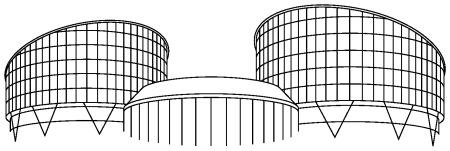

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF THUO v. CYPRUS

(Application no. 3869/07)

JUDGMENT

STRASBOURG

4 April 2017

FINAL

18/09/2017

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

In the case of Thuo v. Cyprus,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Luis López Guerra,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 14 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 3869/07) 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 Mr David William Thuo, a Kenyan national, on 16 January 2007.

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

3. The applicant complained, firstly, of his conditions of detention at Nicosia Central Prisons. He also complained of ill-treatment during his deportation and that no effective investigation of that complaint had taken place. He relied on Article 3 of the Convention.

4. On 23 March 2009 the complaints were communicated to the Government.

5. On 4 May 2010 the Government was requested, pursuant to Rule 49 § 3 (a) of the Rules of Court, to submit additional factual information concerning the conditions of the applicant's detention and the progress of the investigation into his ill-treatment complaint.

6. Two further requests were made to the Government under Rule 49 § 3 (a) for updated factual information concerning the investigation, on 21 October 2010 and 1 October 2015 respectively.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1978 and lives in Nairobi, Kenya.

A. The applicant's arrest and detention and the relevant domestic proceedings

8. The applicant left Kenya on 29 March 2005. He entered Cyprus unlawfully through the "Turkish Republic of Northern Cyprus" ("TRNC") on 4 April 2005.

9. On 6 April 2005 the applicant was arrested at Larnaca Airport as he attempted to travel to London on a forged passport.

10. On 12 April 2005 the applicant, after pleading guilty to using a forged document (sections 331, 332, 335 and 339 of the Criminal Code, Cap. 154; see *Seagal v. Cyprus*, no. 50756/13, § 100, 26 April 2016) was sentenced by the Larnaca District Court to nine months' imprisonment (criminal case no. 4728/05). He was detained in Wing 1B of Nicosia Central Prisons.

11. The applicant appealed to the Supreme Court against his sentence (criminal appeal no. 132/05) but it was dismissed on 4 July 2005.

12. In the meantime, on 21 April 2005, the applicant applied to the Asylum Service for asylum.

13. On 10 November 2005, while the applicant was still serving his sentence, the Director of the Civil Registry and Migration Department issued detention and deportation orders against him, pursuant to section 14 of the Aliens and Immigration Law, on the grounds that he was a "prohibited immigrant" within the meaning of section 6(1)(d) of that law (see paragraphs 94-95 below). The enforcement of the deportation order was suspended pending the examination of his asylum application.

14. On 14 November 2005 the applicant was released after serving his sentence. However, he was re-arrested the same day under the detention and deportation orders and placed in the immigration detention facilities in Block 10 of Nicosia Central Prisons. He was presented with the above orders but refused to sign them.

15. On 31 January 2006 the Asylum Service rejected his application.

16. On 22 February 2006 the applicant lodged an appeal with the Reviewing Authority for Refugees ("Reviewing Authority"), which was dismissed on 6 April 2006.

17. On 3 May 2006 the applicant brought a "recourse" (judicial review proceedings) before the Supreme Court (in its first-instance revisional jurisdiction) challenging the Reviewing Authority's decision (recourse no. 782/06).

18. By a letter dated 11 June 2006 the applicant made a complaint to the Commissioner for Administration of the Republic of Cyprus ("the Ombudsman") concerning, *inter alia*, the deportation and detention orders.

19. By letters dated 17 May 2006 and 29 August 2006 the applicant's lawyer complained to the Minister of the Interior of the unlawfulness of the applicant's continued detention following the expiry of his sentence and requested his release. He further noted that the authorities had threatened to deport the applicant even though his recourse was still pending before the Supreme Court.

20. By a letter dated 5 December 2006 the Ombudsman informed the applicant that the authorities' decision to issue deportation orders had been justified as his asylum application had been rejected.

