



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

FOURTH SECTION

**CASE OF AUAD v. BULGARIA**

*(Application no. 46390/10)*

JUDGMENT

STRASBOURG

11 October 2011

**FINAL**

*11/01/2012*

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



**In the case of Auad v. Bulgaria,**

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

George Nicolaou,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 20 September 2011,

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

## PROCEDURE

1. The case originated in an application (no. 46390/10) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a stateless person of Palestinian origin, Mr Ahmed Jamal Auad (“the applicant”), on 13 August 2010.

2. The applicant was represented by Ms D. Daskalova, a lawyer practising in Sofia, Bulgaria. The Bulgarian Government (“the Government”) were represented by their Agents, Ms N. Nikolova and Ms M. Kotseva, of the Ministry of Justice.

3. The applicant alleged, in particular, that his proposed expulsion to Lebanon would expose him to a risk of ill-treatment or death, that he did not have an effective remedy in respect of his claim in that regard, and that his detention pending deportation had been too lengthy and unjustified.

4. On 13 August 2010 the applicant asked the Court to indicate to the Government, by way of an interim measure, to refrain from removing him to Lebanon and to release him immediately from his detention pending deportation. On 17 August 2010 the President of the Fifth Section of the Court decided, in the circumstances, not to indicate to the Government the interim measure sought by the applicant.

5. On 23 September 2010 the President of the Fifth Section decided to give priority to the application under Rule 41 of the Rules of Court and to give notice of it to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

6. Following the re-composition of the Court’s sections on 1 February 2011, the application was transferred to the Fourth Section.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1989 in Ain al-Hilweh, a Palestinian refugee camp located on the outskirts of Saida, Lebanon (see paragraphs 52-55 below). He currently lives in Sofia, Bulgaria.

#### **A. The applicant's arrival in Bulgaria and his asylum claim**

8. On 24 May 2009 the applicant arrived illegally in Bulgaria and on 7 July 2009 applied for asylum, citing his fear that if he returned to Lebanon he would be killed or ill-treated by members of the Islamic militant group Jund al-Sham (see paragraphs 59, 60, 62, 78, 80 and 81 below). His identity was established on the basis of a certificate issued on 26 November 2008 by the Palestine Liberation Organisation.

9. The applicant's story was that he, like his father who had gone missing in 1991, was a member of Fatah (see paragraphs 59 and 60 below). He had been appointed to a salaried position in the movement with the protection of its head of security in Ain al-Hilweh, colonel Maqdah (see paragraphs 54, 55 and 84 below). His job had consisted in organising rallies in support of various Palestinian organisations, commemorations of the Palestinian revolution and protests against the founding of Israel. In early 2009, a neighbour of his who was a member of Jund al-Sham had been killed, the killing having been facilitated by information supplied by a friend of the applicant, also a member of Fatah. In reprisal, members of Jund al-Sham had killed the applicant's friend. To protect himself, the applicant had moved to his sister's house, located in a part of the camp which was under the control of Fatah. In July 2009 armed men had fired rounds at his sister's house, shouting his name. Later on colonel Maqdah had told the applicant that those men had been members of Jund al-Sham seeking revenge for their associate's killing, that he was not able to protect him from them, and that he should leave Lebanon.

10. In August 2009 the applicant tried to leave Bulgaria with false documents. He was arrested by the police at the Bulgarian-Greek border. On 21 August 2009 the Petrich District Court approved a plea bargain whereby the applicant pleaded guilty to offences of illegally crossing the border and trying to deceive a public officer by using an official document issued to another person. He was sentenced to six months' imprisonment, suspended for three years, and fined 200 Bulgarian levs.

11. In a decision of 29 October 2009, the State Refugees Agency refused to grant the applicant refugee status, but granted him humanitarian protection under section 9(1)(3) of the Asylum and Refugees Act of 2002

(see paragraph 29 below). The reasons for the decision described the applicant's story, as related by him, and continued:

“Bearing in mind the situation in the Palestinian [refugee] camp [Ain al-Hilweh], which is characterised by serious armed clashes between ‘Fatah’ and militants from ‘Jund al-Sham’, there are grounds to grant the applicant humanitarian protection, due to the real risk of infringements consisting of personal threats against his life in a situation of internecine armed conflict. Refugee camps in Lebanon have their own system of governance. Camp administrations are not elected by popular vote, but reflect the predominance of one or more groups or formations that constantly vie for territorial control, which often leads to armed clashes. In an interview for the news agency IRIN of April 2008, the head of security of ‘Fatah’ in Lebanon colonel Maqdah said that ‘Fatah’ will take care of security in all Palestinian camps in order to put an end to the spread of radical groups. ...

The applicant states that he has been a member of ‘Fatah’ since 2006, but there are no acts of persecution against him by the authorities or by another political organisation that the State is unable to oppose. He does not point to any of the other relevant grounds under section 8(1) of the Asylum and Refugees Act justifying fear of persecution, such as race, religion, nationality, membership of a particular social group, or political opinion or belief. That leads to the conclusion that there are no grounds to grant asylum under the Asylum and Refugees Act [of 2002]. The [applicant] does not raise grounds justifying the application of section 9(1)(1) or (1)(2) of [the Act].

The evidence in the file points to grounds to grant humanitarian protection. There are indications of circumstances falling within the ambit of section 9(1)(3) of [the Act]. The above-mentioned circumstances show that there are grounds to take into account [the applicant]'s personal situation in connection with the general social and political situation in the Palestinian camps in Lebanon. The evidence gathered during the proceedings shows that there is a real danger and risk of encroachments upon [the applicant's] life and person.

Under section 75(2) of the [Act], the [applicant]'s assertions, set out in detail in the record drawn up by the interviewing official, must be presumed to be truthful.

...

As required by section 58(7) of [the Act], the State National Security Agency was invited to make written comments. Those comments, dated 21 August 2009, contain no objection to granting the [applicant] protection in the Republic of Bulgaria.”

12. The applicant did not seek judicial review of the refusal to grant him refugee status.

13. During that time he was settled, together with other Palestinians, in a housing facility operated by the State Refugees Agency.

## **B. The order for the applicant's expulsion and his ensuing detention**

14. On 17 November 2009 an agent of the State Agency for National Security proposed to expel the applicant on national security grounds and to

place him in detention pending the carrying out of that measure. In support of the proposal he said that the applicant was a member of Usbat al-Ansar, which he described as a Sunni terrorist organisation acting in close cooperation with Hamas, Jund al-Sham, Ansar Allah and others (see paragraphs 54, 59-61 and 78 below). The applicant was alleged to have taken part in “wet jobs” for the organisation and in the assassinations of more than ten members of a Palestinian political party; he was being sought by the Lebanese authorities in connection with that. He was a relative of one of the leaders of Usbat al-Ansar. The available information showed that the applicant followed strictly the organisation’s ideas and would unhesitatingly follow the orders of its leaders. This had been confirmed by partner security services. It had also been established that the applicant kept contacts with two asylum seekers who were known to adhere to a terrorist organisation active in Ain al-Hilweh. One of them had been implicated in the killing of a member of a Palestinian political party and kept close contacts with Usbat al-Ansar and Fatah al-Islam (see paragraph 65, 72, 74, 78 and 81 below). All of that showed that the applicant by reason of his previous and current activities presented a serious threat to the national security of Bulgaria, and that his presence in the country discredited it as a reliable partner in the fight against international terrorism.

15. On 17 November 2009 the head of the State Agency for National Security made an order for the applicant’s expulsion. He also barred him from entering or residing in Bulgaria for ten years, “in view of the reasons set out in [the above-mentioned] proposal and the fact that his presence in the country represent[ed] a serious threat to national security”. The order relied on sections 42 and 44(1) of the Aliens Act 1998. No factual grounds were given, in accordance with section 46(3) of the Act (see paragraph 33 below). The order further provided that it was to be brought to the attention of the applicant and was immediately enforceable, as provided by section 44(4)(3) of the Act (see paragraph 34 below).

16. Concurrently with that order the head of the State Agency for National Security made an order for the applicant’s detention pending deportation (see paragraphs 42 and 43 below). He reasoned that the information featuring in the proposal showed that the applicant would try to prevent the enforcement of the expulsion order, and accordingly directed that the detention order should be immediately enforceable. He also instructed the immigration authorities urgently to take all necessary steps to enforce the expulsion order.

17. On 20 November 2009 the applicant was arrested and placed in a special detention facility pending enforcement of the expulsion order. He submits that when brought there he was informed about the two orders against him but was not given copies of them.

18. On 19 May 2011, in view of the impending expiry of the maximum permissible period of detention pending deportation – eighteen months (see

paragraph 44 below), the head of the State Agency for National Security made an order for the applicant's release. The applicant was set free the following day, 20 May 2011. He was placed under the obligation to report daily to his local police station. He submits that he is currently without any identification documents, means of support, or the possibility to work.

### **C. Judicial review of the applicant's expulsion**

19. On 4 December 2009 the applicant made an application for judicial review of the expulsion order. He also challenged his detention. He argued that the order was unlawful and that he had not engaged in any illegal activities while in Bulgaria.

20. On 23 March 2010 the applicant, having acquainted himself with an excerpt of the proposal for his expulsion and other documents in the file, asked the court to order the authorities to specify – if need be, subject to restrictions resulting from the use of classified information – what was the basis for their belief that he was being sought by the Lebanese authorities “in connection with the killing of members of Palestinian political parties”, as noted in the proposal. He also asked the court to order the authorities to specify whether they had used special means of surveillance to gather information about him; if yes, to order them to produce a copy of the requisite warrant and other documents.

21. The Supreme Administrative Court heard the case on 27 April 2010.

22. In a memorial filed on that date the applicant argued that the data on which the authorities had relied to order his expulsion were incorrect, vague, unverified, internally inconsistent and unreliable. It was not true that he was a member of Usbat al-Ansar; quite the opposite, he was being sought by terrorist organisations, and had for that reason fled Lebanon. His relative referred to as a terrorist in the proposal was in fact an official of a school administered by the United Nations. There were no concrete elements in support of the assertion that he was being sought by the Lebanese authorities. The Bulgarian authorities had not tried to verify that through official channels, as was possible under the treaty between Bulgaria and Lebanon for mutual cooperation in criminal matters. The lack of concrete information on those issues prevented him from presenting evidence to rebut the allegations against him. He also pointed out that the State Agency for National Security had not objected to his receiving protection in Bulgaria during the asylum proceedings (see paragraph 11 above). Lastly, he drew attention to the fact that he had been granted humanitarian status on the basis of a risk to his life, and argued that his expulsion would breach the principle of “non-refoulement” and Article 3 of the Convention.

23. In a final judgment of 22 June 2010 (реш. № 8-10 от 22 юни 2010 г. по адм. д. № С-4/2010 г., ВАС, VII о.), the Supreme Administrative Court upheld the expulsion order in the following terms:

“The order was issued on the basis of the reasons set out in proposal no. T-6-5347/17.11.2009 and the factual ground featuring in section 42(1) of the Aliens Act [of 1998 – see paragraph 33 below] – the alien’s presence in the country poses a serious threat for national security.

The proposal for imposing the coercive measure in issue says that [the applicant] was born on 30 November 19[8]9 in the refugee camp ‘Ain al-Hilweh’. He became a member of the terrorist radical Islamic organisation ‘Asbat al-Ansar’, which is active on the territory of that camp. That organisation works in close cooperation with similar organisations, including ‘ Hamas’. The [applicant] was member of a ‘wetwork’ squad that targeted also members of a Palestinian political party. It is not in dispute that the applicant is a relative of [A] who, according to operative information, is one of the leaders of ‘Asbat al-Ansar’. He follows strictly the organisation’s ideas and would carry out without hesitation the orders of its leaders.

[The applicant] entered the territory of the county in June 2009 and applied for asylum. However, in August that year he tried to leave the country with forged documents, heading towards western Europe. He was arrested by the border police at [a checkpoint at the Bulgarian-Greek border]. [On] 21 August 2009 the Petrich District Court ... approved a plea bargain whereby [the applicant] pleaded guilty to offences under Articles 279 § 1 and 318 of the Criminal Code[: illegal crossing of the border and trying to deceive a public officer by using an official document issued to another person]. He was sentenced to six months’ imprisonment, suspended for three years, and fined 200 [Bulgarian] levs.

According to operative information, he is in contact with [B] and [C], who are present in the country as asylum seekers. There is information that M.I. is also a member of Jund al-Sham and has taken part in the assassination of a member of ‘Fatah’ in ‘Ain al-Hilweh’, in connection with which he is being sought by the Lebanese authorities. [C] is an adherent of the terrorist organisation ‘Asbat al-Ansar’ and takes part in a human trafficking channel from Lebanon to western Europe that is used by members of Lebanese terrorist organisations. It is known that there are contacts between [D] and individuals who reside in western Europe and who sympathise with ‘Jund al-Sham’. The proposal makes a reasoned assumption that, due to his earlier and present activities the [applicant] presents a serious threat to the security of the Republic of Bulgaria, within the meaning of section 4 of the State Agency for National Security Act [of 2007], and his presence in the country is liable to discredit our country as a reliable partner in the fight against international terrorism.

The written evidence in the case includes excerpts nos. RB 202001-001-03-T6-3594, -95 and -96 of 12 April 2010. By decision no. 513 of 29 October 2009, the State Refugees Agency refused to grant [the applicant] refugee status.

The assertions in the application that [the applicant] resides lawfully on the territory of the country have not been proven. The negative assertions in the application that he has not taken part in unlawful activities cannot be regarded as established, because the specialised agency has made findings in that regard.

