then threw him down onto the ground again. They then put him into a police van and transferred him to Larnaca. He complained there to the officer in charge and was then taken to hospital. The applicant also noted that he had asked to be taken back to hospital on 13 June 2006. The entry of 13 June 2006 in the hospital record reports weakness caused by a hunger strike.

While detained in Larnaca the applicant complained every day about his detention there and threatened to harm himself if he was not transferred.

He was eventually transferred back to Nicosia Central Prisons on 31 July 2006.

Following the appointment of the Vice-President of IAIACAP to a Ministerial post, on 12 October 2007 the IAIACAP appointed two criminal investigators and an observer member. Between 18 October and 22 October 2007 statements were taken from the four police officers who were in

charge of guarding and transferring the applicant and from the police officer in charge at the Larnaca Detention Centre. Upon conclusion of the investigation, the investigators submitted their report to the IAIACAP on 26 October 2007. A report was then also prepared by the member who acted as an observer.

The following account was given to the investigators by four police officers who had been responsible for guarding the applicant and transferring him to Larnaca:

On 6 June 2006, at about 5.30 a.m., police officers went to the Central Prisons in order to carry out the applicant's transfer to Larnaca. The applicant refused to be moved and would not get out of his bed. The officers lifted him out of his bed and took him from the first floor, where his cell was, to the ground floor. The applicant resisted and was violent. The officers tried to handcuff him but he was resisting, kicking and pushing the officers away. In the end they managed to handcuff him but he refused to go to the police car and fell onto the ground in resistance. The police officers pulled him and took him to the car. At 7.25 a.m. the officers put the applicant inside a police van and transferred him to the Larnaca Detention Facilities.

The applicant refused to take his personal belongings with him.

The officer who was in charge at the Larnaca detention centre mentioned in his statement that, upon receiving the applicant at the centre and after removing the applicant's clothes, in a special room, in order to carry out a body search, he found minor scratches on the applicant's hands and shoulder blade which he recorded on the centre's personal detainee sheet. When he asked the applicant how these scratches had been caused, the applicant replied that they had been caused by the police officers in Nicosia Central Prisons when he resisted his transfer to Larnaca. He did not complain at the time.

In their report the investigators concluded that from the evidence given the applicant's claims had been unfounded. In particular:

(a) According to the medical report the applicant had superficial scratches on the "upper limbs and shoulder blade". If the police officers had, as the applicant claimed, thrown the applicant onto the ground and then kicked him in the back while he was handcuffed, and then lifted him up and thrown him down again, he would have had more serious injuries.

(b) A number of police officers had taken part in the transfer of detainees to other districts under the supervision of the Deputy Director of the Police of Nicosia. It could not reasonably be maintained that certain police officers would single out the applicant to attack and beat him during such an operation

(c) According to the evidence, the applicant persistently refused to cooperate with the police. In his statement to the police he admitted that the officers had used force in order to carry out his transfer. It appears therefore

that the minor injuries were caused when the officers tried to handcuff him and carry out his transfer.

Furthermore, the investigation carried out by the police authorities themselves did not find anything to reproach in the conduct of the officers involved.

The investigators therefore concluded that the force used by the officers had been necessary in the circumstances to achieve the applicant's secure transfer and suggested that the case be closed.

The observer member examined the facts and findings of the investigators as set out in their report. In her report she agreed with the conclusions and suggestions. She noted that despite delays in the initial stage of the investigation, the criminal investigators, following their appointment, had speedily concluded the investigation.

By two letters dated 19 November 2007 the IAIACAP informed the applicant's lawyer and the Attorney-General respectively about the conclusions of the investigation.

(d) Complaint to Ombudsman (complaint no. 75/2006)

On 11 January 2006 the applicant filed a complaint through his sister with the Ombudsman concerning his continuing detention.

In three letters to the Minister of the Interior, dated 17 January, 24 May and 12 October 2007, the Ombudsman addressed the question of the extended length of detention of aliens in detention facilities on the basis of detention and deportation orders issued under the Aliens and Immigration Law of 1959 (Cap. 105, as amended), in response to a number of complaints received on the matter, including the one from the applicant. In sum the Ombudsman expressed, *inter alia*, the opinion that the period of detention of a person for the purposes of deportation should be limited by law.