21. It transpires from the documents in the case file that the applicant's deportation was not possible because he had no valid passport or other valid travel document and refused to cooperate with the authorities. When he eventually decided to cooperate, the authorities contacted the Kenyan Embassy in Italy. On 20 February 2007 it issued a travel document for the applicant in the name of David Kandiri Wanjiku.

22. The previous orders were cancelled and on 22 February 2007 new ones were issued on the same grounds (see paragraph 13 above) under the name in the travel document.

23. On 9 March 2007 the applicant was deported (see paragraphs 26-30 below) and added to the authorities' "stop list" (a register of individuals whose entry into and exit from Cyprus is banned or subject to monitoring).

24. Following the applicant's deportation, on 9 May 2007 his lawyer withdrew the recourse from the Supreme Court (see paragraph 17 above).

25. The applicant's Kenyan passport, issued on 15 October 2009, is in the name of David William Thuo.

B. The applicant's account of his deportation and alleged ill-treatment

26. According to the applicant, in the early hours of 9 March 2007 prison guards and two immigration officers insulted him by saying "come here you stupid *mavro* (black)". They were holding a form with the applicant's photograph on it but the applicant could not read it. They asked him whether the photograph was of him and the applicant replied in the affirmative. The applicant asked to be allowed to call his lawyer but was told "no telephone for you – you have no rights here". Then one of the immigration officers pushed him into a room, hitting him and pinching his testicles. It was very painful and he thought they were going to kill him. He could not breathe. He stated that the officers had had their hands on his neck. After a struggle the officers allowed the applicant to call his lawyer. The applicant's lawyer informed him that he was trying to contact the

Minister of the Interior and the applicant told his lawyer that he had been beaten by the immigration officers. One of the officers also spoke to the lawyer but the applicant could not understand the conversation as it was in Greek. He was given very little time before leaving the detention facilities to take his belongings and had to leave some behind.

27. The applicant was driven to Larnaca Airport with his hands handcuffed behind his back. He was placed in a room at the airport and the door was closed. The applicant asked to see the officer in charge and speak to his lawyer and began to shout after the officers refused to listen to him. Twenty minutes later three men in military uniform came into the room and, with the two immigration officers, they beat and verbally abused the applicant. They forced him into a chair and held him by the neck while an army officer held his mouth open and stuffed brown paper in it. They then placed adhesive tape with the Cyprus Airways logo on it over his mouth and neck. They wrapped bandages around his head and neck, almost entirely covering those parts.

28. The applicant was escorted onto the aircraft, which was empty. He was seated at the back and was still in handcuffs. He was in pain. He remained in that state until the aircraft was near Milan.

29. The applicant indicated to the officers that he wanted a pen and paper and they were given to him. He managed to write that he would not cause any problems and that he was in pain but they refused to listen to him. They warned him not to cause any more trouble. He stated that the captain and crew had witnessed everything.

30. The applicant was very upset but remained calm during the flight and managed to have a meal.

31. The applicant submitted that four of his top teeth had become loose owing to the ill-treatment and that he had later been informed by doctors that they needed to be replaced with artificial ones.

32. Lastly, he noted that he could identify the three army officers who had ill-treated him.

C. The applicant's complaints to the authorities about ill-treatment and the investigation of the complaints

1. The applicant's complaint to the Ombudsman

33. Following his deportation, on 27 December 2007, the applicant, while in Kenya, lodged a complaint with the Ombudsman concerning his deportation and the ill-treatment he had received during the deportation process at Nicosia Central Prisons, Larnaca Airport and on the aircraft to Milan. The applicant included a detailed chronology of the events with his letter of complaint, describing his alleged ill-treatment (see paragraphs 26-32 above).

34. On 4 February 2008 the Ombudsman informed the applicant that she would investigate his complaints and inform him of the outcome.

35. On 4 June 2009 the Ombudsman submitted her report to the Attorney General. She relied on comments by the Chief of Police as well as on a report dated 23 May 2008 by the Director of the Nicosia Police Aliens and Immigration Unit (see paragraph 37 below). She observed that the applicant had made his complaint following his deportation and so gathering evidence had not been easy and had had adverse consequences for the investigation. Given those factors and having examined the evidence that had been given to her, which did not substantiate the allegations of ill-treatment, she found that intervention on her part and the imputing of responsibility to the police for their handling of the applicant's situation could not be justified.