Under section 46(3) of the Aliens Act [of 1998], expulsion orders do not point to the factual grounds for the imposition of the coercive measure; those grounds are contained in the proposal for its imposition. The proposal shows that there are indications of encroachments on national security, falling within the remit of the State Agency for National Security under section 4(1)(11) and (14) of the State Agency for



National Security Act [of 2007]: international terrorism and cross-border organised crime, which creates a threat for national security. The existence of such indications does not require proof beyond doubt of acts directed against the security of the country. There are sufficient grounds to impose a coercive measure if there are indications which can lead to a reasonable assumption that the applicant's presence creates a serious threat to national security. The factual data gathered through operative methods and set out in proposal no. RB 202001-001-03-T6-5347 of 17 November 2009 constitute grounds to make a reasonable assumption that this applicant's presence does create a serious threat to national security. The existing data about the applicant's activity on the country's territory show the existence of the grounds set out in section 42 of the Aliens Act [of 1998 – see paragraph 33 below].

A coercive measure, such as that envisaged by section 42 of the Aliens Act, has a preventive character, it aims to prevent actions directed against the country's security. For it to be imposed, it is not necessary to carry out a full inquiry into the information that has been gathered or seek proof for it, because this is not a case involving the imposition of an administrative sanction.

The applicant's statement, made in open court, that he does not wish to be returned to Lebanon, where his life is under threat, is irrelevant for the present proceedings. Under section 42(2) of the Aliens Act, the withdrawal of the right of an alien to reside in the Republic of Bulgaria and the imposition of a ban on entering its territory inevitably flow from the imposition of the coercive measure under subsection 1 – expulsion.

The order complies with the legal requirements. The coercive measure has been imposed by the competent authority under section 44 of the Aliens Act [of 1998], in due form and in compliance with the rules of administrative procedure, the substantive law norms and the aim of the law, and for those reasons the application for judicial review must be rejected as ill-founded.”

#### **D. Judicial review of the applicant's detention pending deportation**

24. The legal challenge to the applicant's detention pending deportation (see paragraph 19 above) was transmitted to the Sofia City Administrative Court. In the course of the ensuing proceedings the court was provided with an excerpt of the expulsion proposal. In a final judgment of 9 February 2010 (реш. № 2 от 9 февруари 2010 г. по адм. д. № С-66/ 2009 г., САС, I о.), it upheld the order for the applicant's detention, finding that it had been made by a competent authority, in proper form, in line with the applicable substantive and procedural rules, and in conformity with the aim of the law. It went on to say that there was enough evidence that the applicant would try to hinder the enforcement of the order for his expulsion.

25. On an unspecified date in the summer of 2010 the Sofia City Administrative Court, acting of its own motion, as required under new section 46a(4) of the 1998 Aliens Act (see paragraph 45 below), reviewed the applicant's continued detention (адм. д. № 3872/2010 г., САС). It confirmed it for a further six months.

26. On 7 December 2010, again acting of its own motion, the Sofia City Administrative Court confirmed the applicant's detention for a maximum of a further six months, until 20 May 2011 (опр. № 4227 от 7 декември 2010 г. по адм. д. № 9061/2010 г., САС, I о.). It noted that the detention had already lasted almost twelve months and by law could be prolonged for a maximum of eighteen months. There existed impediments to the enforcement of the order for the applicant's expulsion. He did not have the required travel document that would enable him to enter Lebanon. In spite of three requests, the Lebanese embassy had failed to issue such a document. The case thus fell within the ambit of section 44(8) of the Aliens Act 1998 (see paragraph 44 below).

## II. RELEVANT DOMESTIC LAW

### A. Asylum and humanitarian protection

27. Article 27 of the Constitution of 1991 provides as follows:

“1. Aliens who reside in the country lawfully cannot be removed from it or delivered to another State against their will except under the conditions and in the manner provided for by law.

2. The Republic of Bulgaria shall grant asylum to aliens persecuted on account of their opinions or activities in support of internationally recognized rights and freedoms.

3. The conditions and procedure for granting asylum shall be established by law.”

28. Bulgaria acceded to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees on 12 May 1993, and they came into force in respect of it on 10 August 1993.

29. Section 9(1)(3) of the Asylum and Refugees Act of 2002 provides that individuals forced to leave or stay out of their country of origin because they faced a real risk of suffering death or ill-treatment as a result of an internal or an international conflict are to be granted humanitarian protection. Section 9(2) makes it clear that the risk may stem from the authorities or from organisations against which the authorities are unable or unwilling to act. Section 9(5) provides that aliens cannot be granted humanitarian protection if in part of their country of origin there is no real risk of serious encroachments and there they can freely and lastingly enjoy effective protection. Under section 75(2), when the authorities determine an asylum application they have to take into account all relevant facts concerning the applicant's personal situation, country of origin, or relations with other countries. The section also provides that when an applicant's statement is not supported by evidence, it must be presumed to be true if the

applicant has endeavoured to substantiate his or her application and has provided a good explanation for the lack of evidence. Section 58(7) requires the authorities processing asylum applications to obtain written comments by the State Agency for National Security.

30. Section 4(3) provides that individuals who have been granted protection under the Act or have entered Bulgaria to seek such protection cannot be returned to the territory of a country where their life or freedom are at risk on account of their race, religion, nationality, membership of a social group, their political opinions or views, or where they may face a risk of torture or other forms of cruel, inhuman or degrading treatment or punishment. However, section 4(4), which reflects a rule laid down in Article 33 § 2 of the 1951 Convention, provides that that benefit may not be claimed by aliens where there are grounds to regard them as a danger to national security. There is no reported case-law under that provision.

31. Section 67(1) provides that expulsion orders are not enforced until the asylum proceedings have been concluded. By section 67(2), expulsion orders are revoked if the person concerned has been granted asylum or humanitarian protection. However, those two provisions are not applicable to, *inter alia*, aliens whose presence in the country may be regarded as dangerous for its national security (section 67(3)).

## **B. Expulsion of aliens on national security grounds**

32. A detailed description of the evolution of the law governing expulsion on national security grounds until 2009 can be found in paragraphs 18-26 of the Court's judgment in the case of *C.G. and Others v. Bulgaria* (no. 1365/07, 24 April 2008) and paragraphs 30-36 of the Court's judgment in the case of *Raza v. Bulgaria* (no. 31465/08, 11 February 2010). The relevant provisions are contained in the Aliens Act 1998, as amended, and the regulations for its application.

33. Section 42(1) of the Act provides that an alien must be expelled when his or her presence in the country creates a serious threat to national security or public order. However, expulsion orders issued on national security grounds do not indicate the factual grounds for imposing the measure (section 46(3)). Under section 42(2), expulsion must be accompanied by withdrawal of the alien's residence permit and the imposition of a ban on entering the country.

34. Expulsion orders issued on national security or public order grounds are immediately enforceable (section 44(4)(3)). However, if expulsion cannot be effected immediately or needs to be postponed for legal or technical reasons, the enforcement of the expulsion order may be suspended until the relevant obstacles have been overcome (section 44b(1)).

35. Expulsion orders may be challenged before the Supreme Administrative Court, whose judgment is final (section 46(2)). The lodging

of an application for judicial review does not suspend the enforcement of the order under challenge (section 46(4)).

36. Article 166 § 2 of the Code of Administrative Procedure of 2006 provides that a court examining an application for judicial review may suspend the enforcement of the administrative decision under review, even if the administrative authority has directed that it should be immediately enforceable, if enforcement might cause the applicant harm that is considerable or hard to redress. Suspension requests are heard in open court and determined by means of a ruling that is amenable to appeal (Article 166 § 3). In a decision of 27 January 2009, the Supreme Administrative Court held that the enforcement of expulsion orders issued on national security grounds could not be suspended. If immediate enforcement was required by statute, it could be suspended by the court only if the same statute specifically allowed that, whereas section 46(4) of the Aliens Act 1998 expressly precluded that possibility (опр. № 1147 от 27 януари 2009 г. по адм. д. № 393/2009 г., ВАС, петчленен състав).

37. In an interpretative decision of 8 September 2009 (тълк. реш. № 5 от 8 септември 2009 г. по тълк. д. № 1/2009 г., ВАС, ОСК), the Plenary Meeting of the Supreme Administrative Court stated that Article 166 § 2 applied even where the immediate enforceability of administrative decisions was required by statute, provided that the law did not expressly preclude judicial review. The effect of that ruling on the possibility of suspending the enforcement of expulsion orders issued on national security grounds is unclear.

38. Section 44a of the Aliens Act 1998, added in 2001, provides that an alien whose expulsion has been ordered on national security or public order grounds cannot be expelled to a country where his or her life or freedom would be in danger, or where he or she may face a risk of persecution, torture, or inhuman or degrading treatment. In its early case-law under that provision, the Supreme Administrative Court accepted that the State Refugees Agency could apply it when dealing with asylum requests (реш. № 5848 от 17 юни 2002 г. по адм. д. № 7864/2001 г., ВАС, III о.; реш. № 6048 от 24 юни 2002 г. по адм. д. № 1298/2002 г., ВАС, III о.; реш. № 7102 от 16 юли 2002 г. по адм. д. № 994/2002 г., ВАС, III о.; реш. № 9203 от 16 октомври 2002 г. по адм. д. № 4948/2002 г., ВАС, III о.; реш. № 10069 от 12 ноември 2002 г. по адм. д. № 996/2002 г., ВАС, III о.). However, in a judgment given in 2003 (реш. № 1400 от 18 февруари 2003 г. по адм. д. № 8154/2002 г., ВАС, III о.), the court held that the Agency had no power to rule on the application of section 44a and that this matter fell within the remit of the immigration authorities. In a 2007 judgment concerning an application for judicial review of a deportation order, the court examined, albeit briefly, the substance of a claim under that provision (реш. № 9636 от 15 октомври 2007 г. по адм. д. № 2222/2007 г., ВАС, III о.). However, in three 2008 judgments it held

that the prohibition spelled out in section 44a does not concern the lawfulness of an expulsion order as such, but merely bars its enforcement. While in two of those cases the court went on to examine, albeit briefly, the substance of the claim that the person concerned was at risk (реш. № 6787 от 5 юни 2008 г. по адм. д. № 11461/2007 г., ВАС, III о.; реш. № 6788 от 5 юни 2008 г. по адм. д. № 11456/2007 г., ВАС, III о.), in the third it refused to do so, saying that solely the authorities in charge of executing an expulsion order have the power to apply section 44a (реш. № 7054 от 12 юни 2008 г. адм. д. № 10332/2007 г., ВАС, III о.). There are no reported cases concerning the application of section 44a by the immigration authorities.

39. If a deportee does not have a document allowing him or her to travel, the immigration authorities must provide one by contacting the embassy or the consulate of the State whose national he or she is. If that is not possible, such a document should be provided through the consular department of the Ministry of Foreign Affairs (regulation 52(1) of the regulations for the application of the Aliens Act 1998, issued in 2000, and superseded on 5 July 2011 by regulation 74(1) of the new regulations for the application of the Act).

40. Under regulation 71 of the new regulations for the application of the Aliens Act 1998 (superseding regulation 48 of the old regulations), in cases where expulsion orders are enforced through removal by air, the person concerned is to be escorted by immigration officers to his or her country of citizenship or another country of his or her choice to which he or she may be admitted.

### **C. Detention pending deportation**

41. A detailed history of the provisions of the Aliens Act 1998 governing detention of deportees may be found in paragraphs 37-42 of *Raza* (cited above). The current regime is as follows.

42. Section 44(5) provides that if there are impediments to a deportee's leaving Bulgaria or entering the destination country, he or she is placed under an obligation to report daily to his or her local police station.

43. Under section 44(6), it is possible to detain a deportee in a special detention facility if his or her identity is unknown, if he or she hampers the enforcement of the expulsion order, or if he or she presents a risk of absconding. Under section 44(10), deportees are placed in the detention facilities pursuant to special orders that have to specify the need for such placement and its legal grounds and be accompanied by copies of the orders under section 44(6).

44. Under section 44(8), which was enacted with a view to transposing Article 15 §§ 5 and 6 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and

procedures in Member States for returning illegally staying third-country nationals (see paragraphs 46-48 below), 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.

45. Section 46a provides for judicial review of the orders for the detention of deportees by the competent administrative courts. The application must be lodged within three days of their being issued, and does not stay their enforcement (subsection 1). The court must examine the application at a public hearing and rule, by means of a final judgment, not later than one month after the proceedings were instituted (subsection 2). In addition, every six months the head of any facility where deportees are being held must present to the court a list of all individuals who have been there for more than six months due to problems with their removal from the country (subsection 3). The court must then rule, on its own motion and by means of a final decision, on their continued detention or release (subsection 4). When the court sets aside the detention order, or orders a deportee's release, he or she must be set free immediately (subsection 5).

### III. RELEVANT EUROPEAN UNION LAW

46. 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 came into force on 13 January 2009 (Article 22). Under Article 20, the Member States of the European Union were required to transpose the bulk of its provisions in their national laws by 24 December 2009.

47. Recital 16 of the Directive reads as follows:

“The use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient.”

48. Article 15 of the Directive, which governs detention for the purpose of removal, provides, in so far as relevant:

“1. Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:

- (a) there is a risk of absconding or

(b) the third-country national concerned avoids or hampers the preparation of return or the removal process.

Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.

...

4. When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be justified and the person concerned shall be released immediately.

5. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. Each Member State shall set a limited period of detention, which may not exceed six months.

6. Member States may not extend the period referred to in paragraph 5 except for a limited period not exceeding a further twelve months in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to:

(a) a lack of cooperation by the third-country national concerned, or

(b) delays in obtaining the necessary documentation from third countries.”

49. On 10 August 2009 the Sofia City Administrative Court made a reference for a preliminary ruling by the European Court of Justice (“ECJ”), enquiring about the construction to be put on various paragraphs of that Article.

