



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

THIRD SECTION

CASE OF KAHADAWA ARACHCHIGE AND OTHERS v. CYPRUS

(Applications nos. 16870/11, 16874/11 and 16879/11)

JUDGMENT

STRASBOURG

19 June 2018

FINAL

03/12/2018

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

In the case of Kahadawa Arachchige and Others v. Cyprus,

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

Helena Jäderblom, *President*,

Dmitry Dedov,

Pere Pastor Vilanova,

Alena Poláčková,

Georgios A. Serghides,

Jolien Schukking,

María Elósegui, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 29 May 2018,

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

PROCEDURE

1. The case originated in three applications (nos. 16870/11, 16874/11 and 16879/11) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Sri Lankan nationals, Mr Don Uditha Niroshana Kahadawa Arachchige (“the first applicant”), Mr Dehiwalage Shehan Fernando (“the second applicant”) and Mr Dushan Aruna Shanthi Budda Korlage (“the third applicant”). The first and second applicants lodged their application on 22 February 2011 and the third applicant on 26 February 2011.

2. The applicants were represented by Mr V. Cooray, a lawyer practising in Negombo, Sri Lanka. The Cypriot Government (“the Government”) were represented by their Agent, Mr C. Clerides, Attorney General of the Republic of Cyprus.

3. The applicants alleged in particular that their detention from 14 January 2011 until their deportation on 19 January 2011 (in the case of the first and third applicants) and 21 January 2011 (in the case of the second applicant) had been unlawful and thus in violation of Article 5 of the Convention, and that they did not have an effective remedy to challenge their detention, in violation of Article 13 of the Convention. Furthermore, the first applicant complained of a violation of the right to respect for his private and family life under Article 8, and the lack of an effective remedy under Article 13 in this respect. Lastly, the first and second applicants alleged that they had been deported without being informed about the deportation decision and without any procedural safeguards, in breach of Article 1 of Protocol No. 7.

4. On 17 March 2011 the Government was requested, pursuant to Rule 49 § 3 (a) of the Rules of Court, to submit additional factual information concerning the applications.

5. On 9 February 2016 the above complaints were communicated to the Government; the applicants' complaints under Articles 5 and 13 were communicated under Article 5 §§ 1 and 4. The remainder of the applications were declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1974, 1978 and 1980 respectively. They all live in Sri Lanka. The first applicant lives in Colombo, the second applicant in Kochchikade, and the third applicant in Pannipitiya.

A. Background to the case

7. The applicants all went to Cyprus for employment purposes.

1. The first applicant and his family

8. The first applicant arrived in Cyprus on 20 April 2001 in order to take up employment as a domestic worker. He was granted a temporary residence permit, initially until 20 April 2005. This was renewed until 10 May 2011.

9. The residence permit stated that it could be revoked at any time with fourteen days' prior notice to the holder.

10. During the above period the applicant left Cyprus twice to go back to Sri Lanka: on 12 November 2001 and in January 2004. The first time, he stayed in his home country for about eleven months, and the second time, he stayed for just over a month. On 21 February 2004, during his second visit home, he married a Sri Lankan national.

11. His wife joined him in Cyprus on 16 September 2004, in order to work as a housemaid. She was granted a temporary residence permit until 16 September 2008.

12. On 13 December 2007 their daughter was born.

13. On 17 September 2008 the first applicant's wife abandoned her work and her place of residence. Her whereabouts at the time were not known to the authorities. She had not applied for the renewal or extension of her temporary residence permit, which had expired the day before.

14. On 10 December 2008 all competent authorities were given orders by the Police Aliens and Immigration Unit to trace the first applicant's wife.

15. On 30 November 2010 a lawyer acting on behalf of the first applicant's wife wrote to the Minister of the Interior requesting a visitor's residence permit for her based on humanitarian grounds, a permit of the same duration as that held by her husband. The lawyer noted that the couple had a young daughter, that both the wife and the daughter were supported by the first applicant, and that she could not return to Sri Lanka without him, as she did not have family there with whom she and her daughter could stay. She also needed time to obtain travel documents for their daughter. The lawyer informed the authorities that the couple's intention was that the whole family would return to Sri Lanka upon the expiry of the first applicant's temporary residence permit.

2. The second applicant

16. The second applicant arrived in Cyprus on 5 February 2010 and was granted a temporary residence permit until 4 May 2010. This was renewed until 19 October 2011.

17. The residence permit stated that it could be revoked at any time with fourteen days' prior notice to the holder.

3. The third applicant

18. The third applicant arrived in Cyprus on 4 March 2002. He was granted a temporary residence permit until 3 May 2002. This was renewed until 12 February 2009. Following the expiry of his permit, he remained in Cyprus on an irregular basis. The third applicant submitted that he had applied for a renewal of his permit.

19. The residence permit stated that it could be revoked at any time with fourteen days' prior notice to the holder. It also stated that it was final and non-renewable.