2. The applicant's complaint to the Independent Authority for the Investigation of Allegations and Complaints against the Police ("IAIACAP") and the initial refusal to investigate

36. On 23 February 2008 the applicant lodged a complaint with the IAIACAP (see paragraphs 99-104 below). He complained that he had been deported even though asylum proceedings had still been pending before the Supreme Court and that he had been ill-treated during the deportation process. The applicant attached a detailed chronology of the events to his letter of complaint (see paragraphs 26-32 above) and requested that the IAIACAP conduct an investigation.

37. The president of the IAIACAP conducted a preliminary investigation by collecting material from the police, who denied ill-treating the applicant. The police provided him with a report dated 23 May 2008 by the Director of the Nicosia Police Aliens and Immigration Unit and open statements by the two immigration officers, acting sergeants T.C. and Po.P., who had accompanied the applicant throughout his deportation. According to the above report and statements, when the immigration officers went to take the applicant from his cell, they showed him his travel document, as was the usual practice. The applicant started shouting and asked to call his lawyer, which the officers allowed him to do before leaving the detention facilities. T.C. also spoke to the lawyer and asked him to persuade his client to be cooperative during the deportation process. The applicant calmed down, they handcuffed him and he got into the police car without any problem. They then went to Larnaca Airport. Po.P stated, in particular, that they had sat in the passengers' waiting area and the applicant had been offered coffee. He had been completely calm. At 9 a.m. the applicant and the two immigration officers had boarded the aircraft for Milan. As soon as they had entered the aircraft they had removed the handcuffs, as the use of handcuffs during flights was prohibited by International Air Transport Association (IATA) regulations. They had stayed in Milan for five hours and had then

boarded a connecting flight to Nairobi. The officers denied the allegations of ill-treatment, maintaining that the deportation procedure had been carried out without the use of force and in compliance with the applicable rules. They also stated that the applicant had been a problematic, uncooperative person who had made threats to them throughout the process. T.C. stated that the officers had behaved impeccably and with patience, despite the fact that the applicant had been provocative throughout.

38. On 9 July 2008 the president of the IAIACAP concluded that the seriousness of the applicant's allegations meant that his complaint ought to be investigated, irrespective of the police officers' statements that they had not ill-treated him. Nevertheless, in order to reach a decision he required information as to how the IAIACAP could secure medical evidence and a statement from the applicant. The matter was referred to the Attorney General for his opinion.

39. By a letter dated 16 July 2008 the IAIACAP informed the applicant that it was willing to investigate the complaint, but there were certain difficulties, such as the fact that he was abroad. The IAIACAP had decided to ask the Attorney General's opinion on the matter.

40. By a letter dated 28 July 2008 counsel for the Attorney General informed the IAIACAP that the applicant's complaint could not be investigated because the applicant had left Cyprus. The applicant was informed of that decision on 11 August 2008.

3. The IAIACAP's investigation

41. By a letter of 17 June 2009 to the IAIACAP, the Attorney General, referring to the applicant's application to the Court, revisited the above decision and ordered the IAIACAP to conduct a formal investigation into the applicant's complaint. He noted that he had been informed of the position taken by counsel in the letter of 28 July 2008 (see paragraph 40 above) when he had looked into the case following communication of the applicant's application by the Court. In his opinion, where an arguable claim for ill-treatment had been made, the fact that the complainant had been deported, was not in Cyprus or that he was on the stop list did not constitute grounds for not conducting an investigation. He therefore did not agree with the opinion expressed by his counsel.

42. The Attorney General requested that the relevant authorities take all the necessary steps to arrange the applicant's return to Cyprus for the purposes of the investigation.

43. In their observations the Government submitted that the Attorney General had already informed the president of the IAIACAP in a letter dated 5 December 2007 on the taking of statements from witnesses, that when a person complaining to the IAIACAP was abroad, he or she should be asked to visit the IAIACAP in person and provide a statement and that

the Government would pay the expenses for a complainant's return to Cyprus.

44. On 13 July 2009 the applicant was informed of the decision to investigate and that he had been temporarily removed from the stop list for the purposes of the investigation. He was requested to inform the IAIACAP when he would be able to travel to Cyprus to provide a statement.