50. In his opinion, Advocate General Mazák expressed the view, *inter alia*, that it was important to note that the periods laid down in Article 15 §§ 5 and 6 of the Directive defined only the absolute and outside limits of the duration of detention, that it was clear from their wording that any detention prior to removal must be for as short a period as possible and may be maintained only as long as removal arrangements are in progress and executed with due diligence, and that detention must be brought to an end when the conditions for detention no longer exist or when there is no longer any reasonable prospect of removal. He went on to say that those maximum periods of detention were part of a body of rules intended to ensure that detention is proportionate, in other words that its duration is for as short a period as possible and, in any event, not for longer than the six months or the eighteen months provided for.

51. In its judgment of 30 November 2009 (*Said Shamilovich Kadzoev v. Direktsia ‘Migratsia’ pri Ministerstvo na vatreshnite raboti*, case C-357/09), the ECJ noted, *inter alia*, that the objective of Article 15 §§ 5 and 6 was to guarantee in any event that detention for the purpose of removal does not exceed eighteen months. It went on to rule that those

provisions must be interpreted as meaning that the period during which enforcement of the deportation order has been suspended because the person concerned has challenged it by way of judicial review is to be taken into account in calculating the period of detention for the purpose of removal, where the person concerned remains in detention during that procedure. The court further ruled that Article 15 § 4 must be interpreted as meaning that only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15 §§ 5 and 6, corresponds to a reasonable prospect of removal, and that such a reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods.

#### IV. RELEVANT COUNTRY INFORMATION

##### A. Background

52. There are twelve “official” Palestinian refugee camps in Lebanon: two in the north of the country, near Tripoli, five in the centre (four near Beirut and one near Baalbek), and five in the south (two near Saida and three near Tyre). In addition, there are dozens of informal gatherings, sometimes referred to as “unofficial camps”, spread throughout the country. The majority of Palestinian refugees in Lebanon are those displaced during the Arab-Israeli war of 1948 and their descendants. More Palestinians arrived in 1967 after the Six-Day War, and in the 1970s after they were expelled from Jordan. The refugees fall into three categories: those registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“the UNRWA”) (“registered refugees”), who are also registered with the Lebanese authorities; refugees registered with the Lebanese authorities but not with the UNRWA (“non-registered refugees”); and refugees registered neither with the UNRWA nor with the Lebanese authorities (“non-ID refugees”). According to the UNRWA, on 30 June 2010 there were 427,057 registered refugees in Lebanon; 226,767, or 53.1% of them, were living in the “official” camps. However, according to a report by the International Crisis Group (see paragraphs 76 and 77 below), many observers believe that the numbers cited by the UNRWA are inflated and fail to take account of the impact of the 1975-90 Lebanese Civil War and subsequent waves of Palestinian departures; according to their estimates, in 2009 the refugees were between 200,000 and 250,000. There are an estimated 10,000 to 35,000 non-registered refugees and 3,000 to 5,000 non-ID refugees. By law, Palestinian refugees in Lebanon are considered foreigners and are subject to various restrictions (for details, see Amnesty International: *Exiled and suffering: Palestinian refugees in Lebanon*, October 2007).



53. Ain al-Hilweh (other transliterations from Arabic include Ain al-Helweh, Ein el-Hilweh, Ein al-Helweh, and Ayn Hilwa) is one of the two “official” camps located near Saida (Sidon). It was established at the outskirts of the town in 1948 to accommodate refugees from northern Palestine. After displacements resulting from the Lebanese Civil War, it became the biggest refugee camp there, in terms of both population and area. According to the UNRWA, it contains more than 47,500 registered refugees; according to the above-mentioned International Crisis Group report (see paragraphs 76 and 77 below), the number is closer to 70,000. It covers an area of about two square kilometres, and is one of the most densely populated camps. Like the other Palestinian refugee camps in Lebanon, it is not controlled by the Lebanese authorities, but by local Palestinian factions. The Lebanese Army has checkpoints at the entrances to the camp.

54. In an article published on 7 January 2010 following a visit by a correspondent to Ain al-Hilweh, the Hong Kong-based newspaper Asia Times Online described the camp as divided into two sections, Upper and Lower streets, which led to a network of arterial alleyways. Lower Street was regarded as the bastion of the radical Islamists in the camp. According to a local figure quoted in the article, there were three broad coalitions inside the camp: the Tahalof (Cooperative), the Palestinian Liberation Organization, and Islamic factions. The Tahalof consisted of seven factions, including the Islamic Resistance Movement (Hamas) and Palestinian Islamic Jihad. The Palestinian Liberation Organization faction was made up of five groups and was dominated by Fatah. The Islamic faction comprised three groups: Asbat al-Ansar, Harakat Mujahideen Islamiyah, and Ansar Allah. The article went on to mention inter-Fatah conflicts inside the camp, saying that they centred on veteran Fatah leader Mounir Maqdah and his rival Mahmoud Abdul-Hameed Al-Issa. Maqdah was described as being regarded as a renegade by some Fatah leaders, partly because of his close links to Palestinian Islamists. However, a minority faction in Fatah viewed his links to Islamists as a vital asset.

## **B. United Kingdom Government Reports**

55. The United Kingdom Home Office Country of Origin Information Report on Lebanon, issued in July 2006, says the following about Ain al-Hilweh:

“6.142 ... ‘There are many displaced Palestine refugee families in this camp who were forced to flee from Tripoli and other areas of the country during the hostilities in the eighties. Ein el-Hilweh has endured much violence, particularly between 1982-1991, which resulted in a high number of casualties and near total destruction of the camp.

Shelters are small and very close to each other. Some still have zinc sheet roofing. UNRWA constructed a multi-storey housing complex in 1993-1994 to accommodate 118 displaced families mainly from Nabatieh camp, which was destroyed during the [sic] 1973 by Israeli military action. A number of displaced refugees continue to live on the edge of the camp in extremely poor conditions.’ ...

...

6.145 A 2003 paper by Are Knudsen, ‘Islamism in the Diaspora: Palestinian refugees in Lebanon’, states that ‘Ayn Hilwa, the most conflict-ridden camp in the country is surrounded by barbed wire and legal entry is only possible through a few checkpoints guarded by the Lebanese army, with secondary checkpoints manned by armed guards representing the popular committees.’

6.146 According to Knudsen’s 2003 paper, Ein el-Hilweh’s political actors can be divided into three groups: loyalist, Islamist and oppositional. Knudsen detailed the different groups as follows:

‘The ‘loyalists’ are secular groups formed around PLO’s largest faction Fateh and share its secular ideology and political programme. The ‘Islamists’ are a heterogeneous mix of Palestinian and Lebanese Islamists with divergent ideologies and political agendas. While some remain ideologically opposed to Fateh and its policies vis-à-vis Israel ( Hamas, Islamic Jihad), others seek to break Fateh’s political hegemony in Lebanese refugee camps, if necessary by violent means (Osbat al-Ansar). The ‘oppositional’ camp is likewise a heterogeneous coalition of secular parties, many of them breakaway factions from Fateh itself, which find a common ground in their difference with Fateh and the loyalists over their policy of appeasement vis-à-vis Israel. In the camps there is also a diverse range of committees and groups whose main function is not political but bureaucratic. Still, control of the popular committees and trade union groups does provide political gains and leadership of them is therefore coveted and sometimes turns violent.’

6.147 The same source also contained a table listing the various political actors in Ein el-Hilweh, which categorised them into the ‘loyalist’, ‘Islamist’ or ‘oppositional’ groups: [Loyalist, which includes Fatah; Islamist, which includes the Ansar Group; and Oppositional].

6.148 A June 2003 Middle East Intelligence Bulletin (MEIB) article recounted, in detail, the various groups and power struggles within Ein el-Hilweh over the last two decades. The article states that ‘Ain al-Hilweh, the largest Palestinian refugee camp in [then] Syrian-occupied Lebanon, has been linked to virtually every case of al-Qaeda activity in Lebanon, while renegade terrorists residing in the camp have been tied to the global terror network’s operations in Jordan, Turkey and elsewhere in the region.’ The article noted that, despite the status of Ein el-Hilweh as a ‘zone of unlaw’ serving Syrian interests, Damascus did not directly control most operatives within the camp and that the most radical groups were in fact anti-Syrian.

6.149 The article also reported that Ein el-Hilweh was the stronghold of the Fatah movement during the late 1980s, that the Abu Nidal Organisation [ANO] had been defeated by Fatah in a bloody three-day war for control of the camp in September 1990 and also recounted the rebellion of Col. Mounir Maqdah against Yasser Arafat’s command. With Iranian finances and Hezbollah logistical support, he began training his own militia and ‘By 1995, Maqdah’s dissident faction [the Black September 13

Brigade], backed by pro-Syrian leftist groups, had established dominance over mainstream Fatah forces in the camp, in part because many of Arafat's most loyal commanders had been transferred to the West Bank and Gaza.' MEIB noted that ' Hamas and Islamic Jihad, which had only a limited presence in the camp until the mid-1990s, coordinated closely with Maqdash and were allowed to distribute Iranian funds to expand their bases of support.'

6.150 Esbat al-Ansar, the League of Partisans, has also had a presence in Ein el-Hilweh for over two decades and, 'In the [sic] late 1998, Esbat al-Ansar began receiving significant funding from al-Qaeda, thoroughly transforming both its infrastructure and its goals. The group's military wing, which now paid recruits monthly salaries for the first time, grew to a force of 150-300 fighters, dozens of whom were sent to bin Laden's training camps in Afghanistan.' Due to its increased financial resources, the group was able to buy weapons and also move more freely, as members could now pay the bribes needed to pass through Lebanese security checkpoints. The latter benefit meant that 'It quickly established close links with radical Islamists in the northern port of Tripoli and the nearby Badawi and Nahr el-Bared refugee camps.'

6.151 Syrian concerns over the rise of Islamist groups in the camp resulted in the Syrian authorities allowing Fatah to reassert its authority in the Ein el-Hilweh, which included Mounir Maqdash who had rejoined Fatah in late 1998, primarily by pouring Palestinian Authority (PA) funds into the camp. However, with the *in absentia* conviction of Fatah's leader in Lebanon, Sultan Abu al-Aynayn [based in Rashidieh camp], of forming an armed gang and the subsequent arrest of three senior Fatah officials, Syrian support of Fatah's authority in Ein el-Hilweh was again curtailed, seemingly in favour of Esbat al-Ansar.

6.152 MEIB also recounted the presence of other groups in Ein el-Hilweh, such as Jamal Suleiman's Fatah's Martyrs' Battalion; the Popular Front for the Liberation of Palestine (PFLP); the 10 to 20 fighters who constituted the remnants of the Dinniyeh Group – initially a 200-300 strong group of Islamic militants who, in January 2000, had failed in an attempt to establish an Islamic 'mini-state' in north Lebanon – who fled to Ein el-Hilweh following the defeat of the group by 13,000 Lebanese troops; and the Esbat al-Ansar breakaway group – Esbat al-Nour – which was led by the eldest son of the original group's founder: '[Abdullah] Shreidi attracted only a few dozen of the [Esbat al-Ansar] movement's fighters, as well as the Dinniyeh militants for whom he had provided shelter.' The article states that 'Another small, but important al-Qaeda affiliate is Al-Haraka al-Islamiya al-Mujahida (The Islamic Struggle Movement), led by Sheikh Jamal Khattab, the imam of Al-Nour Mosque in the Safsaf neighbourhood of Ain el-Hilweh.'

6.153 MEIB detailed the fluctuating nature of power within the camp, reporting on the various outside influences of the Syrian and Iranian regimes, Hezbollah and Al-Qaeda, and also the political and physical conflicts between the groups inside Ein el-Hilweh."

56. The United Kingdom Border and Immigration Agency periodically issues Operational Guidance Notes ("OGNs") which evaluate the general, political and human rights situation in a given country and provide guidance on the nature and handling of the most common types of asylum or subsidiary protection claims by persons fleeing that country.

57. The latest OGN on Lebanon was issued on 10 June 2009. It noted that Palestinian refugees were not able to obtain Lebanese citizenship and were not nationals of any other country. Thousands of Palestinians did not have any form of identification and were not receiving assistance from UNRWA. Some 20,000 Palestinians were believed to have been naturalised as Lebanese. However, it appeared that the status of some of the naturalised Palestinians was not secure as there were reports that their Lebanese nationality could be annulled.

58. The OGN referred to two immigration tribunal rulings (*KK IH HE (Palestinians – Lebanon – camps) Palestine CG* [2004] UKIAT 00293, and *MM and FH (Stateless Palestinians, KK, IH, HE reaffirmed) Lebanon CG* [2008] UKAIT 00014 (4 March 2008)), which found that the general treatment of Palestinians by the Lebanese authorities and the conditions in the Palestinian refugee camps in Lebanon were not such as to reach the threshold of severity that triggers the application of Article 3 of the Convention. On that basis, the OGN concluded that while the situation for Palestinians in Lebanon was poor with some differential treatment due to statelessness, conditions in the camps did not reach the threshold to establish either persecution or a breach of human rights.

59. With regard to claims based on fear of the Lebanese authorities due to membership of a Palestinian group, the OGN noted that the Palestinian political scene in Lebanon consisted of three broad categories. The first was members of the Palestinian Liberation Organisation, including Fatah, the Popular Front for the Liberation of Palestine, the Democratic Front for the Liberation of Palestine and several other less significant factions. The second category consisted of the Alliance of Palestinian Forces, known as Tahaluf, founded in 1993 in opposition to the Oslo peace accords. Its members did not recognise Israel and advocated armed struggle. It had regrouped into eight factions which enjoyed close relations with Syria: Hamas, Islamic Jihad, the Popular Front for the Liberation of Palestine-General Command (PFLP-GC), Fatah al-Intifada, al-Saiqa, the Palestinian Popular Struggle Front, the Palestinian Liberation Front, and the Palestinian Revolutionary Communist Party. The third category comprised Jihadi-leaning Islamist forces, an eclectic assortment of movements that espoused the use of violence rather than a coherent or organised group. It included Usbat al-Ansar, Hizb al-Haraka al-Islamiyya al-Muhahida, and Ansar Allah, which engaged with the Lebanese State and Army. More extreme movements rejected any dealing with Lebanese institutions or Fatah and included Jund al-Sham, Usbat al-Nour, and other less significant groups.