B. The applicants' arrest, detention and deportation

1. The applicants' version of the facts

20. According to the first and second applicants, on 6 January 2011, while in the first applicant's car, they passed through the Ayios Dometios district of Nicosia and saw a group of Sri Lankans. They got out of the car and saw people holding swords and iron rods. Fearing for their lives, they abandoned the car and ran in different directions. The second applicant was injured during the clashes: his index finger was cut off and his middle finger injured. After the clashes, the first applicant took the second applicant to the Nicosia General Hospital, where the latter underwent surgery. According to the second applicant, the police came to the hospital and arrested him. He remained in the hospital after the operation, and on 9 January 2011 he was taken to Lakatamia police station, where he was detained. According to the

first applicant, on the morning of 7 January 2011 six people who had taken part in the clash attacked his residence and threatened to kill him if he went to the police. However, half an hour later, when he went to the police station to report the incident, he was arrested and detained on suspicion of being involved in the clashes.

21. According to the third applicant, he was also passing by that area with his car and stopped to see what was going on, but, fearing for his life, he ran away and left his car behind. He informed his employer and the latter informed the police about the clash. The police asked the third applicant to come to the police station to make a statement and take his car back. On 7 January 2011 the third applicant went to Lakatamia police station and was arrested and detained on suspicion of being involved in the clashes.

2. The Government's version of the facts

22. On the evening of 6 January 2011 the police received information that about twenty aliens carrying offensive weapons (swords, clubs and Molotov cocktails) were in the Ayios Dometios district of Nicosia. The police immediately went to the site and discovered that a number of aliens had attempted to set fire to a house there by throwing Molotov cocktails at it. The police carried out an investigation into the events. They examined and collected evidence found in the area (including the first and third applicants' cars). They reached the conclusion that the applicants, along with six other individuals from Sri Lanka, were likely to have been involved in the clash. A number of suspects, including the second applicant, had sustained injuries which had been treated at Nicosia General Hospital.

23. On 7 January 2011 the police arrested all nine Sri Lankans, including the applicants, on the basis of arrest warrants issued on the same day by the Nicosia District Court under section 18 of the Criminal Procedure Law (Cap. 155) and Article 11(3) of the Constitution, on reasonable suspicion that they had taken part in a fight in a public place, contrary to section 89 of the Criminal Code (Cap. 154).

24. On 8 January 2011 the Nicosia District Court convened at Nicosia General Hospital. The applicants were remanded in custody for six days under section 24 of the Criminal Procedure Law and Article 11(5) and (6) of the Constitution, to enable the investigation into the commission of various criminal offences to be concluded. The offences included: intending to inflict grievous bodily harm, unlawful wounding, an unlawful attempt to set fire to a building, and taking part in a fight in a public place (sections 228, 315 and 89 of the Criminal Code). The first applicant was detained in Paphos Gate police station in Nicosia, and the second and third applicants in Lakatamia police station.

25. On 13 January 2011 the police investigation file, which included written statements by the applicants concerning the incident, was transmitted to the Attorney General. The Nicosia Crime Investigation

Department informed the Attorney General that that there was sufficient evidence against all the nine individuals arrested, including the applicants, in relation to the offence of taking part in a fight in a public place contrary to section 89 of the Criminal Code, but not as regards the remaining offences, which were more serious. The third applicant had also committed the offence of staying in Cyprus unlawfully, as his temporary resident permit had expired on 12 February 2009. At the suggestion of the police, the Attorney General decided not to prosecute the applicants, but to deport them instead.

26. On 14 January 2011 the residence permits of the first and second applicants were revoked by the Director of the Civil Registry and Migration Department under section 6 of the Aliens and Immigration Law (Cap. 105), on the grounds that their conduct had posed a danger to the public order of the Republic. Deportation and detention orders were issued against the applicants on the same day: under section 6(1)(g) of the above Law in respect of the first and the second applicants, on the grounds of public order, and under section 6(1)(k) in respect of the third applicant, on the grounds of unlawful stay.

27. On the same day three letters were prepared by the Minister of the Interior informing the applicants of the decision to detain and deport them. The letters stated that the applicants were illegal immigrants: the first and second applicants under section 6(1)(g) of the Aliens and Immigration Law, because their “conduct had been considered dangerous for reasons of public order”, and the third applicant by virtue of section 6(1)(k), on the grounds of “illegal stay”. Consequently, their temporary resident permits had been revoked and deportation and detention orders had been issued against them.

28. Consequently, on 14 January 2011, upon the expiry of the remand warrant, the applicants were released but re-arrested at once on the basis of the deportation and detention orders that had been issued against them. The Government submitted that, in accordance with standard police practice, the applicants would have been informed orally of the decision not to prosecute them and the decision to deport them. Although the Government did not have evidence as to the exact date on which the applicants were notified of the letters of 14 January 2011 or the exact manner in which they were notified, this happened sometime between 14 and 18 January 2011.

29. On 18 January 2011 a Cypriot lawyer acting on behalf of the applicants sent two letters by fax to the Minister of the Interior, referring to the letters of 14 January 2011 sent to the applicants. He objected to the deportation of the first and second applicants; he also requested a review of the decision taken with regard to the third applicant. The lawyer requested a meeting to discuss the matter with the above-mentioned Minister.

30. The Government submitted that the applicants’ case had then been reviewed by the Minister of the Interior, who had noted their lawyer’s

objection, read the administrative file and maintained the decision to deport the applicants.

31. Although the first applicant called his wife several times during his detention, she did not come to visit him at the police station.

32. The first and third applicants were deported on 19 January 2011 and the second applicant was deported on 21 January 2011.

33. There were signed notes by a police officer on the copies of the letters of 14 January 2011 stating that the letters had also been served on the applicants on the day they were deported.