45. On 14 July 2009 the IAIACAP launched an official investigation into the applicant's ill-treatment complaint. A member of the IAIACAP was appointed as investigator.

46. In the course of the investigation the investigator collected documents and other physical evidence related to the applicant's case. It included the records kept by every police unit involved, including at Block 10 at Nicosia Central Prisons and at the airport; domestic court judgments and transcripts; samples of Cyprus Airways adhesive tape; and the aircraft cabin crew supervisor's report. No mention was made of the incident in the cabin crew report. The footage for that day from the airport's closed-circuit television ("CCTV") cameras had already been destroyed.

47. The investigator singled out five police officers as suspects: acting sergeants T.C. and Po.P. (see paragraph 37 above), the commanding officer of the Immediate Response Squad (*Ουλαμός Ταχείας/Άμεσης Επέμβασης*) ("IRS") Inspector N.S., and Constables Pa.P. and A.I.

48. On 12 June 2010 the applicant arrived in Cyprus to take part in the investigation. He was examined by two specialist doctors at Nicosia General Hospital, a maxillofacial surgeon and a urologist. Each prepared a medical report.

49. After taking X-rays, the maxillofacial surgeon concluded that as three years had passed since the alleged ill-treatment it was impossible to conclude with any certainty that any damage to the applicant's teeth that was diagnosed was due exclusively to ill-treatment, especially in view of the applicant's generally bad oral hygiene. The urologist did not observe any health issues, defects or signs of ill-treatment which could be linked to the applicant's complaint.

50. The reports were passed on to a forensics pathologist who concluded that there was no way to determine scientifically whether the applicant had been ill-treated, but found such a possibility minimal to negligible (*ελάχιστη εώς μηδαμινή*).

51. On 15 June 2010 the applicant was interviewed and gave his first written statement to the investigator. He made reference at the beginning of the statement to his conditions of detention and noted that during his detention in Block 10 he had kept a record of events. Until 8 March 2007 the behaviour of the police and immigration officers had been correct. The applicant continued by providing a detailed account of the events of 8 to 9 March 2007 and his alleged ill-treatment (see paragraphs 26-32 above). He stated that when the immigration officers had come to the detention

facility to take him from his cell he had refused to leave and had resisted. He noted that the bandages and the paper that had been put in his mouth at Larnaca Airport had been removed when the aircraft had been approaching Milan. The applicant also complained that he had had pain when urinating and when erect but that it had gone away after three months of treatment. He stated that he had been examined by a doctor in Kenya and had been treated there.

52. In support of his allegations the applicant provided the investigator with a certificate dated 9 June 2010 which had been issued by a doctor at Tigoni District Hospital, a public hospital in Kenya. It appears from the document that the applicant had written to the hospital on 21 December 2009 to request such a certificate. According to the certificate the applicant had visited the hospital on 10 March 2007 and had complained of neck and back pain, swelling of the face, dizziness, pain in the testicles and palpitations. It gave the applicant's blood pressure upon examination at 140/90 and his pulse at 115 bpm. It indicated that the applicant had "facial oedema/puffiness; bruises on wrist; testicles tendon, no obvious cut or fracture; thigh myalgia and bruises". The applicant was prescribed tablets. According to the certificate the applicant had returned to the hospital on 11 March 2007 because of "painful loose teeth and jaw". He was referred for a dental examination and told to rest for four days. The medical certificate is signed and was also stamped by the hospital's superintendent and certified by a notary on 10 June 2010. There is another signature dated 15 June 2010 but there is no indication whose it is. According to the applicant, he was advised to replace his front teeth but decided not to do so as with the passage of time they had gone back into place.

53. On 16 June 2010 all serving members of the IRS who had been on duty on 9 March 2007 from 7 a.m. to 9 p.m. (the date and approximate time of the alleged ill-treatment) were ordered to attend an identity parade the following day.

54. On 17 June 2010 the investigator visited Larnaca Airport where he took an open statement from N.S., who named the members of the IRS who had been on duty on the day of the alleged ill-treatment, including himself, Pa.P and A.I. He could not recall anything related to the applicant. He further stated that on the day of the alleged ill-treatment the members of his unit had worn blue uniforms. He said he did not object to the applicant, who was at the airport the same day, seeing him or members of the unit.