60. According to the OGN, Fatah generally boasted a strong, often dominant, presence in the camps in south Lebanon, including Ain al-Hilweh. However, the camp was “a microcosm of the Palestinian political universe”, with all PLO, Tahaluf and Jihadi factions being represented and

perpetually competing for influence and power, which resulted in frequent clashes. Palestinian militant groups continued to capitalise on the lack of government control within the camps. Some of those groups, such as Usbat al-Ansar and Jund al-Sham, had been able to find safe haven within the camps, most notably in Ain al-Hilweh. In March 2008 heavy clashes had erupted in the camp between Jund al-Sham militants and fighters of Fatah. They had exchanged rocket fire for four hours until a ceasefire had been agreed following mediation by another Islamist group. A Fatah leader had said at least four people had been wounded in the clashes. The Jund al-Sham fighters would leave the camp and Fatah security agents would take control. The Lebanese army had blocked the entrance to the camp while allowing civilians to leave. A Palestinian official had said that the militants of Jund al-Sham had been angered by Fatah's seizure of a commander of the group and his handover to the Lebanese army. The captive had been suspected of links to militant groups outside Lebanon. On 15 September 2008 a Jund al-Sham member had been killed in further clashes between the group and Fatah. Reports had said the Lebanese army had taken up positions at the entrance of the camp just metres away from the fighting.

61. On the basis of that information, the OGN concluded the following:

“In assessing any risk from the Lebanese authorities to those who claim to have been a member of an armed Palestinian group, the type of group and level of involvement will need to be considered. Consideration should also be given to the reasons for leaving a refugee camp and how the claimant was able to avoid the authorities when leaving Lebanon. In general, the Lebanese authorities do not enter Palestinian camps.

Palestinian groups operate autonomously in refugee camps and in the majority of cases would be able to offer the protection needed from within these camps. Claimants who have not been directly involved in criminal or militant acts and who support more moderate groups, such as Fatah, are unlikely to have come to the attention of or be of interest to the Lebanese authorities. A grant of asylum or Humanitarian Protection would not usually be appropriate in such cases. However, if it is accepted that the claimant has been involved in armed groups of particular interest to the Lebanese authorities, such as the Abu Nidal Organisation, Asbat Al-Ansar/Al Nur and Jund al-Sham, or can otherwise demonstrate adverse interest and inability to access protection, it may be appropriate to grant asylum.

Case owners should note that members of armed Palestinian groups have been responsible for numerous serious human rights abuses. If it is accepted that a claimant was an active operational member or combatant of an armed Palestinian group and the evidence suggests he/she has been involved in such actions, then case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker in the first instance.”

62. With regard to claims based on fear of Islamic Palestinian Groups in the Ain al-Hilweh, such as Usbat al-Ansar, Jund al-Sham, or the Fatah Revolutionary Council (also known as Abu Nidal Organisation), the OGN observed that although Fatah's control was weak, claimants could seek their

protection. It went on to note that the refugee camps were outside the government's control, which meant that in those areas the Lebanese authorities would not be able to offer sufficiency of protection from extremist Palestinian groups. However, the authorities would be able to offer protection outside the camps. A further option was internal relocation. Since the threat was localised in specific camps, relocation to another camp or elsewhere in Lebanon was feasible and not unduly harsh. In that respect, the OGN referred to two immigration tribunal rulings: *BS (Palestinian – Lebanon – relocation) Lebanon* [2005] UKIAT 00004, and *MA (Lebanon/Palestine, fear of Fatah, relocation) Palestine* [2004] UKIAT 00112, and reached the following conclusion:

“Within the [A]in [a]l-Hilweh camp there have been in the past, and continue to be, various factions of extremist Palestinian groups struggling for power leading to occasional outbreaks of violence. In individual cases consideration needs to be given as to why the claimant would be of interest to the extremist Palestinian groups and the level of that interest. The Tribunal have found that it is not unduly harsh to relocate between camps in Lebanon. Many of the most extreme groups have limited support in Lebanon, especially outside the refugee camps. It is therefore considered that a claimant could find safety in another camp or elsewhere in Lebanon where the specific extremist Palestinian group he fears does not have a significant presence. Protection may also be available to the claimant from other Palestinian groups, particularly Fatah. Therefore a grant of asylum or Humanitarian Protection would not usually be appropriate for claims on this basis.”

63. With regard to claims based on fear of Palestinian groups on account of collaboration with their enemies, the OGN observed that, since the Government of Lebanon did not exercise control over the Palestinian refugee camps, armed groups could operate relatively freely there. Therefore, sufficiency of protection would not generally be available from the Lebanese authorities inside the camps. For those who feared persecution at the hands of a rival group, protection inside the refugee camp could be available from another group. There was no evidence to show that the Lebanese authorities would be unwilling or unable to offer protection outside the refugee camps to those fearing Palestinian groups. Another option was internal relocation. The law provided for freedom of movement, and the Lebanese authorities generally respected that right, with some limitations. They maintained security checkpoints, primarily in military and other restricted areas. There were few police checkpoints on main roads or in populated areas. The security services used those checkpoints to conduct warrantless searches for smuggled goods, weapons, narcotics, and subversive literature. Few Palestinian groups had influence outside the refugee camps and relocation to another camp or elsewhere in Lebanon was not likely to be unduly harsh. In that respect, the OGN referred to the above-mentioned ruling in *BS (Palestinian – Lebanon – relocation) Lebanon* [2005] UKIAT 00004, and to the ruling in *WD (Lebanon –*

*Palestinian – ANO – risk) Lebanon CG [2008] UKAIT 00047, and concluded as follows:*

“Consideration needs to be given to the level of involvement as a collaborator, who the claimant worked for, what information the claimant was in a position to give and their position in that group. In the majority of cases within the refugee camps the Lebanese authorities would not be able to provide sufficiency of protection. However, few Palestinian groups have influence outside the refugee camps and the Lebanese authorities would be in a position to offer sufficiency of protection in the remainder of the country. However if the claimant is a known Israeli collaborator the Lebanese authorities might not offer protection. Internal relocation to another camp away from a particular Palestinian group feared would not be unduly harsh. Therefore in the majority of cases a grant of asylum or [h]umanitarian [p]rotection would not usually be appropriate.”

### C. United States’ Government Reports

#### 1. *Department of State Country Report on Human Rights Practices, Lebanon, 2010*

64. This report, issued on 8 April 2011, noted, *inter alia*, the following:

“The law does not specifically prohibit torture or cruel, inhuman, or degrading treatment or punishment, and there were reports government officials employed such practices. According to human rights groups – including Amnesty International (AI), the Lebanese Association for Education and Training (ALEF), and HRW – torture was common, and security forces abused detainees. Human rights organizations reported torture occurred in certain police stations, the Ministry of Defense (MOD), and the ISF’s intelligence branch and Drug Repression Bureau detention facilities in Beirut and Zahle. ...

Former prisoners, detainees, and reputable local human rights groups reported the methods of torture and abuse applied included hanging by the wrists tied behind the back, violent beatings, blows to the soles of the feet, electric shocks, sexual abuse, immersion in cold water, extended periods of sleep deprivation, being forced to stand for extended periods, threats of violence against relatives, deprivation of clothing, withholding of food, being deprived of toilet facilities, and continuous blindfolding.

...

The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights for citizens but placed limitations on the rights of Palestinian refugees. The government cooperated with the UN Relief and Works Agency for Palestinian Refugees (UNRWA), the UNHCR, and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, and other persons of concern.

The government maintained security checkpoints, primarily in military and other restricted areas. On main roads and in populated areas, security services used a few police checkpoints to conduct warrantless searches for smuggled goods, weapons,

narcotics, and subversive literature. Government forces were unable to enforce the law in the predominantly Hizballah-controlled Beirut southern suburbs and did not typically enter Palestinian refugee camps.

According to UNRWA, Palestinian refugees registered with the MOI's Directorate of Political and Refugee Affairs (DPRA) may travel from one area of the country to another. However, the DPRA must approve transfer of registration for refugees who reside in camps. UNRWA stated the DPRA generally approved such transfers. ...

...

The amount of land allocated to official refugee camps in the country has only marginally changed since 1948, despite a four-fold increase in the registered refugee population. Consequently, most Palestinian refugees lived in overpopulated camps subject to repeated heavy damage during multiple conflicts. Poverty, drug addiction, prostitution, and crime reportedly prevailed in the camps, although reliable statistics were not available. In accordance with a 1969 agreement with the PLO, PLO security committees, not the government, provide security for refugees in the camps.”

## 2. *Department of State Country Reports on Terrorism 2009*

65. These reports, issued on 5 August 2010, contained the following observations in respect of Lebanon:

“While the threat of terrorist activity kept Lebanese security agencies on high alert throughout the year, 2009 was characterized by increased governmental efforts to disrupt suspected terrorist cells before they could act. The Lebanese Armed Forces (LAF), in particular, were credited with capturing wanted terrorist fugitives and containing sectarian violence.

Several designated terrorist organizations remained active in Lebanon. HAMAS, The Popular Front for the Liberation of Palestine (PFLP), the Popular Front for the Liberation of Palestine-General Command (PFLP-GC), Fatah al-Islam (FAI), al-Qa'ida (AQ), Jund al-Sham, the Ziyad al-Jarrah Battalions, and several other splinter groups all operated within Lebanon's borders. Hizballah, which is a legal entity and a major political party, is represented in Lebanon's cabinet and parliament.

In 2009, terrorist violence and counterterrorist activity included the following incidents:

...

– In July, the Lebanese Army arrested Syrian citizen Mounjed al-Fahham at Beirut International Airport. Investigations revealed that al-Fahham intended to smuggle out of Lebanon FAI spiritual leader Oussama Chehabi, known as Abou Zahra; FAI leader Abdel Rahman Awad; and Abdel Ghani Jawhar, wanted for 2008 attacks against LAF soldiers in Tripoli.

– On August 19, an LAF intelligence unit arrested Lebanese citizen Wissam Tahbish, reported to be a key member of Jund al-Sham. Tahbish was the primary suspect in the 1999 assassination of four Lebanese judges in Sidon.



...

LAF commanders stressed that it has strengthened its surveillance capabilities over the 12 Palestinian camps and four Syrian-backed Palestinian military bases within its borders. Nevertheless, a porous border with Syria, weak internal camp security, and LAF reluctance to enter the Palestinian refugee camps all contributed to fears of another confrontation with an armed group, similar to the 2007 Nahr al-Barid conflict. The most widely predicted venue for such a clash is in Lebanon's most populous refugee camp, Ain al-Hilweh, near the southern city of Sidon. The camp is well known for HAMAS-Fatah violence and as a suspected safe haven for fugitive FAI terrorists."

#### D. United Nations Reports

66. In his tenth semi-annual report on the implementation of Security Council resolution 1559 (2004), issued on 21 October 2009 (S/2009/542), the Secretary-General of the United Nations said, *inter alia*, the following:

"33. While the situation in most of the 12 Palestinian refugee camps remains relatively stable, the threat of internal violence that could potentially spill over into surrounding areas exists in a number of camps. Indeed, some of the refugee camps, in particular Ain el-Hilweh, continue to provide safe haven for those who seek to escape the authority of the State. In Ain el-Hilweh camp, several incidents were registered during the reporting period. On 16 June, two unidentified masked men opened fire at a Fatah officer, Ahmad Abul Kol. He was shot dead, while another individual was injured. The incident was followed by continuous shooting in different areas inside the camp over several days. Other shooting incidents were reported over the last months.

34. Notwithstanding these incidents, closer cooperation between Palestinian camp authorities and Lebanese authorities improved camp security during the reporting period. More needs to be done to contain potential tension in the camps.

35. The conditions of hardship inside Palestinian refugee camps are strengthening radical groups and therefore living conditions of Palestinian refugees in Lebanon should be improved, in the best interest of the wider security situation in the country. ... "

67. In his eleventh report on the implementation of Security Council resolution 1701 (2006), issued on 2 November 2009 (S/2009/566), the Secretary-General of the United Nations said, *inter alia*, the following:

"42. The security situation in the UNRWA-administered Palestinian refugee camps remained relatively calm, with only minor incidents during the reporting period. This positive development is largely due to increased cooperation and coordination between Palestinian camp authorities and Lebanese security agencies. I remain, however, concerned about reports of threats to the United Nations posed by militant extremist groups present in Lebanon. Some of those elements have sought shelter in Palestinian refugee camps, including Ain el-Hilweh camp at Saida, to which Lebanese security agencies do not have access."

68. In his twelfth report on the implementation of Security Council resolution 1701 (2006), issued on 26 February 2010 (S/2010/105), the Secretary-General of the United Nations said, *inter alia*, the following:

“38. On 15 February clashes between members of Fatah and members of radical Islamist movements broke out in the Palestinian refugee camp of Ain el-Hilweh, near Saida. One person was killed as a result of the fighting before calm was restored to the camp. This incident disrupted an otherwise generally calm situation in the camps. Lebanese authorities have continued to welcome cooperation arrangements with Palestinian authorities on security issues in the camps. ....”