4. Subsequent developments

On 30 November 2007 the applicant was transferred to the Paphos detention facilities.

On 18 December 2007 the Minister of the Interior offered to revoke the deportation and detention orders and allow the applicant to remain in the Republic for eighteen months during which he would be entitled to seek employment and work in the Republic, provided he consented and cooperated with the Iranian Diplomatic Mission in Cyprus for the issuance of a passport valid for a minimum of five years. The applicant would be released upon delivery of his passport to the Director of the Civil Registry and Migration Department. The applicant was given the Minister's assurance that during this period he would not be deported or detained for deportation, unless he breached the conditions of his residence/employment permit. Furthermore, at the end of this period the possibility of a further extension of his leave to remain would be considered.

The applicant did not accept this offer.

In May 2008 the authorities decided to revoke the deportation and detention orders and release the applicant, allowing him to stay and work for twelve months in the Republic with the possibility of subsequently renewing his permit, without requiring the issuance of a passport. The applicant was informed by a letter dated 8 March 2008 from the Permanent Secretary of the Minister of the Interior about the Minister's order for his immediate release and the relevant conditions.

According to the Government, the applicant was consequently released.

B. Relevant domestic law and practice

1. Admission, residence and deportation of aliens

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

Under section 6(1) of the above Law a person is not permitted to enter the Republic if he or she 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 under the Law (section 6(1)(k) and any alien who does not have in his possession an immigration permit granted by the Director of the Civil Registry and Migration Department in accordance with the relevant regulations. A "prohibited immigrant" can be ordered to leave the Republic under section 13 of the same Law.

The Director of the Civil Registry and Migration Department has the power under the Law to order the deportation and, in the meantime, the detention, of any alien who is a "prohibited immigrant" under the Law (section 14).

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."

Such recourse must be made within 75 days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse (Article 146 § 3). Upon such a recourse, the Supreme Court may (a) confirm, either in whole or in part, such decision or act or omission; or (b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever, or (c) declare that such omission, either in

whole or in part, ought not to have been made and that whatever has been omitted should have been performed (Article 146 § 4).

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".

The Supreme Court has held in a number of cases 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, among many authorities, Civil Appeal no. 12166 concerning the application of *Elena Bondar* for Habeas Corpus, judgment of 30 December 2004 – full bench; *Sarkisasvili Kaha*, application 180/2004, judgment of 6 December 2004; and *Asad Mohammed Rahal*, application 169/2004, judgment of 26 October 2004).

A detainee can, however, challenge the lawfulness of his/her protracted detention for the purpose of deportation through a habeas corpus application. In such an application, the Supreme Court will not examine the lawfulness of the decisions ordering deportation and detention but whether the detention which was initially lawful subsequently became unlawful by exceeding a reasonably permissible length. In deciding whether the detention has been excessively long the specific facts of the case will be taken into account (*Essa Murad Khlaief*, application 91/2003, judgment of 14 October 2003). In the case of *Essa Murad Khlaief*, the Supreme Court held that detention under Article 11 (2) of the Constitution for the purpose of deportation could not possibly be unlimited but was restricted to a reasonable period, taking into account all the circumstances of the deportation execution process. If deportation was not completed within a reasonable time, the grounds for detention would cease to exist.

Res judicata obtains from successive habeas corpus applications which are based on the same facts without new intervening factors. This also applies to questions that could have been raised in the first habeas corpus claim but were not (*Refaat Barquwi*, application 131/2003, judgment of 12 January 2004).

2. Asylum

The Cypriot Government assumed responsibility for assessing asylum claims from 1 January 2002 through the establishment of an Asylum Service within the Migration Department of the Ministry of Interior. Prior to that, the UNHCR dealt with such claims. Asylum seekers can appeal against the decision of the Asylum Service to the Reviewing Authority for

Refugees, which was established by the Refugee Law of 2000 (Law 6 (I) of 2000, as amended).