55. Certain members of the IRS, including N.S., Pa.P. and A.I., did not attend the identity parade. N.S. and Pa.P were absent for personal reasons while A.I. had already retired. The applicant did not identify any of the police officers present in the identity parade. As some of the officers were absent the investigator showed the applicant pictures of IRS officers who had been on duty on 9 March 2007. The applicant identified N.S., Pa.P. and A.I. as the men in military uniform who had been responsible for his

ill-treatment that day with the assistance of the two members of the Police Aliens and Immigration Unit.

56. Later the same day the applicant gave a second written statement to the investigator, providing further details of his alleged ill-treatment during the deportation process. The applicant stated that at Larnaca Airport N.S. had introduced himself as the "chief", put brown paper in his mouth, stuck adhesive tape on part of his face and had then wrapped almost his entire face in bandages. A.I. had assisted N.S. by holding the applicant by the neck. They had left some space so he could see and breathe. He also alleged that Pa.P. had held him by the shoulders and, with the assistance of one of the immigration officers, had immobilised him on the chair in which he had been sitting. He had kept trying to shout. Samples of the adhesive tape allegedly used during the incident were shown to the applicant. He identified the sample with the Cyprus Airways logo but noticed a difference in the colour of the letters. The applicant left Cyprus a few hours after giving his second statement.

57. On 21 June 2010 the investigator was informed by an officer working at the warehouse and storeroom at Police Headquarters that the IRS had introduced blue uniforms on 31 May 2007. Before that, the IRS had worn military uniform. This was verified by another officer who kept the warehouse and storeroom records.

58. On 25 and 28 June 2010 the investigator interviewed Po.P. and T.C and took statements from them. They handed the investigator the statements they had given in the course of the preliminary investigation in which they had denied the applicant's allegations of ill-treatment (see paragraph 37 above). They stated that no force had been used at Nicosia Central Prisons, that they had not insulted the applicant and that he had been allowed to speak to his lawyer.

59. Po.P. stated that the applicant had reacted only verbally at Nicosia Central Prisons and that after calling his lawyer he had cooperated and shown no resistance. They had thus been able to handcuff him and take him to the police car. Po.P. stated that throughout the trip to and at the airport and during the flight, the applicant had threatened the officers but had not been violent. However, according to Po.P., during the wait at the airport, the applicant had started to become uneasy and had tried to hit his head on the wall to harm himself. With the assistance of colleagues from another unit, T.C. had wrapped bandages around the applicant's forehead to protect him, but they had not under any circumstances gagged him. The force used for that purpose had been minimal and Po.P could not recall whether the applicant had been injured. They had taken the applicant on board the airplane before the other passengers and had removed the bandages once on board in order to assure the captain, who had come to see them, that the applicant was not injured. From then on the trip had gone smoothly. When Po.P was asked why he had not mentioned this incident to his superiors

earlier and had not made a note of it, for instance, in any of the police records, Po.P. stated that such things often happened during deportations, he had not considered it to be significant as no one had been injured and the whole deportation process had been carried out smoothly. He could not recall whether he had been informed of the applicant's specific allegations when he had given his open statement (see paragraph 37 above).

60. T.C. stated that when the applicant had realised he was being deported he had only reacted verbally and had asked to speak to his lawyer. The officers had allowed him to do so. T.C. stated that he had heard the applicant tell his lawyer that the officers had taken him by the neck and had been suffocating him, but that was a lie. T.C. also spoke to the applicant's lawyer (see paragraph 37 above). The applicant had calmed down, they had handcuffed him and put him in the police car; T.C. stated that the applicant had tried to pull away when they had tried to put him in the car. At the airport in Larnaca, T.C. had left the applicant under Po.P.'s supervision for about twenty minutes for check-in purposes. When he had returned the applicant had been frantic. Po.P had informed him that the applicant had been trying to hit his head on the wall. T.C. stated that he had also noticed that he had tried to hit himself against the chairs and walls in the room. He had been shouting and screaming and causing disruption in the departure hall. The officers had asked him to calm down but to no avail. For that reason, with the help of members of the IRS who had restrained the applicant, they had wrapped the applicant's head in bandages to protect him from possible self-harm. He could not remember whether they had also tied his feet because he had been kicking. T.C. stated that they had used the amount of force necessary to protect the applicant and immobilise or restrain him. When the aircraft had been ready to depart they had removed the bandages and handcuffs and the applicant had listened to music throughout the flight. When asked why he had not mentioned in his previous open statement that force had been used against the applicant (see paragraph 37 above), T.C. stated that it might have been an omission on his part but at that time he had not thought it essential.