69. In his eleventh semi-annual report on the implementation of Security Council resolution 1559 (2004), issued on 19 April 2010 (S/2010/193), the Secretary-General of the United Nations said, *inter alia*, the following:

“34. The situation inside the Palestinian refugee camps remains a source of concern, although it has been generally calm over the reporting period. On a few occasions, security incidents were reported, in particular on 15 February, when fighting between members of Fatah and a radical Islamist movement in Ain al-Hilweh resulted in one fatality. The refugee camps continue to provide a safe haven for those who seek to escape the State’s authority, such as militants, extremists, criminals and arms smugglers, in addition to Palestinian armed factions across all party lines. Internal violence could potentially spill over into surrounding areas. While security coordination and cooperation between the Lebanese security agencies and the Palestinian factions have improved, Lebanese authorities do not maintain a permanent presence inside the camps ... More needs to be done to contain potential tension in the camps. ....”

70. In his twelfth semi-annual report on the implementation of Security Council resolution 1559 (2004), issued on 18 October 2010 (S/2010/538), the Secretary-General of the United Nations said, *inter alia*, the following:

“28. While the situation in most of the 12 Palestinian refugee camps remains relatively stable, the threat that internal violence could spill over into surrounding areas still exists in a number of camps. Some of the camps continue to provide safe haven for those who seek to escape the authority of the State. During the reporting period, security sources registered several incidents in and around refugee camps involving the use of weapons.

29. Notwithstanding those incidents, closer cooperation between Palestinian camp authorities and Lebanese authorities has improved camp security. Meanwhile, Lebanese authorities do not maintain a permanent presence inside the camps ... More will need to be done to contain potential tension in the camps.

30. The situation of Palestinian refugees living in Lebanon remains, by and large, dire. For many years, the United Nations has urged the Government to improve the conditions in which Palestinian refugees live in Lebanon, without prejudice to the eventual resolution of the Palestinian refugee question in the context of a comprehensive peace agreement in the region, in particular given the detrimental effects of dismal living conditions on the wider security situation. ....”

71. In his Fourteenth report on the implementation of Security Council resolution 1701 (2006), issued on 1 November 2010 (S/2010/565), the Secretary-General of the United Nations said, *inter alia*, the following:

“39. The security situation inside the Palestinian refugee camps has been generally calm during the reporting period, with only a few incidents reported, thanks to increased cooperation on security issues between Palestinian factions and Lebanese security agencies. On 7 September, tensions rose in Ain el-Hilweh camp when a group believed to have sympathies for Al-Qaida publicly threatened to assassinate a local Fatah leader responsible for security cooperation with Lebanese authorities.”

72. In his fifteenth report on the implementation of Security Council resolution 1701 (2006), issued on 28 February 2011 (S/2011/91), the Secretary-General of the United Nations said, *inter alia*, the following:

“33. Lebanese authorities point to the good cooperation existing between the Lebanese Armed Forces and Palestinian security officials in the 12 official Palestinian refugee camps in the country. Only one major incident was reported in the Palestinian refugee camps in Lebanon during the reporting period. This involved the assassination in the Ain el-Hilweh camp on 25 December 2010 of Ghandi Sahmarani, a member of the disbanded Jund al-Sham group. Following his murder, a bomb was planted in a building that allegedly belongs to Fatah al-Islam in Ain el-Hilweh; the bomb caused only material damage. Lebanese authorities attributed the assassination to in-fighting between rival groups in Ain el-Hilweh camp.”

73. In his thirteenth semi-annual report on the implementation of Security Council resolution 1559 (2004), issued on 19 April 2011 (S/2011/258), the Secretary-General of the United Nations said, *inter alia*, the following:

“38. The situation in most of the 12 Palestinian refugee camps in Lebanon has remained relatively stable, although a few shooting incidents and explosions have been registered in some of the camps, in particular in Ain el-Hilweh, where, as recently as 31 March, clashes erupted between rival groups inside the camp. The threat of internal violence that could potentially spill over into surrounding areas still exists in a number of camps, as some of them continue to provide safe haven for those who seek to escape the authority of the State.

39. Notwithstanding those incidents, Lebanese authorities have acknowledged the existence of good cooperation between the Lebanese Armed Forces and Palestinian security officials in the camps. However, Lebanese authorities do not maintain a permanent presence inside the camps, despite the fact that the Cairo agreement of 1969 — which permitted the presence of Palestinian armed forces in the refugee camps — was annulled by the Lebanese Parliament in 1987. More will need to be done to contain potential tension in the camps.

40. The situation of Palestinian refugees living in Lebanon remains, by and large, dire. The United Nations continues to urge the Lebanese authorities to improve the conditions in which Palestinian refugees live in Lebanon, without prejudice to the eventual resolution of the Palestinian refugee question in the context of a comprehensive peace agreement in the region, in particular given the detrimental effects of dismal living conditions on the wider security situation.”

## E. Non-Governmental Organisations' Reports

### 1. *Amnesty International*

74. In its 2011 report on Lebanon, Amnesty International noted, *inter alia*, the following:

“Palestinian refugees continued to face discrimination, which impeded their access to work, health, education and adequate housing. At least 23 recognized Iraqi refugees were reported to have been deported while scores of other refugees and asylum-seekers were detained in what may amount to arbitrary detention. At least 19 people were convicted following unfair trials of collaboration with or spying for Israel; 12 of them were reported to have been sentenced to death. Reports continued of torture in detention. ...

...

More than 120 individuals suspected of involvement with the Fatah al-Islam armed group, detained without charge since 2007, continued to await trial before the Judicial Council. Most were allegedly tortured. ...

...

– The trial began of Maher Sukkar, a Palestinian refugee, and 10 others before a military court on security-related offences including ‘forming an armed gang to commit crimes against people and property’. No investigation was carried out into his allegation that he ‘confessed’ under torture in April while held incommunicado. ...

...

Reports continued of torture and other ill-treatment of detainees and few steps were taken to improve the situation. However, the authorities did permit a visit of the UN Subcommittee on Prevention of Torture to the country in May [the report from that visit, which took place between 24 May and 2 June 2010, is still confidential], and in November announced that they would criminalize all forms of torture and ill-treatment. Detainees continued to be held incommunicado, allegations of torture were not investigated and ‘confessions’ allegedly given under duress were accepted as evidence in trials. The government failed for a further year to submit its first report under the UN Convention against Torture, which Lebanon ratified in 2000. It also failed to establish an independent body empowered to inspect detention centres, as required by the Optional Protocol to the Convention against Torture to which Lebanon became party in 2008.

### 2. *Human Rights Watch*

75. In its 2011 report on Lebanon, Human Rights Watch said that a number of detainees, especially suspected spies for Israel and armed Jihadists, had told the organisation that their interrogators had tortured them in a number of detention facilities, including the Ministry of Defence and the Information Branch of the Internal Security Forces.

2. *International Crisis Group: Nurturing Instability: Lebanon's Palestinian Refugee Camps (19 February 2009)*

76. The International Crisis Group is a non-governmental organisation based in Brussels. Its stated aim is to “prevent and resolve deadly conflict”. It has field representations in, *inter alia*, Beirut, Damascus and Jerusalem.

77. In a comprehensive report on the Palestinian refugee camps in Lebanon (*Nurturing Instability: Lebanon's Palestinian Refugee Camps*, issued on 19 February 2009) it described in detail the main political actors in the camps, the situation in each of them, the evolution of Lebanese-Palestinian relations since 1948, the status of the refugees, the inter-factional conflicts in the camps, the conflicts within the Palestinian Liberation Organisation and Fatah, the failures in the management of the camps, and the spread of jihadism in them. The relevant parts of the report read as follows:

“A number of analysts argued that power struggles within Fatah and widespread corruption within the movement are a reason for growing chaos within the camps. They have undermined the credibility and effectiveness of important institutions, such as the Armed Struggle Organisation and contributed to security breakdowns. Perhaps most important, neither the PLO nor Fatah has been able to deal effectively with the challenge of jihadi groups that reject the organisation's nationalist project, strategy and alliances.

In Ain al-Helweh for example, a conflict between two Fatah leaders significantly weakened the movement. Crisis Group interviews, Palestinian officials and residents, Beirut and Palestinian camps, April-December 2008.

Some observers believe that violent acts in Ain al-Helweh attributed to jihadis were perpetrated by Fatah members opposed to [Abbas] Zaki [, a local Fatah leader]. ... This view was echoed by other Palestinian and Lebanese officials and sheikhs. ...”

78. In relation to jihadism in the camps, the report noted the following:

“By the late 1980s, several converging factors promoted the rise of a salafist jihadi current in the camps: the absence of any dominant political force on the Lebanese Palestinian scene; the camps' seclusion and isolation from the rest of the country; deteriorating living conditions; and the wider spread of Islamism throughout the Middle East. The collapse of the peace process in the late 1990s intensified the process. Taking advantage of young refugees' identity crisis, socioeconomic despair and leadership vacuum, groups such as Jund al-Sham, Usbat al-Ansar, Usbat al-Nour, al-Haraka al-Islamiyya al-Mujahida and, more recently, Fatah al-Islam, prospered. This was particularly true in the North, a traditional Sunni stronghold which lacks a powerful Lebanese leadership, and in Ain al-Helweh, which – unlike the other camps – is not under any single faction's control.

In Ain al-Helweh in particular, jihadi groups presented themselves as alternatives to a PLO leadership viewed by many as discredited and corrupt and which the Islamists accused of capitulating to Israel and the West by renouncing Palestinian rights, notably the right of return.

...

Largely beyond the state's reach, the camps have become *de facto* sanctuaries for weapons but also for Lebanese and Palestinian fugitives sought by Lebanese authorities, including very often for minor offences. Caught in the camps and with no realistic prospect on the outside, they form a sizeable pool of potential jihadi recruits. Militant groups offer protection, a social network and, in some cases, a cause in which to believe. A PLO official remarked: 'They are trapped in the camps and have no future outlook. They fear they will live the rest of their lives as fugitives and thus are easily manipulated'.

...

... the groups have a vested interest in maintaining the status quo in the camps, avoiding state interference and reaching tacit understandings with a variety of local actors. In Ain al-Helweh, Usbat al-Ansar is now seen by all Palestinian factions – including Fatah, its traditional foe – as a full-fledged participant in the camp's security structure. Likewise, the leader of al-Haraka al-Islamiyya al-Mujahida, Sheikh Jamal Khattab, helps mediate between major Palestinian factions and more militant groups in Ain al-Helweh.

Ain al-Helweh provides a good example of how local actors seek to avoid clashes with jihadi groups. For Hizbollah, a confrontation could deepen sectarian tensions, thereby further exposing it to the charge of being a narrow Shiite group. ... For its part, Fatah is wary of a confrontation with Usbat al-Ansar whose outcome would not be guaranteed. The Future Movement and in particular the Hariri family fear that a crisis with jihadi groups could jeopardise their hegemony over the Sunni community.

During a 2004 crisis, Usbat al-Ansar joined in efforts to force Jund al-Sham from one of the camp's northern neighbourhoods. ..."

### 3. *United States Committee for Refugees and Immigrants: World Refugee Survey 2009: Lebanon*

79. The United States Committee for Refugees and Immigrants is a non-governmental organisation founded in 1911 to serve refugees and immigrants and defend the rights of refugees, asylum seekers, and internally displaced persons worldwide. It publishes annual World Refugee Survey and Refugee Reports.

80. In its 2009 country profile on Lebanon, issued on 17 June 2009, it noted, *inter alia*, the following:

"Clashes between Fatah and the fundamentalist, reportedly al Qaeda-inspired group Jund al-Sham in [A]in [al-]Hilweh camp killed several Palestinians. Fighting killed three[:] a Jund al-Sham leader and two other Palestinians in July. Three died and three were wounded in a gun battle in mid-September, and about a week later an explosion killed one and wounded four."

## F. News Reports

81. In a news report of 21 March 2008 the BBC described Jund al-Sham ("Soldiers of Greater (or historic) Syria") as a radical splinter group formed

in 2002. The report said that the group had been blamed or had claimed responsibility for a number of bombings and gun battles in Lebanon and Syria. The previous years it had fought Lebanese troops after joining a revolt by fellow Islamic militant group Fatah al-Islam which was centred on the northern Palestinian refugee camp of Nahr al-Bared.

82. On 17 May 2007 the news service IRIN, a non-profit project of the United Nations Office for the Coordination of Humanitarian Affairs, reported that two Fatah members had been killed the previous week in clashes with Jund al-Sham in Ain al-Hilweh. It said that the group, whose active fighters were believed to number fewer than fifty out of an estimated membership of up to two hundred and fifty, had frequently been blamed by the Syrian authorities for a string of failed attacks in Syria over the previous two years. A revenge attack on 15 May 2007 by unidentified gunmen in the camp had wounded two Jund al-Sham members.

83. On 5 August 2007 IRIN reported that on 4 June 2007 fighters from Jund al-Sham, which it described as a loosely knit “takfiri” group – which Palestinians had said had no leader and had all but disbanded – had attacked a Lebanese Army checkpoint outside Ain al-Hilweh. The report said that the group was based in a small stretch of no-man’s-land known as Taamir, between the boundary of Ain al-Hilweh and one of the Lebanese Army checkpoints that overlooked the camp. Following the attack, Ansar Allah, another Palestinian Islamist group, had been tasked with heading an eighty-member security force to control two of the camp border checkpoints, including the one overlooking the Jund al-Sham stronghold. The other camp border checkpoints, as well as security inside the camp, had remained the task of Fatah. The report went on to say that Fatah militants had had regular deadly clashes with Jund al-Sham over the previous six months, and also faced a challenge from other armed and more radical Palestinian groups, such as the Popular Front for the Liberation of Palestine General Command or Usbat al-Ansar.

84. On 29 April 2008 IRIN reported that on 21 March 2008 heavy clashes had broken out between Fatah and members of Jund al-Sham. The fighting, which had prompted at least one hundred families to flee the camp, had been triggered after Fatah had seized a commander of Jund al-Sham who had fought the Lebanese Army the previous summer, and had handed him over to that Army. Fatah’s security chief in Lebanon, Mounir Maqdash, had told the agency that while the Jund al-Sham commander had been seized without enough coordination with other factions in Ain al-Hilweh, new security arrangements would ensure that no militants could exist beyond the reach of the inter-factional committees.