34. The applicants were included on the authorities' "stop list" (a register of individuals whose entry into and exit from Cyprus is banned or subject to monitoring).

C. Subsequent developments

35. The documents submitted by the Government indicate that the first applicant's wife continued to stay in Cyprus illegally following her husband's deportation. On 3 December 2012 she lodged an asylum application, which was dismissed on 31 January 2013. She left Cyprus for Sri Lanka on 5 July 2013 and she was included on the authorities' "stop list" (see paragraph 34 above). She returned to Cyprus that same month with a new passport with different identity details, and was granted a residence and employment permit until 15 November 2016. However, the authorities realised that she was the same person and arrested her on 10 September 2014 with a view to her deportation. No further details have been given by the Government in this respect.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Aliens and Immigration Law (Cap. 105)

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

37. Under section 6(1) of the Law, a person is not permitted to enter the Republic if he is a "prohibited immigrant". This category includes any person who enters or resides in the country contrary to any prohibition, condition, restriction or limitation contained in the Law or in any permit granted or issued under the Law (section 6(1)(k)). Furthermore, a person can be considered a "prohibited immigrant" on, *inter alia*, grounds of public order, legal order or public morals, or if he or she constitutes a threat to peace (section 6(1)(g)). A "prohibited immigrant" can be ordered to leave the Republic under section 13 of the same Law.

38. Unauthorised entry into and/or stay in Cyprus (section 19(1)(l) of the Aliens and Immigration Law) are criminal offences. Until November 2011, they were punishable by imprisonment or a fine (section 19(2)) of the Aliens and Immigration Law). Amending Law no. 153(I)/2011, which entered into force in November 2011, removed the punishment of imprisonment, but retained the criminal nature of the contraventions and their punishment by a fine (section 18).

39. Section 6(2) of the Aliens and Immigration Law provides that the Council of Ministers or, by its direction, any Director, may grant a licence for a prohibited immigrant to enter and remain in the Republic for such period and subject to such terms and conditions as the Council of Ministers may see fit. In accordance with section 6(3), read in conjunction with section 13, any licence granted under section 6(2) may be revoked at any time by the Council of Ministers and, where such a licence is so revoked, the Chief Immigration Officer, who is the Minister of the Interior, may cause the person concerned to be arrested with a view to an order being made for his or her deportation as provided for by section 14 of the law. Under section 14, the deportation and, in the meantime, the detention of any alien who is considered “a prohibited immigrant” can be ordered by the Chief Immigration Officer.

40. Section 14(6) of the Aliens and Immigration Law provides that a person against whom a detention and/or deportation order has been issued shall be informed in writing, in a language which he understands, of the reasons for that decision – unless this is not desirable for reasons of public security – and that person has the right to be represented before the competent authorities and to request the services of an interpreter. Section 14(6) does not set a time-limit for notifying a person of the orders in writing. In addition, Regulation 19 of the Aliens and Immigration Regulations of 1972 (as amended) provides that when the Chief Immigration Officer decides that a person is a prohibited immigrant, written notice to that effect must be served on that person in accordance with the second schedule of the Regulations (see *M.A. v. Cyprus*, no. 41872/10, §§ 63-65, ECHR 2013 (extracts)).

41. Under Regulation 9(4) of the Aliens and Immigration Regulations of 1972, an entry permit can be revoked by the Minister of the Interior provided that its holder is given at least fourteen days’ notice. If the holder is found (*ανακαλυφθῆ*) to be a prohibited immigrant or to have violated the terms and conditions of his entry permit, revocation may be implemented immediately.

42. Deportation and detention orders as well as the revocation of residence permits can be challenged by way of administrative “recourse” (judicial review proceedings) under Article 146 (1) of the Constitution of the Republic of Cyprus (for the domestic law applicable at the material time, see *ibid*, §§ 67-72; see also paragraph 43 below).

B. Relevant case-law submitted by the Government

43. In the case of *Qureshi Aqeel Ahmed v. the Republic* (2006) 3 C.L.R. 537, the applicant was arrested on the basis of information that he was reportedly involved with al-Qaeda. He was declared a “prohibited immigrant” by the Chief Immigration Officer under the Aliens and Immigration Law. His temporary resident permit was revoked and detention and deportation orders were issued against him under section 6(1)(k) of the above Law. He was deported two days after his arrest. The applicant contested the legality of the revocation of his permit and the issuance of the detention and deportation orders against him. The Supreme Court, sitting as a full bench (that is, all thirteen judges), dismissed his recourse in its judgment of 21 September 2006. The applicant had been declared a “prohibited immigrant” on national security grounds under the relevant provisions of the Aliens and Immigration Law, and after the Chief Immigration Officer had examined all the evidence. Under Regulation 9(4) of the Aliens and Immigration Regulations, the Chief Immigration Officer had the power to revoke a residence permit without notice. There was nothing to suggest that the authorities had not acted in good faith. The issuance of the deportation order under the Aliens and Immigration Law had been in accordance with domestic law. The Supreme Court held that the exception contained in the second paragraph of Article 1 of Protocol No. 7 was applicable in the circumstances of the case.