61. On 29 June 2010 the IAIACAP investigator arranged an interview with N.S., who refused to answer any questions or provide a statement. On the same day, the investigator interviewed Constable Pa.P. who stated that members of the IRS had been wearing military uniform on the day of the incident but he did not remember coming into contact with the applicant. He observed that IRS officers did not keep a record when they helped other units as it was the responsibility of the unit itself to do that. He could not remember whether he had made a note in his personal notebook. He stated that he would get back to the investigator when he had found it.

62. On 1 July 2010 the investigator interviewed the applicant's lawyer. The lawyer stated that on 9 March 2007 he had spoken to the applicant by telephone while the applicant was still at Nicosia Central Prisons. The

applicant had informed him that he was being deported. The applicant had not made any mention of ill-treatment. He had next spoken to the applicant a few days after his deportation. The applicant had informed him that he had been ill-treated and insulted by police officers from the beginning of the deportation process in prison to when he had boarded the aircraft. The applicant had not provided further details but had informed him that he had lodged an application with the Court.

63. On 2 July 2010 the investigator started taking a statement from A.I. but A.I. left the interview following a telephone call and promised to return on 5 July 2010. However, A.I. informed the investigator on that date that he refused to answer any questions and referred the investigator to his lawyer.

64. In the course of the investigation statements were taken from various individuals, mainly police officers, *inter alia*, from the units concerned and from those at the immigration detention facilities at Nicosia Central Prisons.

65. On 22 July 2010 the investigator prepared a report on the investigation procedure and his findings.

66. The report stated that the various police records (records of action and log or duty books) were deficient and had failed to keep track of ongoing events (such as the applicant's being moved from Block 10 to another area on the night of his deportation and the officers' actions during the deportation).

67. The investigator stated that it was clear that the applicant, after failing in his asylum claim and lodging his recourse with the Supreme Court, had tried to delay and obstruct his deportation by reacting negatively and not cooperating. In the end he had applied to the Court for compensation.

68. According to the investigator there was a possibility that the applicant had been exaggerating. The officers' omissions, however, allowed room for questioning the accountability and objectivity which ought to have characterised them as members of the police during the execution of their duties. Furthermore, he noted the discrepancies in the officers' statements with regard to the colour of their uniform. He observed that that had clearly aimed at hiding the truth (*προφανώς για σκοπούς συσκότισης*). He also noted the fact that three of them had failed to attend the identity parade. The investigator considered that it was questionable whether the medical certificate provided by the applicant could be accepted as evidence in any procedure given that it did not mention the name of the doctor or doctors who had examined him. Relevant evidence from Kenya would therefore be required.

69. The investigator found that the applicant had reacted negatively and resisted deportation, both at Nicosia Central Prisons and at the airport, either by trying to obstruct it or through resisting in an effort to gain time in order to prevent it. It was likely that he had caused a great deal of disturbance in Larnaca Airport's departure hall and it had seemed that that would extend to

the aircraft. A certain amount of force had had to be used in those circumstances in order to overcome his resistance and calm him down. It was crucial to examine which of the two versions of events – that of the applicant or the officers – better described the level of force used against the applicant. He concluded with the following words:

> "Theoretically, if the violence was as described by the complainant, it may be considered excessive, inhuman and degrading. In practice, however, it was imperative to use some analogous/proportionate (*ανάλογη*) force to ensure the success of the deportation, to restore order and to ensure security during the flight, which probably, however, went beyond the permissible limits. It all depends, however, on the credibility of those involved."