The decision of the Reviewing Authority of Refugees can be challenged before the Supreme Court by way of administrative recourse under Article 146 (1) of the Constitution of the Republic of Cyprus (see above).

3. Relevant Constitutional provisions

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

Article 11

"1. Every person has the right to liberty and security of person.

2. No person shall be deprived of his liberty save in the following cases when and as provided by law:

...

(f) the arrest or detention of a person to prevent him effecting an unauthorised entry into the territory of the Republic or of an alien against whom action is being taken with a view to deportation or extradition.

...

4. Every person arrested shall be informed at the time of his arrest in a language which he understands of the reasons for his arrest and shall be allowed to have the services of a lawyer of his own choosing.

..

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

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

Article 8 of the Constitution prohibits torture, inhuman or degrading treatment or punishment. Moreover, under Article 35 the legislative, executive and judicial authorities are required to secure, within the limits of their respective competences, the efficient application of the provisions of the Constitution. Finally Article 32 of the Constitution states that the provisions of Part II of the Constitution do not preclude the Republic from regulating by law any matter relating to aliens in accordance with international law.

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

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

5. Investigation of complaints against the police

The Independent Authority for Investigation of Allegations and Complaints against the Police ("IAIACAP") was established in 1996 by Law 9(I)/2006 (as amended). The Law came into force on 17 February 2006.

The IAIACAP comprises five members, including the President, who are all appointed by the Council of Ministers. It started operating on 2 May 2006.

The IAIACAP can investigate complaints against the police in a number of areas, including those concerning violations of human rights (section 5(5) of Law 9(I)/2006). It can receive complaints directly from individuals, from the Attorney-General of the Republic, the Minister of Justice and Public Order or even the police authorities themselves when a complaint has been drawn to their attention.

In the event that the IAIACAP considers that a criminal offence has been committed, the complaint is sent on to the Attorney-General who has the authority to decide whether or not to instigate criminal proceedings against the police officers in question. In the event that the IAIACAP considers that a disciplinary offence has been committed, the complaint is sent to the Chief of Police. Following an amendment to Law 9(I)/2006 by Law 100(1)/2007 the IAIACAP can appoint external investigators from a list prepared by the Attorney-General. These investigators, who are not members of the police, remain under the constant supervision, control and guidance of the IAIACAP.

C. Material submitted by the Government of Cyprus on the situation of Iranian asylum seekers in Cyprus

According to the Government, Cyprus has to deal with numerous Iranians who enter Cyprus, largely as illegal immigrants through the "Turkish Republic of Northern Cyprus", and claim asylum. In 2004 the Cypriot Government put forward a proposal to the Iranian Government for a Readmission agreement in order to facilitate the readmission of Iranian nationals residing without authorisation in Cyprus into their own country. A draft agreement was also submitted to the Iranian Government. The need for concluding such an agreement was put to the Iranian Government several times. The two Governments have not reached such an agreement to date.

It is common practice, upon entering Cyprus, for Iranian nationals to destroy or hide their identity documents (passport, identity cards, travel documents) in order to avoid their deportation. The Iranian authorities do not issue travel documents to any Iranian national without the latter's consent to repatriation.

D. Relevant international material on Iran concerning returned asylum seekers

According to the UK Home Office's *Country of Origin Information Report on Iran*, dated August 2008, in respect of returned asylum seekers, it is reported by observers that they had seen no evidence that failed claimants, persons who had left Iran illegally, or deportees faced any significant problem upon return to Iran, although individuals in cases that gained a high profile could face difficulties (Section 28.12 of the Report).

COMPLAINTS

The applicant complained under Articles 2, 3, 5, 6, 7, 8, 13, 14 and 17 of the Convention and Article 4 of Protocol no. 4 as follows:

(a) If deported to Iran he would be tortured and killed because when he had been a student in Iran he had been involved in meetings condemning the Government for human rights violations;

(b) He had been subjected to ill-treatment by the police and immigration authorities on a number of occasions;

(c) He had been unlawfully detained and had had no effective remedy in this connection;

(d) The decisions of the authorities concerning his asylum applications were unfair.