44. In an earlier case, that of *Maria-Bella A. Mabello v. the Republic of Cyprus* (2003) 4 C.L.R. 344, the applicant had challenged the legality of the detention and deportation orders issued against her following the revocation of her residence permit. The Supreme Court (first-instance revisional jurisdiction) dismissed the recourse. It held that the applicant, whose residence permit had been revoked because she had been considered to be a “prohibited immigrant”, had been in accordance with section 6(1)(k) of the Aliens and Immigration Law and Regulation 9(4) of the Aliens and Immigration Regulations. Article 1 of Protocol No. 7 was not applicable to the case as, following the revocation of her permit, the applicant had not been “lawfully resident” in Cyprus within the meaning of that provision.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

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

“9. The word ‘resident’ is intended to exclude from the application of the article any alien who has arrived at a port or other point of entry but has not yet passed through the immigration control or who has been admitted to the territory for the purpose only of transit or for a limited period for a non-residential purpose...”

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

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

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

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

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

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

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

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

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

THE LAW

I. JOINDER OF THE APPLICATIONS

47. Given their similar factual and legal background, the Court decides that the three applications should be joined under Rule 42 § 1 of the Rules of Court.

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

48. The applicants complained that their detention with a view to their deportation had been unlawful and therefore in breach of Article 5 § 1 of the Convention, the relevant parts of which provide as follows:

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

..

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

49. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicants

51. The applicants submitted that it was for the respondent Government to show that their detention had been lawful and reasonable and necessary in the circumstances of the case. The applicants had been bystanders and had not been involved in the fight.

(b) The Government

52. The Government submitted that from 14 January 2011 until their respective deportations the applicants had been detained lawfully with a view to their deportation under and in conformity with Article 5 § 1 (f) of the Convention. The applicants' detention had been in conformity with domestic law and procedure. They had been deprived of their liberty on the basis of deportation and detention orders issued on 14 January 2011 under section 14 of the Aliens and Immigration Law on the grounds that they had been “prohibited immigrants”: under section 6(1)(g) of the above Law in respect of the first and second applicants, on the grounds of public order, and under section 6(1)(k) in respect of the third applicant, on the grounds of unlawful stay.

53. The Government had no doubt that standard police practice had been followed and that when the applicants had been re-arrested immediately upon their release following the expiry of the remand warrant on 14 January 2011, they had been informed orally of the decision to deport and not prosecute them. Further, on the same date, letters informing the applicants of the decision to detain and deport them in compliance with section 14(6) of the Aliens and Immigration Law had been immediately prepared and sent to them. Although the Government did not have evidence as to the exact date and the exact manner in which the applicants had been notified of the

letters of 14 January 2011, the applicants had definitely received the letters sometime between 14 and 18 January 2011. A lawyer acting on their behalf had thus been able to contact the Minister of the Interior on 18 January 2011 and object to the deportation decisions. In addition to that, the applicants had been served with the letters again on the date of their deportation.

54. In any event, the Government pointed out that section 14(6) did not set a time-limit within which a person should be notified of detention and/or deportation. In accordance with the domestic case-law, the authorities had had an obligation under this provision to inform the applicants in a language which they understood of the reasons for that decision, and to give this information after the issuance of the detention and/or deportation orders.

55. Lastly, the Government highlighted that the applicants had been held for a very short period time and solely for the purpose of their deportation and had not been deprived of their liberty in an arbitrary fashion.

2. *The Court's assessment*

56. It is not disputed that the applicants, following the decision not to prosecute them and the expiry of their detention in remand, were deprived of their liberty on the basis of deportation and detention orders issued against them on the grounds that there were “prohibited immigrants”, and that they were detained for the purpose of being deported from Cyprus. The first and third applicants were held from 14 January 2011 until 19 January 2011, and the second applicant from 14 January 2011 until 21 January 2011.

57. Their detention therefore came within the ambit of Article 5 § 1 (f) of the Convention.

58. The Court reiterates that this provision does not require that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary, for example to prevent his committing an offence or fleeing; in this respect, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c) (see *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I, and *Chahal v. the United Kingdom*, 15 November 1996, Reports 1996-V, §§ 112-113). All that is required under this provision is that “action is being taken with a view to deportation”. It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see *Chahal*, cited above, § 112). Any deprivation of liberty, however, under Article 5 § 1 (f) will be justified only for as long as deportation proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) of the Convention (*ibid.*, § 113).

59. Under the sub-paragraphs of Article 5 § 1, any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a)-(f), be “lawful”. Where the “lawfulness” of detention is at issue, including the question of whether “a procedure prescribed by law”

has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1, and the notion of “arbitrariness” in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (*Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008).

60. Furthermore, in order to avoid being branded arbitrary, detention under Article 5 § 1 (f) of the Convention must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (see, for example, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009, and *Saadi*, cited above, § 74).

61. The Court observes that Cypriot law allows for the possibility of detention with a view to deportation. The Court notes in this respect that the decision of 14 January 2011 ordering the applicants’ detention and deportation was based on section 14 of the Aliens and Immigration Law, which permits the Chief Immigration Officer to order the deportation of any alien who is a prohibited immigrant, and his or her detention in the meantime. The deportation and detention orders in respect of the first and second applicants were issued on the grounds of public order under section 6(1)(g) of the Aliens and Immigration Law, and those in respect of the third applicant under section 6(1)(k) of the above-mentioned Law on the grounds of unlawful stay. The applicants were also notified of the orders in accordance with domestic law. Indeed, the applicants have not contested this in their observations.

62. Consequently, in view of the foregoing, the Court finds that the applicants’ detention had a legal basis in domestic law and was ordered “in accordance with a procedure prescribed by law”.