85. In a recent incident, on 2 January 2010 a Fatah member was wounded during a half-hour skirmish with members of Jund Al-Sham. However, from reports in the press it appears that after that the situation in

the camp calmed down and that on 4 August 2010 the two groups' leaders in Ain al-Hilweh made a truce.

86. On 25 December 2010 the television network Al-Jazeera reported that a senior Jund al-Sham commander, Ghandi Sahmarani, had been found murdered in Ain el-Hilweh. It said that the death of Sahmarani "could be a major blow for [Jund al-Sham], which has had several leaders and members either killed or fleeing its ranks in the past few years".

87. On 3 January 2011 the Lebanese news website *NOW Lebanon* reported on the latest developments with Jund al-Sham. The report said, *inter alia*, that colonel Issa, appointed by Palestinian President Mahmoud Abbas in May 2010 as the head of the Fatah security in the camps, had said that Fatah and other factions present in Ain al-Hilweh, mainly Usbat al-Ansar, had reached a peace agreement. After talks, Usbat al-Ansar leaders had given Issa a free mandate to annihilate the threat he said jihadists and radicals posed to the camp's security. Issa was quoted as saying that "[a]fter some battles with these factions, some died, many of them were captured and handed over to the Lebanese authorities, and those that were left fled. These groups took advantage of the instability in Lebanon and infiltrated the camp, and when we realized that they were among suspects in explosions taking place around stores, we started dealing with them with security means, we captured many of them, went to battle with some, and some, like I said, fled". He had also said that some of the jihadists had left for Europe, adding that "[t]hey were originally in the 'emergency' area [at the outskirts of the camp] and started fleeing bit by bit. Some left to France, some to Belgium, some to Sofia in Bulgaria". He had said that in mid-December 2010, five of the runaways had been sent back to Lebanon by the Bulgarian authorities. Among them had been Youssef Kayed, a rogue former Fatah member who had rebelled against the central command, Anwar al-Sidawi and Imad Karroum, both wanted by the Lebanese authorities. The report went on to say that according to another Fatah official in Ain al-Hilweh, what was left of the radical Islamists was no longer a threat without the head of the militant group. "The phenomenon of Jund al-Sham is over in the camps now and does not constitute a threat anymore," he had told *NOW*.

88. In an article of 26 April 2011, titled "Fatah and Jund al-Sham clash in Ain al-Hilweh", the Lebanese newspaper *The Daily Star* reported that during the previous weekend there had been armed clashes, with an exchange of missiles, between Fatah and members of Jund al-Sham. They had started after two unidentified individuals had refused to obey the commands of the security forces at a checkpoint. Jund al-Sham militants had joined the conflict after reportedly coming under fire from Fatah.



## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

89. The applicant alleged that if expelled to Lebanon, he would face a real risk of ill-treatment or death. He relied on Article 3 of the Convention, which provides as follows:

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

#### A. The parties' submissions

90. The Government submitted that the applicant's fears were groundless in view of the prohibition in section 44a of the Aliens Act 1998 on the expulsion of aliens to a country where their health or life would be in jeopardy. The order to expel him had been intended to protect the national security of Bulgaria. However, its enforcement was subject to the provisions of section 44a, which coincided with the principles underlying Articles 2, 3 and 5 of the Convention. The practice in such cases was for the competent authorities, which worked in close cooperation with the Ministry of Foreign Affairs and non-governmental organisations, to verify the issue upon expulsion of their own motion. The Ministry of Foreign Affairs kept an updated list of safe third countries that could receive individuals in the applicant's position. The authorities were thus complying with the absolute prohibition of Article 3 of the Convention, and, unlike the situation obtaining in *Saadi v. Italy* ([GC], no. 37201/06, ECHR 2008-...), were not seeking to balance national security considerations against the risk of ill-treatment faced by the applicant. The bar in section 44a applied to all aliens, including those subject to expulsion orders on national security grounds.

91. The applicant replied that the Government failed to say anything about the risk that he faced in Lebanon. As for their reliance on section 44a, there existed no mechanism to ensure its effective application. The only opportunity for him to invoke that provision to prevent his expulsion to Lebanon had been in the proceedings for judicial review of the expulsion order. However, the Supreme Administrative Court had held that the point was irrelevant. In any event, the only procedure in which the applicant could prove that he risked death or ill-treatment were asylum proceedings. When examining his asylum request, the State Refugees Agency had found that risk to be real, based as it was on the applicant's personal circumstances and the general situation in the Palestinian refugee camps in Lebanon. On that account it had granted him humanitarian protection. The risk could therefore

be regarded as established. However, he could not benefit from such protection, as he fell within the exclusion clauses of sections 4(4) and 67(3) of the Asylum and Refugees Act of 2002.

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

### *1. Admissibility*

92. Since the Government appear to contest that the applicant is at risk of being expelled to a country where he may face treatment contrary to Article 3, the Court must first examine his victim status. It notes, firstly, that the order for his expulsion, having been upheld by the Supreme Administrative Court, is final and enforceable (see, *mutatis mutandis*, *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 358, ECHR 2005-III; *Abdulazhon Isakov v. Russia*, no. 14049/08, § 100, 8 July 2010; *Karimov v. Russia*, no. 54219/08, § 90, 29 July 2010; and *Kolesnik v. Russia*, no. 26876/08, § 63, 17 June 2010, and contrast *Vijayanathan and Pusparajah v. France*, 27 August 1992, § 46, Series A no. 241-B; *Pellumbi v. France* (dec.), no. 65730/01, 18 January 2005; *Djemailji v. Switzerland* (dec.), no. 13531/03, 18 January 2005; *Etanji v. France* (dec.), no. 60411/00, 1 March 2005; *Shamayev and Others*, cited above, §§ 354-55, ECHR 2005-III; and *Nasrulloev v. Russia*, no. 656/06, § 60, 11 October 2007). Secondly, although issued more than a year and a half ago, it continues to have full legal effect (contrast *Benamar and Others v. France* (dec.), no. 42216/98, 14 November 2000). Lastly, there is no indication that the authorities have suspended its enforcement (contrast *Andrić v. Sweden* (dec.), no. 45917/99, 23 February 1999), or that it is possible to challenge its enforcement (contrast *Kalantari v. Germany* (striking out), no. 51342/99, § 56, ECHR 2001-X; and *Yildiz v. Germany* (dec.), no. 40932/02, 13 October 2005). The question whether the bar in section 44a of the Aliens Act 1998 on the expulsion of aliens to countries where their life or freedom would be in danger or where they may face a risk of ill-treatment (see paragraph 38 above) would in fact prevent the applicant's removal to Lebanon goes to the merits of the case (see *Boutagni v. France*, no. 42360/08, §§ 47-48, 18 November 2010). Nor is it apparent, from the information available in the case file, that the Lebanese authorities will never issue travel documents enabling the applicant to re-enter Lebanon.

93. In those circumstances, the Court considers that the applicant may claim to be a victim within the meaning of Article 34 of the Convention.

94. The Court further considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

## 2. Merits

95. The Court wishes to emphasise at the outset that it is acutely conscious of the difficulties faced by States in protecting their populations from terrorist violence, which constitutes, in itself, a grave threat to human rights (see, among other authorities, *Lawless v. Ireland (no. 3)*, 1 July 1961, §§ 28-30, Series A no. 3; *Ireland v. the United Kingdom*, 18 January 1978, Series A no. 25; *Öcalan v. Turkey* [GC], no. 46221/99, § 179, ECHR 2005-IV; *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V; *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 126, ECHR 2009-...; and *A. v. the Netherlands*, no. 4900/06, § 143, 20 July 2010). Faced with such a threat, the Court considers it legitimate for Contracting States to take a firm stand against those who contribute to terrorist acts, which it cannot condone in any circumstances (see *Daoudi v. France*, no. 19576/08, § 65, 3 December 2009, and *Boutagni*, cited above, § 45).

96. The Court would next reiterate the principles governing the Contracting States' responsibility in the event of expulsion, as established in its case-law and summarised, with further references, in paragraphs 124-27 of its judgment in the case of *Saadi* (cited above):

(a) As a matter of well-established international law, and subject to their treaty obligations, including those arising from the Convention, Contracting States have the right to control the entry, residence and removal of aliens. Neither the Convention nor its Protocols confer the right to political asylum.

(b) However, expulsion 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 concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case that provision implies an obligation not to deport the person in question to a country where he or she would face such a risk.

(c) In this type of case the Court is therefore called upon to assess the situation in the receiving country in the light of the requirements of Article 3. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the Contracting State, by reason of its having taken action which has as a direct consequence the exposure of an individual to the risk of proscribed ill-treatment.

(d) Article 3, which prohibits in absolute terms torture and inhuman or degrading treatment or punishment, enshrines one of the fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15, even

in the event of a public emergency threatening the life of the nation. As the prohibition of torture and of inhuman or degrading treatment or punishment is absolute, irrespective of the victim's conduct, the nature of any offences allegedly committed by the applicant is therefore irrelevant.

97. In paragraphs 137-39 of the same judgment the Court went on to reaffirm a principle that it had first articulated in its judgment in the case of *Chahal* (cited above, § 81): that it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion in order to determine whether the responsibility of a State is engaged under Article 3.

98. It should be added that the existence of the obligation not to expel is not dependent on whether the source of the risk of the treatment stems from factors which involve the responsibility, direct or indirect, of the authorities of the receiving country. Having regard to the absolute character of the right guaranteed, Article 3 may extend to situations where the danger emanates from persons or groups of persons who are not public officials. What is relevant in this context is whether the applicant is able to obtain protection against and seek redress for the acts perpetrated against him or her (see *H.L.R. v. France*, 29 April 1997, § 40, *Reports* 1997-III; *T.I. v. the United Kingdom* (dec.), no. 43844/98, ECHR 2000-III; *Headley v. the United Kingdom* (dec.), no. 39642/03, 1 March 2005; *N. v. Finland*, no. 38885/02, § 163, 26 July 2005; *Salah Sheekh v. the Netherlands*, no. 1948/04, §§ 137 and 147, 11 January 2007; *N.A. v. the United Kingdom*, no. 25904/07, § 110, 17 July 2008; *F.H. v. Sweden*, no. 32621/06, § 102, 20 January 2009; and *N. v. Sweden*, no. 23505/09, §§ 55-62, 20 July 2010).

99. In *Saadi* (cited above, §§ 128-33) the Court also summarised, with further references, the principles governing the manner of assessing the risk of exposure to treatment contrary to Article 3:

(a) In determining whether substantial grounds have been shown for believing that there is a real risk of treatment incompatible with Article 3, the Court takes into account all the material placed before it or, if necessary, material obtained *proprio motu*. Its examination of the existence of a real risk must necessarily be a rigorous one.

(b) 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. Where such evidence is adduced, it is for the Government to dispel any doubts about it.

(c) To determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his or her personal circumstances.

(d) To that end, as regards the general situation in a particular country, the Court has often attached importance to the information contained in recent reports from independent international human-rights organisations

such as Amnesty International, or governmental sources, including the United States Department of State. At the same time, it has held that the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3, and that, where the sources available to it describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence.

(e) In cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the protection of Article 3 enters into play when the applicant establishes, where necessary on the basis of the sources mentioned in the previous subparagraph, that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned.

(f) With regard to the material date, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of expulsion. However, if the applicant has not yet been removed when the Court examines the case, the relevant time will be that of the Court's examination. Accordingly, while historical facts are of interest in so far as they shed light on the current situation and the way it is likely to develop, the present circumstances are decisive.

100. In paragraphs 140-42 of the same judgment the Court, in response to arguments by certain governments in relation to the standard of proof in such matters, reaffirmed that for a planned expulsion by a Contracting State to be in breach of the Convention, it is sufficient for substantial grounds to have been shown for believing that there is a real risk that the person concerned will be subjected in the receiving country to treatment prohibited by Article 3, even where he or she is regarded as presenting a threat to the Contracting State's national security.

101. Thus, any considerations in the present case having to do with the question whether the applicant presents a risk to the national security of Bulgaria are irrelevant for the Court's examination. The salient issue is whether substantial grounds have been shown for believing that there is a real risk that he will face ill-treatment or death if the order for his expulsion is implemented (see *Ismoilov and Others v. Russia*, no. 2947/06, § 126, 24 April 2008). The Court notes in this connection that the Supreme Administrative Court did not attempt to assess the question of risk, confining itself to the question of the lawfulness of the expulsion order. It is a matter of regret that that court found the applicant's statement about the risk which he faced if he were to be returned to Lebanon "irrelevant for the ... proceedings" (see paragraph 23 above). Not only does the judgment of the Supreme Administrative Court not assist the Court in the assessment of the risk, such approach cannot be considered compatible with the need for independent and rigorous scrutiny of the substance of the applicant's

fears, which were plainly arguable in the light of the opinion delivered by the State Refugees Agency (see paragraph 11 above). The Court will revert to this matter in the context of Articles 13 and 46 (see paragraphs 121 and 139 below). In the light of the domestic court's failings, it falls to the Court to assess the question of risk with reference to the above-mentioned principles.