THE LAW

A. The applicant's complaint concerning his deportation

The applicant complained that if deported to Iran he would be killed or subjected to torture upon return. The Court considers that this complaint falls to be examined under Articles 2 and 3 of the Convention, the relevant parts of which read as follows:

Article 2 (right to life)

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

..."

Article 3 (prohibition of torture)

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

The applicant claimed that, as a result of his participation in a student meeting in Khorramabad in July 2000 he ran a risk of being tortured and killed in Iran. Since the Iranian authorities now knew that he had sought asylum in Cyprus he was in even greater danger.

The Court observes that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens. However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies an obligation not to deport the person in question to that country (see, among other authorities, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-125, ECHR 2008-...).

Moreover, the Court does not exclude that analogous considerations might apply to Article 2 of the Convention where the return of an alien puts his or her life in danger, as a result of the imposition of the death penalty or otherwise (see, among other authorities, *Hakizimana v. Sweden* (dec.), no. 73913/05, 27 March 2008; *Bahaddar v. the Netherlands*, 19 February 1998, *Reports of Judgments and Decisions* 1998-I, opinion of the Commission, pp. 270-71, §§ 75-78; and *Sinnarajah* v. *Switzerland* (dec.), no. 45187/99, 11 May 1999).

The Court will therefore examine the applicant's complaints together under Articles 2 and 3 of the Convention.

First and foremost, the Court observes that the applicant has not submitted any evidence to substantiate his claims. His allegations before this Court are confined to general statements. The applicant relies on the account of events set out in the affidavit he filed in his recourse before the Supreme Court concerning the deportation and detention orders issued against him on 24 November 2004 (recourse no. 123/05, see above). This includes only a very brief and general description of the alleged incident in Khorramabad on which his complaint is primarily based. Furthermore, his allegations of dismissal from University and of persecution before leaving Iran are not corroborated by any evidence. There is no indication that the applicant is wanted by the Iranian authorities. In this connection, the Court reiterates that it is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see, among other authorities, *N. v. Finland*, no. 38885/02, § 167, 26 July 2005).

In addition, the Court observes that the applicant is referring to an incident which occurred more than eight years ago in which he does not claim to have had a leading role.

The Court also takes note of the decisions of the UNHCR, the Asylum Service and the Reviewing Authority of Refugees concerning the applicant's asylum applications.

Finally, the Court points out that, having regard to the particular circumstances of the case, even assuming that the Iranian Embassy in Nicosia was informed about the applicant's asylum application, something which was contested by the authorities of the respondent Government in the domestic proceedings (recourse no. 123/05, see above), it appears from the UK Home Office's Country of Origin Information Report on Iran, dated August 2008, that there is no evidence that returned asylum seekers face any significant problem upon return to Iran (see above).

Hence, having regard to all of the above, the Court concludes that the applicant has not established that there are substantial grounds for believing that he would be exposed to a real risk of being ill-treated or killed, contrary to Articles 2 or 3 of the Convention, if he were to be deported to Iran.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

B. The applicant's complaints of ill-treatment

The applicant complained that he had been subjected to ill-treatment by immigration and police officers on 3 August 2005 and, subsequently, on 6 June 2006. The Court considers that the applicant's complaints in this connection fall to be examined under the substantive limb of Article 3 of the Convention. In so far as the applicant invokes Article 13 of the Convention in relation to these complaints, the Court finds it appropriate to examine the issue under the procedural limb of Article 3.

1. The parties' submissions

The Government argued that the applicant's complaints were inadmissible for non-exhaustion of domestic remedies. They submitted that the applicant could have brought a civil action against the Republic under the Civil Wrongs Law for assault concerning the alleged use of force by its officers in the execution of the deportation and detention orders and during his detention. In the context of such proceedings he could have complained that he had been subjected to treatment contrary to Article 8 of the Constitution and Article 3 of the Convention and could have sought, in addition to damages, a declaratory judgment that there had been a violation of his Constitutional and Convention rights.

Furthermore, the Government denied any ill-treatment of the applicant. They submitted, in any event, that there was no evidence of treatment attaining a sufficient level of severity for the purposes of Article 3 of the Convention.