63. Furthermore, the applicants were in immigration detention for a short period of time: the first and third applicants were detained for five days and the second applicant for seven days. Thus, no issue arises in the case in respect of the requirement of diligence.

64. Lastly, there is no indication that the authorities acted in bad faith in detaining the applicants, or that the applicants were detained in unsuitable conditions, or that their detention was arbitrary for any other reason.

65. Accordingly, the Court finds that there has been no violation of Article 5 § 1 of the Convention.

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

66. The applicants complained that they did not have at their disposal an effective remedy to challenge the lawfulness of their detention. They relied on Article 13 of the Convention. The Court finds that the applicants' complaint falls to be examined under Article 5 § 4 of the Convention, as this provision is the *lex specialis* in relation to the more general requirements of Article 13 which the applicants invoke (see *Nikolova v. Bulgaria* [GC], no. 31195/96 § 69, ECHR 1999-II). Article 5 § 4 provides as follows:

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

A. Admissibility

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

B. Merits

1. *The parties' submissions*

(a) **The applicants**

68. The applicants did not make any observations on the matter.

(b) **The Government**

69. The Government accepted that, in the light of the Court's judgment in *M.A. v. Cyprus* (cited above, §§ 164-170), recourse proceedings under Article 146 of the Constitution were ineffective for the purposes of Article 5 § 4, as they did not comply with the requirement of “speediness”. Therefore, they acknowledged that the applicants did not have at their disposal an effective remedy by which they could challenge the lawfulness of their detention.

2. *The Court's assessment*

70. At the outset, the Court notes that the fact that the applicants were released upon being deported does not render their complaint under this provision devoid of purpose, since the deprivation of liberty in issue lasted five days in respect of the first and third applicants and seven days in respect of the second applicant (see, for example, *Čonka*, cited above, § 55;

see also, *mutatis mutandis*, *Döner and Others v. Turkey*, no. 29994/02, §§ 69-70, 7 March 2017).

71. The Court observes that, in the light of its judgment in *M.A. v. Cyprus* (cited above, §§ 160-170), the Government have accepted that recourse proceedings are incompatible with the provisions of Article 5 § 4 of the Convention, and that as a result the applicants did not have an effective remedy under domestic law by which to contest the lawfulness of their detention.

72. Accordingly, the Court finds that there has been a violation of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8, TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 13 OF THE CONVENTION, ON ACCOUNT OF THE FIRST APPLICANT'S DEPORTATION TO SRI LANKA

73. The first applicant complained of a violation of the right to respect for his private and family life under Article 8, as he had been deported while his wife and child were still in Cyprus. He also complained under Article 13 of the lack of an effective remedy in relation to his complaint. These provisions provide as follows:

Article 8

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

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.”

Article 13

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

A. The parties' submissions

1. The Government

74. The Government accepted that the first applicant had established a family life with his wife and child in Cyprus within the meaning of Article 8 of the Convention. However, they argued that, in the particular circumstances of the case, there had been no interference or lack of respect for his family life and home in breach of that provision.

75. First of all, the first applicant's wife had been residing unlawfully in the Republic since the expiry of her residence permit on 16 September 2008, and at the material time her whereabouts had not been known to the authorities. Although the first applicant had called his wife several times during his detention, she had not come to visit him at the police station. On the date of the first applicant's arrest and subsequent deportation his wife had been unlawfully resident in the Republic. If she had been traced at the time, detention and/or deportation orders would have been issued against her under sections 14(1) and 6(1)(k) of the Aliens and Immigration Law on the grounds of unlawful residence, and she would have been declared a prohibited immigrant. Consequently, she would have been deported with her husband and child to Sri Lanka, where they would have continued their family life.

76. In these circumstances, it could not be said that the first applicant's deportation had constituted an interference with his family life within the meaning of Article 8 § 2, as responsibility for the impugned separation could not be imputed to the respondent Government (relying on *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, §§ 88-89, Series A no. 201).

77. Secondly, the present case did not just concern family life, but also immigration. In accordance with the Court's case-law, decisions taken by States in the sphere of immigration could, in some cases, amount to interference with the right to respect for private and family life where the persons concerned possessed strong personal or family ties in the host country which were liable to be affected by an expulsion order (referring to *Z.H. and R.H. v. Switzerland*, no. 60119/12, § 41, 8 December 2015, and *Muradeli v. Russia*, no. 72780/12, § 70, 9 April 2015). Even though the first applicant had not been prosecuted for any criminal offence, there had been serious public order considerations weighing in favour of his deportation. In respect of the offence of taking part in a fight in a public place, the police had found that there was sufficient evidence against all the persons arrested, including the first applicant. The circumstances in which the fight had taken place had been serious, and in the Government's view the persons in question had constituted a danger to the public order and security of the Republic, regard being had to the following factors: (a) the manner in which the fight had taken place – two opposing groups had decided in advance that they would fight each other at a specified time and place, and the location of the clash had been in a road in a residential area; (b) the objects and weapons used in the fight; (c) the persons involved; and (d) the consequences of the fight (four of the participants, including the second applicant, had been injured and hospitalised). As for the first applicant, his car had been found at the crime scene and the police had found an iron tube and a bottle containing petrol inside it, which suggested his active involvement in the fight.