102. When considering that question on 29 October 2009, the State Refugees Agency was satisfied that there existed substantial grounds for believing that there was a real risk that the applicant would face ill-treatment or death in Lebanon, and granted him humanitarian protection, based, firstly, on his particular circumstances and, secondly, on the general situation in the Palestinian refugee camps in Lebanon. Its decision mainly relied on the fact that the applicant had been a member of Fatah and had been personally engaged in a violent conflict with members of a militant group (Jund al-Sham) operating in the Palestinian refugee camp (Ain al-Hilweh) where he had lived (see paragraph 11 above). Those findings carry significant weight, for two reasons. First, that Agency is a specialised body with particular expertise in this domain. Secondly, its officers were able to conduct a personal interview with the applicant. They had an opportunity to see, hear and assess his demeanour, and were thus in a position to test the credibility of his fears and the veracity of his account (see, *mutatis mutandis*, *Ahmed v. Austria*, 17 December 1996, § 42, *Reports* 1996-VI; *Jabari v. Turkey*, no. 40035/98, § 41, ECHR 2000-VIII; *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, §§ 82-83, 22 September 2009; and *R.C. v. Sweden*, no. 41827/07, § 52, 9 March 2010).

103. Moreover, this evidence cannot be considered in isolation. Instead, it must be assessed against the background of the available information on the situation in Lebanon and that of the Palestinian refugees there. It is true that the situation in the country as a whole does not appear so serious that the return of the applicant there would constitute, in itself, a breach of Article 3 (see paragraph 58 above). However, it cannot be overlooked that the applicant is a stateless Palestinian originating from a refugee camp in Lebanon (see paragraphs 1 and 7 above). There is therefore a likelihood that he would not be allowed to reside in Lebanon proper, but would have to return to the camp from which he fled, Ain al-Hilweh. The information available on the Palestinian refugee camps in general and Ain al-Hilweh in particular (see paragraphs 52-55, 60, 62, 65-73, 77, 78, 80 and 82-88 above) shows that they are not under the control of the Lebanese authorities, but of various Palestinian armed factions. They are secluded from the rest of the country, are often surrounded by Lebanese army checkpoints, and have been described in reports as "beyond the [S]tate's reach", "*de facto* sanctuaries for weapons" and "a safe heaven for those who seek to escape the authority of the State". They continue to be plagued by outbursts of violence and armed clashes between various factions. Ain al-Hilweh, which is very

densely populated and not under the control of any single faction, appears to be one of the more chaotic and violent camps, where Fatah and various radical Islamist groups have for decades been engaged in a conflict of varying degrees of intensity. Since 2007, there has been a string of violent clashes between Fatah and Jund al-Sham, which is reported to have about fifty armed men at its disposal. Although in late 2010 the Jund al-Sham suffered some setbacks, including the death of a leader, it reengaged in armed clashes with Fatah in March and April of this year. In addition, there appear to exist power struggles within the ranks of Fatah itself. They, together with corruption within the movement, have apparently contributed to various security breakdowns. One of those internal divisions is pitting the applicant's purported "protector", Mounir Maqdah (see paragraph 9 above), against other figures in Fatah. It is therefore not readily apparent that Fatah, despite its relative dominance in Ain al-Hilweh, would be able to provide the applicant with effective protection. Nor is it apparent that the applicant would be able to settle in another Palestinian refugee camp. Fatah apparently does not have strong positions in the camps in northern Lebanon, where the radical Islamist groups are more powerful. Those circumstances, coupled with the applicant's personal account, amount to at least *prima facie* evidence capable of proving that there are substantial grounds for believing that he would be exposed to a real risk of being subjected to treatment contrary to Article 3 if expelled to Lebanon. Having regard to the information referred to above, the Court is not persuaded that the situation has evolved to an extent that the findings made by the State Refugees Agency in October 2009 on the question of risk are no longer valid. Indeed, as recently as 19 April 2011 the Secretary-General of the United Nations reported on violent clashes in Ain al-Hilweh and estimated that there still existed a threat of violence inside the Palestinian refugee camps (see paragraph 73 above). The burden is therefore on the State to dispel any doubts in that regard.

104. However, no evidence has been presented by the Government in relation to that issue. In that connection, it is noteworthy that when issuing and reviewing the decision to expel the applicant, the competent domestic authorities and courts did not try to make any assessment of that risk. The expulsion order and the proposal for one to be issued gave no consideration to this matter (see paragraphs 14 and 15 above). In the ensuing judicial review proceedings, the Supreme Administrative Court expressly stated that the applicant's fear that his life would be at risk in Lebanon was irrelevant (see paragraph 23 above). The Court is therefore unable to conclude that the Bulgarian authorities have duly addressed the applicant's concerns with regard to Article 3 (see, *mutatis mutandis*, *Khodzhayev v. Russia*, no. 52466/08, § 104, 12 May 2010, and *Khaydarov v. Russia*, no. 21055/09, §§ 112-14, 20 May 2010). Their uncorroborated assertions that he is not who he says he is, but is a member of a militant Jihadist organisation who is

sought by the Lebanese authorities in connection with a number of assassinations (see paragraphs 14, 22, 23 and 87 above) show, if anything, that he may be at even greater risk of ill-treatment, by the Lebanese authorities themselves. There are a number of reports indicating that those authorities are likely to ill-treat persons suspected of involvement with such groups (see paragraphs 61, 64, 74 and 75 and above). There is no indication that the Government have sought or obtained any form of assurance on the part of Lebanon in relation to such matters. In any event, the existence of assurances does not absolve a Contracting State from its obligation to consider their practical application (see, among other authorities, *Babar Ahmad and Others v. the United Kingdom* (dec.), nos. 24027/07, 11949/08 and 36742/08, § 106, 6 July 2010).

105. In their observations, the Government referred to the prohibition in section 44a of the Aliens Act 1998 (see paragraph 38 above). They explained that the practice in such cases was for the authorities to verify the matter when executing the expulsion order, and that the Ministry of Foreign Affairs kept an updated list of safe third countries that could receive individuals in the applicant's position. However, the Court does not consider that the Government's statement can be regarded as a binding assurance that the applicant will not be expelled to Lebanon, for two reasons. First, in contrast to the express assurances given by the French Government in *Boutagni* (cited above, §§ 20 and 42), in the present case the Government did not declare that the applicant would not be removed to Lebanon, but merely said that the point would be examined at the time of the execution of the expulsion order. Secondly, the Government's statement is not based on, or reflected in, a binding legal act (contrast *Boutagni*, cited above, §§ 19-20 and 47-48), and it is unclear whether it can of itself bind the authorities responsible for executing the expulsion order (see, *mutatis mutandis*, *Shamayev and Others*, cited above, §§ 344-45).

106. The Court's main concern is whether effective guarantees exist that protect the applicant against arbitrary *refoulement*, be it direct or indirect, to the country from which he has fled (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 286, 21 January 2011). It is not persuaded that, if and when they proceed with the applicant's expulsion, the Bulgarian authorities will examine with the necessary rigour whether his return to Lebanon would put him at risk of treatment prohibited under Article 3 (contrast *M.H. v. Sweden* (dec.), no. 10641/08, §§ 25 and 41, 21 October 2008). The Government did not provide any particulars about the manner in which the immigration authorities apply section 44a when implementing expulsion orders, and did not give any concrete examples. The Aliens Act 1998 and the regulations for its application are silent on this point, and there are no reported cases (see paragraph 38 *in fine* above). It is thus unclear by reference to what standards and on the basis of what information the authorities will make a determination, if any, of the risk faced by the applicant if removed to



Lebanon. Nor is there any indication as to whether, if the authorities choose to send the applicant to a third country, they will properly examine whether he would in turn be sent from there to Lebanon without due consideration for the risk of ill-treatment. The Court reiterates that under its case-law removal to an intermediary country does not affect the responsibility of the expelling State to ensure that the applicant is not exposed to treatment contrary to Article 3 as a result of the decision to expel (see *T.I. v. the United Kingdom*, cited above; *Salah Sheekh*, cited above, § 141; *K.R.S. v. the United Kingdom* (dec.), no. 32733/08, 2 December 2008; *Abdolkhani and Karimnia*, cited above, § 88; *Babar Ahmad and Others*, cited above, §§ 113-16; and *M.S.S. v. Belgium and Greece*, cited above, §§ 338-61).

107. The lack of a legal framework providing adequate safeguards in this domain allows the Court to conclude that there are substantial grounds for believing that the applicant risks a violation of his rights under Article 3 (see, *mutatis mutandis*, *Abdolkhani and Karimnia*, cited above, § 89). In this connection, the Court finds it necessary to reiterate that the grave and irreversible nature of the potential consequences is such that the matter calls for rigorous scrutiny.

108. In view of those considerations, the Court concludes that the applicant's expulsion, if carried out, would be in breach of Article 3 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

109. The applicant complained under Article 8 of the Convention that his expulsion would be unlawful and disproportionate.

110. Article 8 provides, in so far as relevant:

“1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

111. The Court observes at the outset that, in so far as the applicant may be taken to rely on Article 8 in relation to any risk to his physical integrity as a result of his expulsion, the issue has already been addressed in the Court's reasoning under Article 3. In so far as the applicant may be taken to rely on Article 8 in relation to any private or family life in Bulgaria, the Court notes that he has not alleged that he has a family life or, indeed, any relatives in Bulgaria. Nor does it appear that he has a private life in that country. He arrived there on 24 May 2009, tried to leave in August 2009, and was later settled in a housing facility operated by the State Refugees Agency. He was granted humanitarian protection on 29 October 2009, but

was arrested with a view to deportation less than a month after that, on 17 November 2009 (see paragraphs 8-13 and 15 above). He cannot therefore be regarded as a settled migrant who has developed a private life in Bulgaria (contrast *Maslov v. Austria* [GC], no. 1638/03, § 63, 23 June 2008, and *Miah v. the United Kingdom* (dec.), no. 53080/07, § 17, 27 April 2010). On the contrary, his stay in Bulgaria has been brief and at all times precarious (see, *mutatis mutandis*, *N.M. and M.M. v. the United Kingdom* (dec.), nos. 38851/09 and 39128/09, 25 January 2011). Article 8 is not therefore applicable.

112. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

### III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

113. The applicant complained under Article 13 in conjunction with Articles 3 and 8 of the Convention that the Supreme Administrative Court had not genuinely scrutinised whether he represented a risk for national security, had refused to examine whether he would risk ill-treatment or death if expelled to Lebanon, and had not considered whether such expulsion would be proportionate.

114. Article 13 provides as follows:

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

#### A. The parties’ submissions

115. The Government submitted that the applicant had been able to challenge the order for his expulsion in judicial review proceedings, in the course of which he had been able to acquaint himself with all documents in the case file and seek to rebut the assertions of the authorities. In judicial review proceedings, the courts reviewed whether the administrative decision had been issued by a competent authority, in due form, and in compliance with the rules of administrative procedure and substantive law. In the applicant’s case, the Supreme Administrative Court had done just that. It had examined the arguments of the parties and had given reasons for finding against the applicant. It is true that the question whether the applicant faced a risk of ill-treatment upon expulsion had been raised before that court. However, since the proceedings concerned the lawfulness of the expulsion order, the court had deemed that question to be irrelevant. Domestic courts could review only specific administrative decisions. The applicant did not

claim that there existed a tacit or an express refusal to stay the enforcement of the order for his expulsion by reference to section 44a.

116. The applicant submitted that section 44a did not have direct application. He had raised the issue of risk in the proceedings for judicial review of the expulsion order, which was the only available legal avenue where such issues could be addressed. However, the Supreme Administrative Court had said that the issue was irrelevant.

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

117. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

118. On the merits, the Court must start by examining which of the applicant's substantive complaints in relation to his expulsion were arguable, because the scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint (see, as a recent authority, *A. v. the Netherlands*, cited above, § 157).

119. Article 8 not being applicable (see paragraphs 111 and 112 above), the applicant's claim under Article 13 in conjunction with Article 8 is not arguable. It is, then, not necessary to establish whether the Supreme Administrative Court subjected the allegation that the applicant represented a national security risk to a genuine examination or whether it gave consideration to the question whether the expulsion amounted to a disproportionate interference with the applicant's right to respect for his private or family life (see, *mutatis mutandis*, *A. v. the Netherlands*, cited above, § 160, and contrast *C.G. and Others v. Bulgaria*, §§ 60-64, and *Raza*, § 63, both cited above).

120. By contrast, the Court's findings in paragraphs 101-103 above show that the applicant's claim under Article 3 was arguable. He was therefore entitled to an effective remedy in that respect. The notion of an effective remedy in such circumstances has two components. Firstly, it imperatively requires close, independent and rigorous scrutiny of the claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 (see *M.S.S. v. Belgium and Greece*, cited above, § 293, with further references). That scrutiny must be carried out without regard to what the person may have done to warrant expulsion or to any perceived threat to the national security of the expelling State (see *Chahal*, cited above, 151 *in fine*). The second requirement is that the person concerned should have access to a remedy with automatic suspensive effect (see *Čonka v. Belgium*, no. 51564/99, §§ 81-83, ECHR 2002-I, and *Gebremedhin [Gaberamadhién] v. France*, no. 25389/05, § 66 *in fine*, ECHR 2007-II; *Muminov v. Russia*, no. 42502/06, § 101, 11 December 2008; *Abdolkhani*

and *Karimnia*, cited above, § 108; and *M.S.S. v. Belgium and Greece*, cited above, § 293 *in fine*).

121. Concerning the “scrutiny” requirement, the Court observes that when examining the applicant’s legal challenge against the order for his expulsion, the Supreme Administrative Court expressly refused to deal with the question of risk, saying that any threat to the applicant in Lebanon was irrelevant for determining the lawfulness of his expulsion (compare with *Jabari*, cited above, § 49). As for the “suspensive effect” requirement, it should be noted that under Bulgarian law applications for judicial review of expulsion orders issued on national security grounds do not have automatic suspensive effect (see paragraph 35 above). It furthermore appears that the courts have no power to suspend the enforcement of such orders, even if an irreversible risk of death or ill-treatment in the receiving State is claimed (see paragraphs 31, 34 and 37 above). The proceedings for judicial review of the expulsion order against the applicant cannot therefore be regarded as an effective remedy in respect of his grievance under Article 3.