As regards the applicant's first complaint concerning ill-treatment on 3 August 2005 the Government submitted that the applicant's account had been full of inconsistencies and contradictions and was therefore not credible. The applicant had not laid the basis before the authorities of an arguable claim that he had been subjected to ill-treatment. As for his second complaint concerning ill-treatment on 6 June 2006 they observed that the applicant's injuries, namely superficial scratches on his upper limbs and on his shoulder-blade did not tally with his version as to the manner in which he alleged he had been ill-treated by the police. The IAIACAP had concluded that these injuries had been caused when the applicant had refused to cooperate with the police for his transfer to Larnaca police station and while the police were trying to handcuff him. The force used against the applicant had been no more than that necessary in order to handcuff him and carry out his transfer.

The applicant submitted that the authorities had never examined his complaints as to ill-treatment objectively. With regard to his complaint concerning the events of 6 June 2006 he pointed out that the medical certificate of the General Hospital showed that he had bruises on his left shoulder-blade which could not have been self-inflicted.

2. The Court's assessment

(a) Complaint concerning alleged ill-treatment on 3 August 2005

The Court observes that the first part of the applicant's complaint concerning 3 August 2005 was raised before the Court for the first time by the applicant in a document dated 10 August 2006. The Ombudsman, who was informed by the police of the Attorney-General's decision to close the applicant's file, in a letter dated 16 November 2005, informed the applicant's lawyer of this decision and added that she was not competent to intervene in the matter. As the applicant has not contested the notification of the said decision, the Court finds that this notification constitutes the date of the final decision for the purposes of the six-month rule. Consequently, this complaint was introduced outside the six-month time-limit in Article 35 § 1 of the Convention and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) Complaint concerning alleged ill-treatment on 6 June 2006

The applicant complained under Article 3 of the Convention that he had been ill-treated by the police on 6 June 2006.

(i) Exhaustion of domestic remedies

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

It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from this requirement (see, for example, *Akdivar*, § 68, cited above, and *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V).

Turning to the present case, the Court firstly points out, with regard to the civil remedy of assault put forward by the Government, that, as it has already found in a number of cases, a civil action, which is aimed at awarding damages, cannot by itself be regarded as an effective remedy in the context of claims brought under Article 3 of the Convention (see, for example, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, Reports 1998-VIII, p. 3286, § 85). The notion of an "effective remedy" under this provision entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see, among many authorities, *Aÿan and Others v. Turkey*, no. 56003/00, § 82, 31 July 2007). The Court also points out that a civil court is itself unable to pursue any independent investigation and is not capable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings as to the identity of the perpetrators of assaults, still less of attributing responsibility (see, mutatis mutandis, *Yaÿa v. Turkey*, judgment of 2 September 1998, Reports 1998-VI, p. 2431, § 74, and *Khashiyev and Akayeva v. Russia*, nos. 57942/00, §§ 119-121, 24 February 2005).

Accordingly, this complaint cannot be rejected for failure to exhaust domestic remedies.

(ii) The well-foundedness of the complaint

(α) Substantive aspect of Article 3 of the Convention

Article 3, as the Court has observed on many occasions, enshrines one of the most fundamental values of democratic societies, making no provision for exceptions and with no derogation from it being permissible, as provided by Article 15 § 2 (see *Selmouni*, § 95, and *Assenov*, § 93, both cited above).

The Court further reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Assenov* cited above, §§ 93-94).

The Court observes that on 6 June 2006 the police authorities carried out the transfer of certain detained aliens, including the applicant, from the Central Prisons to various detention facilities in other districts. The police officers entered the applicant's cell at 5.30 a.m. on the above date for this purpose. It appears, however, that the applicant did not know in advance of his transfer to the detention facilities in Larnaca.

The applicant claimed that he had been treated violently by the police officers. In his statements of 6 and 20 June 2006 to the police he admitted that he had refused and resisted his transfer. Although he submitted that he had been attacked by the officers he did not provide any more details in this connection. In his statement of 12 January 2007 to the IAIACAP he alleged that his head had been hit on a table and then he had been thrown to the ground and kicked by 5 or 6 officers in the back. He then claimed that the officers had pulled him up but had then thrown him down onto the ground again. He did not, however, give this account of events in his first two statements, including the one taken on the day that the incident in question took place.