78. Further, the first applicant had not possessed any strong family ties in Cyprus at the time of his deportation. The fact that his wife had remained after the expiry of the period for which she had been granted permission to remain, and thus remained unlawfully, could hardly be considered a factor advocating in favour of his possessing strong family ties in the Republic. Moreover, even assuming that she would have been granted temporary residence following her request to the Minister of the Interior, this would have been dependent on her husband having a valid residence permit. On her own, she did not have a right to settle in Cyprus or a right to an autonomous residence permit. The Government stressed that on many occasions the Court had held that “respect” did not necessarily entail enabling a family to establish themselves in the country of their choice (relying on *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 68, Series A no. 94). They also submitted that the first applicant had not referred to other family or personal ties.

79. The Government also emphasised that there had been no objective obstacles to the first applicant and his family establishing a family life in Sri Lanka. The first applicant and his wife were Sri Lankan nationals, they had been born in Sri Lanka, spoke Sri Lankan and had both come to Cyprus as adults on temporary residence permits. The first applicant had lived in Cyprus for nine years and his wife for seven (for three of which she had stayed illegally). They had both returned to Sri Lanka during their stay in Cyprus and had had sufficiently strong ties with their home country. Their daughter had been four years old at the material time and, due to her young age, she would not have encountered any difficulties if she had gone with her parents to Sri Lanka. Moreover, she did not have a right to acquire Cypriot nationality as, by virtue of the Civil Registry Law (Law no. 141(I)/2002), this could only be passed on by a child’s parents, regardless of fact that she had been born in Cyprus.

80. Therefore, it was the Government’s position that a fair balance had been struck between the competing interests of the State – namely immigration control, preserving public order or public safety and preventing disorder and crime – on the one hand, and protecting the first applicant’s family life and home on the other. In addition, the Government had not exceeded the margin of appreciation afforded to States in immigration matters.

81. Lastly, the Government argued that the facts of the case were distinguishable from cases concerning “settled migrants” – a notion used by the Court in its case-law to refer to persons who had already been formally granted a right of residence in a host country where a subsequent withdrawal of the right would constitute an interference with their family life within the meaning of Article 8. The first applicant had never acquired the status of a third country national who was a long-term resident. His residence permits had only been temporary and had had to be renewed after

expiry. However, even assuming that the first applicant could be considered a “settled migrant”, and assuming his deportation could be said to have amounted to an interference with his family life and home, the interference had fulfilled the requirements of Article 8 § 2.

82. With regard to Article 13 taken in conjunction with Article 8, the Government submitted that the first applicant did not have an arguable complaint under Article 8 because his wife had been residing unlawfully in the Republic at the time of his deportation and had also been liable to be deported had the authorities traced her at the material time.

83. The Government submitted that the first applicant had had an effective remedy to raise his complaint about the alleged violation of his right to a family life, as required by Article 13. He could have challenged the deportation and detention orders and the revocation of his residence permit before the Supreme Court by way of administrative recourse under Article 146(1) of the Constitution (*M.A. v. Cyprus*, cited above, §§ 67-72). Although a recourse did not have automatic suspensive effect under domestic law, upon such an application, the Supreme Court had the power to issue provisional orders suspending the enforcement of a decision taken by an administrative authority, pending the case being heard on the merits (*ibid.*, § 79). In the context of such a recourse and an application for a provisional order, the applicant could have raised his complaint under Article 8 of the Convention and under Article 15 of the Constitution, which also protects private and family life. In cases involving deportation and the right to respect for family life, the Supreme Court took into account the Court’s case-law on Article 8 of the Convention and examined whether, in the circumstances of the case before it, deportation would be in breach of the provision. The first applicant could have challenged those decisions before or after his deportation within seventy-five days of their being issued (referring to *Abbasi v. Cyprus* (dec.), no. 21713/06, 5 July 2007 with regard to challenging such a decision in that manner after deportation).

2. *The first applicant*

84. The first applicant submitted that an order deporting someone from a Convention State where his or her children or other people with whom he or she enjoyed family life resided, or refusing to allow a parent or other family member to join others in that State, constituted an interference with his or her family life under Article 8 of the Convention. Such interference was in breach of Article 8 of the Convention unless it could be justified under paragraph 2 of Article 8 as being “in accordance with the law”, pursuing one or more of the legitimate aims listed therein, and being “necessary in a democratic society”. Relying on the Court’s judgments in *Olsson v. Sweden* (no. 1), 24 March 1988, Series A no. 130, *Silver and Others v. the United Kingdom*, 25 March 1983, Series A no. 61, and *The Sunday Times v. the United Kingdom* (no. 1), 26 April 1979, Series A no. 30, the first applicant

referred to the principles governing these conditions. In his view, in the present case, the Government had exceeded the margin of appreciation afforded to it in immigration matters, in breach of Article 8.

85. The first applicant did not make any submissions on Article 13 of the Convention taken together with Article 8.

B. The Court's assessment

1. Article 8 of the Convention

86. The Court has consistently affirmed that the Convention does not guarantee the right of an alien to enter or to reside in a particular country, and that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, for example, *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 355, ECHR 2012 (extracts) with further references). However, the removal of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8 § 1 of the Convention (see, *inter alia*, *Udeh v. Switzerland*, no. 12020/09, § 38, 16 April 2013; *Bajsultanov v. Austria*, no. 54131/10, § 78, 12 June 2012; *Mawaka v. the Netherlands*, no. 29031/04, § 58, 1 June 2010; and *Boultif v. Switzerland*, no. 54273/00, § 39, ECHR 2001-IX).