122. The Government’s case was that the issue of risk would be examined upon the enforcement of the expulsion order against the applicant and that the authorities would not remove him from Bulgaria without ensuring that this would not fall foul of the prohibition set out in section 44a of the Aliens Act 1998 (see paragraph 38 above). However, the Court has already found that there are no guarantees that before proceeding with the expulsion the authorities would subject the applicant’s claims under Article 3 of the Convention to rigorous scrutiny (see paragraphs 105 and 106 above). More importantly, the Government did not point to any procedure whereby the applicant would be able to challenge their assessment of those claims. From the provisions of the Aliens Act 1998 and the regulations for its application it does not appear that it is possible to bring a separate legal challenge against the enforcement of the expulsion order, let alone that there exists an avenue of redress that meets the two requirements set out in paragraph 120 above. The Court would emphasise in that connection that the existence of remedies must be sufficiently certain not only in theory but also in practice, and that it falls to the respondent State to establish that (see, among other authorities, *McFarlane v. Ireland* [GC], no. 31333/06, § 107, ECHR 2010-...).

123. In the light of the above, the Court concludes that the applicant does not have an effective remedy in relation to his complaint under Article 3 of the Convention. There has therefore been a violation of Article 13 of the Convention.

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

124. The applicant complained that his detention had ceased to be justified and had become arbitrary. He relied on Article 5 § 1 (f) of the Convention, which provides as follows:

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

...

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

##### **A. The parties’ submissions**

125. The Government submitted that the law governing detention pending deportation was fully Convention-compliant. It also met the requirements of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals. Those standards had been fully observed in the applicant’s case. His placement in the detention facility had been reviewed by an independent body, as the applicant had sought judicial review of the order for his detention by the Sofia Administrative Court. In the course of the proceedings the authorities had produced documents showing the grounds for taking the impugned measure. The applicant, who had been legally represented, had been able to contest the authorities’ assertions. After reviewing the legality of the detention order, the court had rejected his application.

126. The applicant submitted that there was no indication that the authorities had been actively pursuing his expulsion or that it was at all possible. The only thing that the authorities had done had been to contact the Lebanese embassy in Sofia with a view to obtaining travel documents for the applicant to allow him to enter Lebanon. They had not tried to contact the embassies of any safe third countries. In the applicant’s view, detention pending deportation should be allowed to reach the maximum eighteen-month period allowed by law only in exceptional cases.

## B. The Court's assessment

127. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

128. On the merits, the Court reiterates that Article 5 § 1 (f), which permits the State to control the liberty of aliens in the immigration context, does not demand that detention be reasonably considered necessary, for example, to prevent the individual from committing an offence or fleeing. Any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified, however, only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under that provision (see, among other authorities, *Chahal*, § 113; *A. and Others v. the United Kingdom*, § 164; *Mikolenko v. Estonia*, no. 10664/05, § 63, 8 October 2009; and *Raza*, § 72, all cited above). In other words, the length of the detention should not exceed that reasonably required for the purpose pursued (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 74 *in fine*, ECHR 2008-...). Indeed, a similar point was recently made by the ECJ in relation to Article 15 of Directive 2008/115/EC (see paragraphs 50 and 51 above). It should, however, be pointed out that unlike that provision, Article 5 § 1 (f) of the Convention does not contain maximum time-limits; the question whether the length of deportation proceedings could affect the lawfulness of detention under this provision thus depends solely on the particular circumstances of each case (see *Osman v. the United Kingdom*, no. 15933/89, Commission decision of 14 January 1991, unreported, and *Gordyeyev v. Poland* (dec.), nos. 43369/98 and 51777/99, 3 May 2005).

129. In the instant case, the applicant was detained under a decision issued by a competent authority in line with the applicable law, and action was being taken with a view to his deportation. His allegations in respect of the underlying expulsion order do not call into doubt the lawfulness of his detention (see *Chahal*, cited above, § 112; *Slivenko v. Latvia* [GC], no. 48321/99, § 146, ECHR 2003-X; and *Sadaykov v. Bulgaria*, no. 75157/01, § 21, 22 May 2008).

130. Therefore, the only issue is whether or not the authorities were sufficiently diligent in their efforts to deport the applicant. He remained in custody pending such deportation for exactly eighteen months, between 20 November 2009 and 19 May 2011 (see paragraphs 17 and 18 above).

131. In *Raza* (cited above, §§ 73-75), Bulgaria was found in breach of Article 5 § 1 in similar circumstances in respect of a detention lasting a little more than two and a half years. In the meantime, following legislative amendments intended to bring Bulgarian law into line with European Union law, the detention of deportees was subjected to strict time-limits of six, and in exceptional cases, eighteen months (see paragraph 44 above). As a result,

the applicant spent exactly eighteen months in custody, the maximum period allowed by law. Contrary to what has been suggested by the Government, compliance with that time-limit, which is in any event exceptional (see paragraphs 47, 48, 50 and 51 above), cannot automatically be regarded as bringing the applicant's detention into line with Article 5 § 1 (f) of the Convention. As noted above, the relevant test under that provision is rather whether the deportation proceedings have been prosecuted with due diligence, which can only be established on the basis of the particular facts of the case.

132. Here, it appears that the only steps taken by the authorities during the eighteen months in issue were to write three times to the Lebanese embassy in Sofia with requests for the issuing of a travel document for the applicant (see paragraph 26 above). While the Bulgarian authorities could not compel the issuing of such a document, there is no indication that they pursued the matter vigorously or endeavoured entering into negotiations with the Lebanese authorities with a view to expediting its delivery (see *Raza*, cited above, § 73; *Tabesh v. Greece*, no. 8256/07, § 56, 26 November 2009; and *Louled Massoud v. Malta*, no. 24340/08, § 66, 27 July 2010). Moreover, apart from their own statements for the purposes of the proceedings before the Court, the Government have not provided evidence of any effort having been made to secure the applicant's admission to a third country. The authorities can thus hardly be regarded as having taken active and diligent steps with a view to deporting him. It is true that the applicant's detention was subject to periodic judicial review, which provided an important safeguard (see *Dolinskiy v. Estonia* (dec.), no. 14160/08, 2 February 2010). However, that cannot be regarded as decisive. The last such review took place on 7 December 2010 (see paragraph 26 above), whereas the Court has not been informed whether any steps were taken with a view to removing the applicant from that time until his release more than five months later, on 19 May 2011 (see, *mutatis mutandis*, *Mikolenko*, cited above, § 64 *in fine*).

133. The assessment of those points is further frustrated by the fact that neither the expulsion order nor any other binding legal act specified the destination country, as this was not required under domestic law (see paragraphs 39 and 40 above). The Court considers that this may be seen as problematic with regard to the requirement of legal certainty inherent in all Convention provisions. Where deprivation of liberty is concerned, legal certainty must be strictly complied with in respect of each and every element relevant to the justification of the detention under domestic and Convention law. In cases of aliens detained with a view to deportation, lack of clarity as to the destination country could hamper effective control of the authorities' diligence in handling the deportation.

134. It is true the applicant did not spend such a long time in detention as the applicants in some other cases, such as *Chahal* (cited above).

However, Mr Chahal's deportation was blocked, throughout the entire period under consideration, by the fact that proceedings were being actively and diligently pursued with a view to determining whether it would be lawful and compatible with the Convention to proceed with his deportation (see *Chahal*, cited above, §§ 115-17, as well as, *mutatis mutandis*, *Eid v. Italy* (dec.), no. 53490/99, 22 January 2002; *Gordyeyev*, cited above; and *Bogdanovski v. Italy*, no. 72177/01, §§ 60-64, 14 December 2006). By contrast, in the present case the Supreme Administrative Court refused to give any consideration to the point whether the applicant would be at risk if returned to Lebanon (see paragraph 23 above). Moreover, under Bulgarian law the order for the applicant's expulsion was immediately enforceable at any time, regardless of whether a legal challenge was pending against it (see paragraphs 31, 34, 35 and 37 above, as well as *Raza*, cited above, § 74). The delay in the present case can thus hardly be regarded as being due to the need to wait for the Supreme Administrative Court to determine the legal challenge brought by the applicant against the order for his expulsion.

135. In view of the foregoing, the Court concludes that the grounds for the applicant's detention – action taken with a view to his deportation – did not remain valid for the whole period of his deprivation of liberty due to the authorities' failure to conduct the proceedings with due diligence. There has therefore been a violation of Article 5 § 1 of the Convention.

## V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

136. The Court finds it appropriate to consider the present case under Article 46 of the Convention, which provides, in so far as relevant:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ...”

137. In the context of the execution of judgments in accordance with that provision, a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order. Furthermore, it follows from the Convention, and from Article 1 in particular, that in ratifying the Convention the Contracting States undertake to ensure that their domestic legislation is compatible with it (see *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I, and, more recently, *Paksas v. Lithuania* [GC], no. 34932/04, § 119, 6 January 2011). The Contracting States' duty in international law to comply with the requirements of the Convention may



thus require action to be taken by any State authority, including the legislature (see, by way of example, *Viașu v. Romania*, no. 75951/01, §§ 75-83, 9 December 2008).

138. In the present case, in view of the grave and irreversible nature of the consequences of the removal of aliens to countries where they may face ill-treatment, and the apparent lack of sufficient safeguards in Bulgarian law in that respect, it appears necessary to assist the Government in the execution of their duty under Article 46 § 1 of the Convention.

139. Having regard to its findings under Articles 3, 5 § 1 and 13 of the Convention, the Court is of the view that the general measures in execution of this judgment should include such amendments to the Aliens Act 1998 or other Bulgarian legislation, and such change of administrative and judicial practice in Bulgaria so as to ensure that: (a) there exists a mechanism requiring the competent authorities to consider rigorously, whenever there is an arguable claim in that regard, the risks likely to be faced by an alien as a result of his or her expulsion on national security grounds, by reason of the general situation in the destination country and his or her particular circumstances; (b) the destination country should always be indicated in a legally binding act and a change of destination should be amenable to legal challenge; (c) the above-mentioned mechanism should allow for consideration of the question whether, if sent to a third country, the person concerned may face a risk of being sent from that country to the country of origin without due consideration of the risk of ill-treatment; (d) where an arguable claim about a substantial risk of death or ill-treatment in the destination country is made in a legal challenge against expulsion, that legal challenge should have automatic suspensive effect pending the outcome of the examination of the claim; and (e) claims about serious risk of death or ill-treatment in the destination country should be examined rigorously by the courts.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

140. 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

141. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage sustained as a result of the alleged breaches of Articles 3 and 13 of the Convention. He submitted that his impending

expulsion to Lebanon, entailing a risk for his life, and the lack of procedural safeguards in that regard, had caused him stress, fear and a sense of helplessness. He claimed a further EUR 20,000 in respect of the alleged breach of Article 5 § 1 of the Convention, emphasising the excessive duration of his detention in poor conditions. He claimed EUR 10,000 in respect of an alleged breach of Article 5 § 4 of the Convention, submitting that he suffered frustration on account of the lack of speedy and effective judicial review of his detention. Lastly, he claimed EUR 10,000 in respect of the alleged breaches of Articles 8 and 13 of the Convention, submitting that the formal manner in which the courts had reviewed the order for his expulsion and the impossibility for him to lead a normal life in Bulgaria, even if released from detention, had given rise to feelings of injustice and humiliation.

142. The Government submitted that the claims were excessive, especially considering that the events on which they were based were hypothetical and had not yet occurred. In their view, the amount of compensation should not exceed the awards made in previous similar cases against Bulgaria, and should reflect the fact that part of the applicant's complaints was rejected by the Court.

143. The Court observes that in the present case an award of just satisfaction can be based only on the violations of Article 3, Article 5 § 1, and Article 13 read in conjunction with Article 3. The applicant's claims in relation to the alleged breaches of Article 5 § 4, Article 8, and Article 13 read in conjunction with Article 8 must therefore be rejected.

144. The Court further observes that no breach of Article 3 has as yet occurred. In those circumstances, it considers that its finding regarding Article 3 amounts of itself to sufficient just satisfaction (see *Soering v. the United Kingdom*, 7 July 1989, §§ 126-27, Series A no. 161; *Chahal*, cited above, § 158; and *Saadi*, cited above, § 188). The same is true of the Court's related finding regarding Article 13 (see *Gebremedhin [Gaberamadhien]*, cited above, § 79). Conversely, the Court considers that the distress suffered by the applicant as a result of his detention pending deportation cannot wholly be compensated by the finding of violation (see *Quinn v. France*, 22 March 1995, § 64, Series A no. 311, and *Raza*, cited above, § 88). Having regard to the awards made in similar cases, and ruling on an equitable basis, as required under Article 41, the Court awards the applicant EUR 3,500, plus any tax that may be chargeable.

## **B. Costs and expenses**

145. The applicant sought reimbursement of EUR 1,800 incurred in legal fees for the proceedings before the Court, and EUR 46 for postage.

146. The Government submitted that the legal fees claimed appeared excessive. They were several times higher than those usually charged in Bulgaria.

147. According to the Court's case-law, costs and expenses claimed under Article 41 must have been actually and necessarily incurred and reasonable as to quantum. Having regard to the materials in its possession and the above considerations, and noting that part of the application was declared inadmissible, the Court finds it reasonable to award the applicant the sum of EUR 1,200, plus any tax that may be chargeable to him, to cover costs under all heads.

### **C. Default interest**

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

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* the complaints concerning the applicant's impending expulsion, the alleged lack of effective remedies in that regard, and his detention pending deportation admissible, and the remainder of the application inadmissible;
2. *Holds* that, should the order to expel the applicant be implemented, there would be a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
5. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian leva at the rate applicable at the date of settlement:
    - (i) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 11 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President