70. According to the investigator, on the basis of the evidence, the applicant had by his reactions and behaviour rendered the use of force necessary. However, as the applicant had described it, that force had been excessive (*που όπως την περιγράφει ο ίδιος ήταν υπέρμετρη*). In his opinion it was more suitable to take disciplinary action against the officers for improper conduct and neglecting their duty to record and report the events than to press criminal charges. If the officers had acted appropriately from the beginning it would have given more weight to their accounts and made them more convincing.

71. On 27 July 2010 the investigator transmitted a summary of his report and findings to the president of the IAIACAP.

72. The IAIACAP agreed with the investigator's finding that no criminal action was merited but disagreed with his suggestion that disciplinary action should be pursued against the officers involved. It stated that it believed the officers' testimony that only the requisite amount of force had been used to enable the applicant's deportation. After examining the background to the case, it further stated that it was clear that the applicant's actions had been self-serving and that through lying and using various stratagems he had tried to make sure he stayed in Cyprus or benefitted financially. To that end, he had proceeded to lodge an application with the Court. In addition, the IAIACAP supported its finding by noting that the cabin crew supervisor had stated that he had not noticed anything untoward during the flight, something he would have recorded in his flight report. The IAIACAP concluded as follows:

> "If [the applicant's] claim that he was gagged with bandages was true, the cabin crew would have perceived it as an unusual event and would have recorded it.
>
> At the same time, omissions by the officers involved have been identified; they are not, however, of such a nature as to justify disciplinary action. Such omissions can be communicated to the Chief of Police for taking corrective steps".

73. The IAIACAP's conclusion and the investigator's report with all the relevant material were submitted to the Attorney General for a decision.

4. Decisions taken by the Attorney General and the Chief of Police

74. On 2 September 2010 the Attorney General decided that the police officers' actions and omissions did not merit criminal prosecution, noting also that it appeared that the applicant's actions had been self-serving. He agreed with the findings of the investigator and the IAIACAP that no criminal offence had been committed by the officers in question. In his opinion, the officers' omission in not recording or reporting the incident did not merit disciplinary action either, given that the applicant had been unruly (ατίθασος) and uncooperative. He left that issue, however, to the discretion of the Chief of Police.

75. On 10 September 2010 the applicant was informed of the Attorney General's decision.

76. The Chief of Police decided not to take disciplinary action against the officers involved. Instead, on 7 October 2010, he issued instructions to the Immigration Police and the Airport Security Police that in future they had to ensure that all relevant information regarding similar incidents and actions taken by the police in such contexts was meticulously recorded. Furthermore, the police departments concerned held meetings and lectures on the matter.

D. Conditions of the applicant's detention

1. The applicant's description of the conditions of detention

77. According to the applicant, he was detained in a police detention cell at Nicosia Central Prisons for a long time in conditions which had only been acceptable for a stay of a few days. He had been detained with another detainee in a cell measuring 5.5 sq. m and there had been no room for exercise. The conditions had also been unhygienic: strong smells had emanated from the toilet, the detainees had been made to clean their cells and the area nearby and rubbish had not been collected. He stated that the detention facilities had been overcrowded.

78. The applicant submitted a hand-sketched floor plan of his cell in Block 10. The plan showed that it was 5.5 sq. m in area, measuring 2.75 m by 2 m with a window 75 cm wide. It had a bunk bed which measured 83.5 cm by 200 cm, two chairs and a small table.

79. In May 2006 a fire broke out in Block 10. As a result the Block had been covered in ash and detainees had been exposed to the smell of smoke. However, despite those conditions the detainees, including the applicant, had still been detained in Block 10. They had even been kept there when the Block had been under renovation and had thus had to bear the smell of paint. In support of that statement, the applicant submitted extracts from newspaper articles describing the situation in Block 10.

2. The Government's description of the conditions of detention

80. Relying on a letter issued by the Prison Director in June 2009 the Government made submissions about the conditions of the applicant's detention as follows.

81. From 6 April 2005 until 14 November 2005, when serving his sentence, the applicant had been detained in Wing 1B of Nicosia Central Prisons.

82. On 14 November 2005, following his release and re-arrest, the applicant had been moved to Block 10 (see paragraph 14 above).