87. Factors to be taken into account in this context are the extent to which family life is effectively ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of the family members concerned, and whether there are factors of immigration control (for instance, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion (see, *inter alia*, *Nacic and Others v. Sweden*, no. 16567/10, § 81, 15 May 2012, and *Nunez v. Norway*, no. 55597/09, § 70, 28 June 2011).

88. Another important consideration is whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the continuation of that family life within the host State would, from the outset, be precarious (see, *Nunez*, *ibid.*, § 70, with further references). Where this is the case, the removal of a non-national family member would be incompatible with Article 8 only in exceptional circumstances (*ibid.*).

89. As regards the facts of the present case, the Court observes that the first applicant arrived in Cyprus on 20 April 2001 and was granted a temporary residence permit which was renewed on more than one occasion. The last permit was valid until 10 May 2011. In 2004, during one of his

visits to Sri Lanka, the first applicant married a Sri Lankan national who joined him a few months later in Cyprus. She was granted a temporary residence permit until 16 September 2008. Their daughter was born in 2007.

90. It is undisputed that the first applicant and his wife had established a family life in Cyprus. However, the Court notes that the applicants' removal from Cyprus was not aimed at breaking up the family (see *Mawaka*, cited above, § 60). When the first applicant's permit was revoked, his wife did not have legal residence in Cyprus; she had remained illegally in Cyprus for more than two years. She had not taken any steps to renew her residence permit until 30 November 2010, when a lawyer acting on her behalf had written to the Minister of the Interior requesting a visitor's residence permit based on humanitarian grounds – a permit of the same duration as that held by her husband. At the material time, that request had not been decided. She had therefore been liable to be deported. The Government have submitted that she had gone into hiding in order to avoid deportation.

91. Hence, while the revocation of the first applicant's residence permit resulted in the situation that he was unable to lawfully reside in the country where he had been enjoying family life with his wife and child, at the time his wife was no longer lawfully residing in Cyprus. As mentioned above, it is well established in the Court's case-law that an issue may arise under Article 8 due to the removal of a person from a country where close members of his family are living (see paragraph 86 above). However, that principle is in general to be understood as applying only if those family members are residing lawfully in that country or, exceptionally, if there is a valid reason why they could not be expected to follow the person concerned (see *Mawaka*, cited above, § 61).

92. Moreover, the first applicant has not submitted any arguments to the effect that his wife and child – who are not parties to the present proceedings and have not lodged an application with the Court themselves – were unable to return with him to Sri Lanka or that there were obstacles to their establishing a family life in their home country (see *Mawaka*, cited above, § 61, and *Cruz Varas*, cited above, § 88). Indeed, the evidence in the file suggests the contrary. In the letter of 30 November 2010 the lawyer acting on behalf of the first applicant's wife had requested a visitor's residence permit of the same duration as that held by her husband and informed the Minister of the Interior that the couple's intention was that the whole family would return to Sri Lanka upon the expiry of the first applicant's temporary residence permit.

93. In these circumstances, the Court finds the first applicant's complaint under Article 8 of the Convention is manifestly ill-founded and therefore inadmissible, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

2. *Article 13 of the Convention taken in conjunction with Article 8*

94. The Court will confine itself to noting that, in accordance with its established case-law, Article 13 requires a remedy in domestic law to be available only in respect of such grievances as are “arguable” in terms of the Convention (see, among many other authorities, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131; more recently, *F.A.K. v. the Netherlands* (dec.), no. 30112/09, § 91, 23 October 2012; *El Morabit v. the Netherlands* (dec.), no. 46897/07, 18 May 2010; *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 137, ECHR 2003-VIII; and *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 58, ECHR 2000-IV).

95. In view of its finding above, the Court does not consider that an arguable claim has been established under Article 8 of the Convention.

96. Consequently this complaint too is manifestly ill-founded and must be rejected, pursuant to Articles 35 §§ 3 (a) and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 7 TO THE CONVENTION IN RESPECT OF THE FIRST AND SECOND APPLICANTS

97. The first and second applicants further complained under Article 1 of Protocol No. 7 that, even though they had been lawfully resident in Cyprus, they had been deported without being informed about the deportation decision and without any procedural safeguards. This provision reads as follows:

“1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

- (a) to submit reasons against his expulsion,
- (b) to have his case reviewed, and
- (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1 (a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.”

A. The parties’ submissions

1. *The Government*

98. The Government submitted that the first and second applicants had not been “lawfully resident” in the territory of Cyprus within the meaning of Article 1 of Protocol No. 7 at the time of their deportation, and therefore this

provision was not applicable. Their residence permits, which had been valid until 10 May 2011 and 19 October 2011 respectively, had been revoked with immediate effect on the grounds of public order on 14 January 2011. Subsequently, detention and deportation orders had been issued in respect of the first and second applicants and they had been deported on the basis of those orders.

99. According to the Explanatory Report to Protocol No. 7 to the Convention, the word “lawfully” referred to the domestic law of the State concerned. It was therefore for domestic law to determine the conditions which had to be fulfilled for a person’s presence in the territory to be considered “lawful”.