The Government submitted that the police officers had been obliged to resort to force as the applicant had resisted. According to the statements of the police officers obtained by the IAIACAP, the applicant had resisted and had been violent and when they had tried to handcuff him he had kicked them and pushed them away. When they had finally managed to handcuff him he had refused to go to the police car and had fallen to the ground in an act of resistance. The police officers had pulled him and taken him to the car.

The Court points out that it is undisputed by the parties that the police officers used force against the applicant in order to handcuff him and carry

out his transfer. Furthermore, the Government have not disputed that the applicant's injuries, as shown by the medical record of 6 June 2006, were caused by the force used by the police officers. From this it appears that the applicant suffered superficial scratches on the upper limbs and shoulder-blade. However, in the Court's view, the medical record, the veracity of which the applicant does not contest, does not support the applicant's allegations made in his statement of 12 January 2007 concerning the nature of the force used against him. As the criminal investigators found in their report for the IAIACAP, any such action would have resulted in the applicant having more serious injuries, which was not the case. In this connection the Court takes note of the fact that the injuries suffered by the first applicant were of a very minor nature – superficial scratches – and had no lasting consequences.

Accordingly, the Court finds that, in the present case, the recourse to physical force – the exact character of which cannot be established from the case file – was made necessary by the conduct of the applicant who resisted his transfer. Moreover, neither the nature nor the extent of the injuries sustained by the applicant enable the Court to conclude that the use of force against the applicant was excessive or was such that it reached the threshold of Article 3 of the Convention.

(β) Procedural aspect of Article 3 of the Convention

Notwithstanding the above finding, the Court recalls that Article 3 of the Convention also requires the authorities to investigate allegations of ill-treatment when they are "arguable" and "raise a reasonable suspicion" (see *Assenov*, cited above, §§ 101-02, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). The Court considers that the medical evidence, the applicant's statement to the police and complaint to the IAIACAP, taken together, raise a reasonable suspicion that these injuries may have been caused by the officers. An investigation was therefore required.

The Court notes that, in the morning of 6 June 2006, just after being taken to the Larnaca detention facilities, the applicant was taken for a medical examination to the first-aid unit of the Larnaca General Hospital. Two days later he complained to the IAIACAP. The IAIACAP conducted an investigation into his allegations. The criminal investigators appointed by the IAIACAP took statements from the officers involved, including the officer in charge of the Larnaca detention facilities who received the applicant. On the basis of these statements, the applicant's statements to the police and the IAIACAP, the medical evidence and, in particular, the nature of the applicant's injuries, the investigators concluded that the applicant's allegations had been unfounded and the officers had not used excessive force. They therefore suggested that the case be closed.

Although the applicant in his observations before the Court claims that the authorities had never examined his complaints as to ill-treatment

objectively, he does not provide any explanations in this respect or substantiate his claim. The Court notes that the IAIACAP is an independent authority that is not linked in any way, hierarchically or institutionally, to the police. Furthermore, no ground has been put forward by the applicant to question the independence of the investigators appointed by the IAIACAP or the adequacy of the investigation. Despite a certain delay in the investigation following the departure of the initial investigator, the two criminal investigators, when appointed, concluded the investigation very quickly.

In view of the above, the Court finds that, in the circumstances of the case, the investigation carried out by the IAIACAP was sufficiently thorough to meet the requirements of Article 3.

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

C. The applicant's complaints concerning his detention

The applicant complained that he had been unlawfully detained and that he had no effective remedy in this connection.

The Court finds that the applicant's complaints fall to be examined under Article 5 § 1 (f) of the Convention as the applicant was detained "with a view to deportation" within the meaning of that provision and under Article 5 § 4 of the Convention as this provision is the *lex specialis* in relation to the more general requirements of Article 13 which the applicant invokes (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 69, ECHR 1999-II).

These provisions read as follows, in so far as relevant:

Article 5 §§ 1 (f) and 4 (right to liberty and security)

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

...