100. The first and second applicants’ residence permits had been revoked by decisions taken on 14 January 2011 under section 6 of the Aliens and Immigration Law on the grounds that their conduct posed a danger to the public order of the Republic, and under Regulation 9(4) of the Aliens and Immigration Regulations of 1972, which gave the Minister of the Interior the authority to revoke a residence permit with immediate effect if the holder of the permit was found to be a prohibited immigrant (see paragraphs 40 and 41 above). This had been in line with domestic law (see paragraphs 43 and 44 above). The Supreme Court had held that, in such cases, Article 1 of Protocol No. 7 was not applicable (see paragraph 44 above).

101. In accordance with section 6(1) of the Aliens and Immigration Law, a prohibited immigrant was, *inter alia*, a person whose conduct was considered dangerous for reasons of public order. Since the conduct of the first and second applicants had posed a danger to public order, their residence permits had been revoked immediately without notice. The deportation and detention orders had been issued under sections 14(1) and 6(1)(g) of the Aliens and Immigration Law on public order grounds.

102. Notwithstanding the above, the Government submitted that if the Court were to find that Protocol No. 7 was applicable in the present case, it was evident that the first and second applicants’ deportation had been in accordance with the law and had served a legitimate aim. It had also been in compliance with the procedural requirements of Article 1 § 1 (a), (b) and (c) of Protocol No. 7. Before the applicants’ deportation, their lawyer had been able to object to the deportation and their case had been reviewed by the Minister of the Interior, who had made a note of the objection, read the administrative file and maintained the decision to deport them. According to the Explanatory report to Protocol No. 7, the whole procedure could be in writing, with no need for an oral hearing. Furthermore, in his letters, the applicants’ lawyer had not submitted any reasons contesting their deportation, but had merely objected to it and requested a meeting. He had not put forward any specific reasons as to why a meeting was necessary as opposed to the reasons against the deportation being stated in writing. The

Government noted in this respect that the applicants had not been the only ones who had been arrested on the same grounds and detained with a view to being deported. The lawyer of another person who had been involved in the events had actually submitted reasons opposing his client's deportation; the competent authority had reviewed his case and then suspended the enforcement of the deportation order in respect of him.

103. Lastly, the Government submitted that the exception contained in paragraph 2 of Article 1 of Protocol No. 7 was not applicable in this case.

2. The first and second applicants

104. The applicants did not make any submissions under this head.

B. The Court's assessment

105. The Court notes that the scope of application of Article 1 of Protocol No. 7 applies only to aliens "lawfully resident" in the territory of the State in question (see, *inter alia*, *Berdzenishvili and Others v. Russia*, nos. 14594/07 and 6 others, § 87, 20 December 2016; *Georgia v. Russia (I)* [GC], no. 13255/07, § 228, ECHR 2014 (extracts); and *Nowak v. Ukraine*, no. 60846/10, § 79, 31 March 2011).

106. In accordance with paragraph 9 of the Explanatory Report to Protocol No.7, the word "lawfully" in Article 1 of that Protocol refers to the domestic law of the State concerned (see paragraph 45 above). It is therefore for the domestic law to determine the conditions which must be fulfilled for a person's presence in the territory to be considered lawful (see, for example, *Sharma v. Latvia*, no. 28026/05, § 73, 24 March 2016). In this connection, the Court notes the definitions of the notion of "lawful residence" of other international instruments contained in the Explanatory Report (see paragraph 46 above).

107. Accordingly, it is necessary in the present case to ascertain whether the first and second applicants were lawfully resident in Cyprus within the meaning of domestic law at the time of their deportation.

108. The Court observes that the first applicant was the holder of a residence permit which was valid until 10 May 2011, and the second applicant had a residence permit which was valid until 19 October 2011. However, these were revoked on 14 January 2011 following the authorities' decision not to prosecute the applicants and to issue deportation and detention orders against them on public order grounds – under sections 14 and 6(1)(g) of the Aliens and Immigration Law and under regulation 9(4) of the Aliens and Immigration Regulations of 1972, which gave the Minister of the Interior the authority to revoke residence permits with immediate effect and without the fourteen-day notice period. The applicants have not suggested that those revocations were tainted in a way which could affect

their domestic lawfulness, and nothing in the materials before the Court casts doubt on the domestic lawfulness of the revocations.

109. Therefore, on the revocation of their residence permits and the issuance of deportation orders, the first and second applicants were no longer lawfully resident in Cyprus under domestic law. It follows that they were not “lawfully resident” in Cyprus at the time of their deportation within the meaning of Article 1 of Protocol No. 7. The Court further notes that the applicants never attempted to contest the revocation of their residence permits or the decisions to deport them before the Cypriot courts, either before or after their deportation.

110. In the light of the above considerations, the Court finds that Article 1 of Protocol No. 7 is not applicable in the present case.

111. It follows that the first and second applicants’ complaint under this provision must be declared inadmissible as being incompatible *ratione materiae* with the provisions of the Convention and its Protocols, pursuant to Article 35 §§ 3 and 4.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. 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.”

113. The applicants did not submit a claim for just satisfaction.

114. The Court therefore makes no award in this regard and finds no exceptional circumstances which would warrant a different conclusion (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 76-78, 30 March 2017).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaints concerning Article 5 §§ 1 and 4 of the Convention admissible, and the remainder of the applications inadmissible;
3. *Holds* that there has been no violation of Article 5 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention.

Done in English, and notified in writing on 19 June 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Helena Jäderblom
President