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

...

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."

1. First arrest and detention

The Court notes that the applicant was arrested on 23 November 2004 and was detained until 27 July 2005. He was detained on the basis of the detention and deportation orders issued against him on 24 November 2004

under section 6(1)(k) of the Aliens and Immigration Law on the ground that he was a prohibited immigrant. The applicant, however, successfully challenged these orders before the Supreme Court (recourse no. 123/05) and was as a result released on 27 July 2005. The question that therefore arises is whether he can still be considered to be a victim of the alleged violation.

The Court reiterates that under Article 34 of the Convention it may receive applications from any person claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. It is the Court's settled case-law that where the national authorities have acknowledged either expressly or in substance, and then afforded redress for, a breach of the Convention, the party concerned can no longer claim to be a victim within the meaning of Article 34 of the Convention (see, for example, *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001; *Morby v. Luxembourg* (dec.), no. 27156/02, ECHR 2003-XI; and *Hadjiiski and Iliev v. Bulgaria* (dec.), nos. 68454/01 and 68456/01, 2 June 2005).

On 27 July 2005 the Supreme Court annulled the detention and deportation orders as it found that they had been issued on the basis of an inadequate inquiry and misconception about the facts. It thus acknowledged in substance a breach of the applicant's Convention rights.

The applicant was released and had the right to seek damages under Article 146 (6) of the Constitution. The applicant has submitted that he availed himself of that possibility by instituting civil proceedings before the District Court of Nicosia claiming damages in respect of unlawful arrest and detention for the above period. These proceedings are still pending.

The Court therefore finds that in these circumstances the applicant can no longer claim to be a victim for the purposes of Article 34 of the Convention (see, among other authorities, *A.B. v. France*, no. 18578/91, Commission decision of 19 May 1995; *Pansart v. France*, no. 24684/94, Commission decision of 29 November 1995; and *Montousse v. France*, no. 21976/93, Commission decision of 29 November 1995).

2. Second arrest and detention

The applicant was arrested again on 3 August 2005 on the basis of new deportation and detention orders issued on that date under section 6(1)(k) of the Aliens and Immigration Law on the grounds that he was a prohibited immigrant. The applicant was detained until May 2008 when the authorities revoked the orders and released him.

(a) The parties' submissions

The Government submitted that the applicant's complaint was inadmissible for non-exhaustion of domestic remedies. Firstly, they pointed out that the applicant had not challenged the lawfulness of the detention and deportation orders of 3 August 2005 by bringing a recourse before the

Supreme Court under Article 146 of the Constitution. They maintained that in the context of such proceedings he could have sought a declaratory judgment that there had been a violation of his Constitutional and Convention rights and, consequently, brought a claim for damages. The Government observed that the applicant had successfully challenged the previous deportation and detention orders issued against him before the Supreme Court and was seeking damages before the District Court of Nicosia. Recourse no. 995/05 had only been against the decision of the Refugee Reviewing Authority to dismiss his application to review the Asylum Service's decision to close his file.

Secondly, and with regard to the lawfulness of the applicant's continuing detention, the Government submitted that the applicant had not appealed against the first-instance judgment dismissing his habeas corpus application (application no. 36/2006). In addition, or in the alternative, they argued that the applicant could have lodged a new habeas corpus application challenging the lawfulness of his detention, which had been continuing. Relying on the Supreme Court's judgment of 14 October 2003 in the case of *Essa Murad Khlaief* (habeas corpus application 91/2003 – see above) they pointed out that the Supreme Court had jurisdiction, in the context of a habeas corpus application, to examine and rule on the legality of a person's prolonged detention with a view to deportation. They further submitted that the Supreme Court had the competence to examine new habeas corpus applications based on new facts (relying on the Supreme Court's judgment in *Refaat Barquwi*, application 131/2003, judgment of 12 January 2004).

Thirdly, the Government argued that the applicant could have instituted proceedings against the Republic under the Civil Wrongs Law for false imprisonment, to contest the lawfulness of his arrest and detention.

As to the substance of the applicant's complaint, the Government submitted that the applicant had been detained under detention and deportation orders in accordance with the provisions of the Aliens and Immigration Law, the Constitution and the Convention. Although the authorities had been diligent throughout the deportation procedure they had been prevented from executing the deportation order due to the applicant's own conduct, namely his refusal to cooperate with the Iranian authorities for the purpose of having travel documents issued. Without his consent to repatriation the Iranian Embassy would not issue the necessary travel documents. It was therefore impossible, until such consent was given, to execute the deportation order. Despite efforts to find a solution concerning the repatriation of Iranian nationals, no agreement had yet been reached between the Cypriot and Iranian Governments on the matter.

The applicant disputed the Government's submissions. He claimed that he had brought numerous proceedings before the Supreme Court, of an administrative and habeas corpus nature, challenging his detention. The ongoing and repetitive detention orders were such that the applicant would

be forced to have to challenge each order separately *ad infinitum*. The Supreme Court repeatedly rejected such cases and examined only technical matters raised. The applicant therefore had very slim chances, if any, to be successful in such proceedings.

(b) The Court's assessment

In the present case, it is not disputed that the applicant was detained on the basis of deportation and detention orders issued on 3 August 2005 under section 6(1)(k) of the Aliens and Immigration Law for the purpose of his deportation. Having found no reasons to hold otherwise, the Court is satisfied that the applicant's detention falls within the scope of Article 5 § 1 (f) of the Convention.

As the Government submit, however, the applicant, who had been represented by a lawyer throughout all the domestic proceedings, did not challenge the above orders before the Supreme Court. It notes in particular that the applicant had successfully brought such a recourse challenging the previous detention and deportation orders issued against him (recourse no. 123/05, see above). Although the applicant raised the issue of the lawfulness of his detention in recourse no. 995/05, concerning his asylum application, he only brought this recourse against the Refugee Reviewing Authority, which was not the authority that had issued the detention and deportation orders. Furthermore, the Supreme Court was not competent to examine the lawfulness of the detention order in the context of a habeas corpus application (application no. 36/2006, see above). The Court also notes that even though the applicant complained about the length of his detention before the Supreme Court in his habeas corpus application (application no. 36/2006) he did not appeal against the first-instance judgment.

The Court observes that the applicant has not put forward any specific arguments as to the inadequacy or ineffectiveness of the above remedies in the particular circumstances of the case and has not pointed to any special circumstances absolving him from the requirement to avail himself of these remedies.

In view of the above conclusions, the Court finds it unnecessary to decide on the remaining arguments of the Government.

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

D. The applicant's remaining complaints

The applicant complained that the domestic authorities' decisions concerning his asylum applications had been unfair. He further relied on Articles 6, 7, 8, 13, 14 and 17 of the Convention and Article 4 of Protocol No. 4.

Firstly, the Court notes that the applicant's complaint concerning the alleged unfairness of the decisions of the domestic authorities concerning his asylum applications falls to be examined under Article 6 of the Convention. To the extent that the applicant is complaining about the unfairness of the decisions on his asylum claim and his deportation, the Court notes that proceedings and decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge, within the meaning of this provision (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 82, ECHR 2005-I, and *Maaouia v. France* [GC], n° 39652/98, § 40, ECHR 2000-X). Consequently, Article 6 § 1 is not applicable and this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3.

Secondly, the Court considers that the applicant's complaints under Articles 7, 8, 14 and 17 of the Convention and Article 4 of Protocol no. 4 do not disclose any appearance of a violation of the rights or freedoms set out in the Articles of the Convention or its Protocols.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

Finally, to the extent that the applicant invokes Article 13 of the Convention in relation to his complaints concerning ill-treatment and detention, the Court notes that his complaints have been examined under Articles 3 and 5 § 4 of the Convention and have been declared inadmissible.

In so far as the applicant invokes Article 13 in conjunction with the rest of his complaints, the Court notes that it has also found them all to be inadmissible and therefore not arguable within the meaning of its case-law. This complaint is accordingly manifestly ill-founded within the meaning of Article 35 § 3. Accordingly it must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Christos Rozakis
President