83. The applicant had been detained in a cell measuring 2.73 m by 2 m, equipped with a bunk-bed and any other equipment he had desired; it was likely that he had shared his cell with another detainee. A window measuring 87 cm by 68 cm had allowed for natural light and ventilation.

84. Block 10 had had sufficient hygiene facilities such as washbasins, toilets and showers. Although a private cleaner had been hired, the detainees had been personally responsible for keeping their cells clean and had been provided with cleaning products.

85. Air conditioning units provided heat in the winter and cold air in the summer. A communal area measuring 50 m by 3.5 m, which connected the cells, allowed detainees to move freely inside throughout the day so prisoners had had access to water coolers and entertainment rooms; the applicant had been allowed out of his cell from dawn to the evening, as referred to in the European Prison Regulations. After 11 a.m. all detainees were allowed to leave the common area to go to the laundry room where they could stay until the end of the laundry cycle, which could last up to ninety minutes.

86. With reference to access to outdoor activities the Government submitted that all detainees were obliged to go out of the detention area straight after breakfast, from 7.30 a.m. until 9 a.m. Outdoor access was restricted from 9 a.m. to 11 a.m., during visiting hours. At the end of visiting time detainees could leave the detention area and visit the washrooms. Detainees were allowed out of their cells again from 4 p.m. to 8 p.m. when they also had access to the basketball court.

87. Block 10 had been under renovation from October 2005 to October 2010 to improve conditions for detainees and ensure their compatibility with European standards.

88. The Government submitted the file on the applicant which had been kept by prison officers during his detention and a medical certificate. They indicated that the applicant had had visits from his lawyer and other people and that he had received medical examinations on request.

3. Information concerning the conditions of detention arising from the IAIACAP's investigation

89. In his statement to the IAIACAP on 22 September 2009, the officer in charge of the archives at Nicosia Police Headquarters informed the investigator that on 28 April 1999, the Minister of Justice had declared Block 10 at Nicosia Central Prisons a police detention establishment. He further informed the investigator that for safety purposes Block 10 had been under renovation from October 2005 until October 2007. He provided the investigator with an undated document containing all the steps taken for the renovation of Block 10. With reference to the conditions of detention, the document recorded the following (emphasis in the original):

"CONDITIONS OF DETENTION BASED ON EUROPEAN STANDARDS:

Cell Size: In Block 10 there are 36 cells measuring 5.4 sq. m. It is noted that according to European standards, each cell should measure at least 7 sq. m for 1 person.

- Lighting (metal shutters and natural light): Natural light is considered adequate.

- Ventilation [and air conditioning]**:** There are air conditioning devices which are considered sufficient. There is no ventilation system and the area is ventilated by the windows inside the cells of the detention area. Ventilation is considered adequate.

- Hygiene Areas: The toilets and bathrooms are built in a way they cannot be vandalised.

- **Access to drinking water:** There is a water cooler in the common area which is considered sufficient.

- **Open area for exercise:** There is an open area and it is considered sufficient

- **Chair and table in each cell:** Tables and chairs have been placed inside the cells.

- **Rights of detainees:** The rights of detainees are posted within the detention area. They have been translated into seven languages: English, Russian, Turkish, Arabic, Iranian, Chinese and French."

90. It appears from extracts of the custody logs held in Block 10 in February 2007 contained in the IAIACAP's investigation file that detainees were allowed into the open area for walking and exercise for approximately one hour each day. It appears from the same record that overall in February a maximum of fifty-eight detainees were held in Block 10. On 15 February 2007 the police officers in Block 10 received instructions from the detention cell supervising officer that any detainee who refused to clean his cell or failed to contribute to the general cleaning of the detention facilities (*γενική καθαριότητα των κρατητηρίων*) would be placed in isolation until he complied with the cleaning requirements. Food would be provided to the detainee in the isolation cell.

91. In his statement to the IAIACAP investigator on 15 June 2010 (see paragraph 51 above) the applicant stated the following with regards to the conditions of his detention:

"The treatment I had in Block 10 was good, I didn't have any problems with the policemen, but the conditions were not good. We used to be two in the same room and were locked. The cooling system was problematic, because some detainees from Iran burned the place during a protest they carried out. After the beginning of 2007 they started leaving us to go out of our rooms for one hour every day. ...".

4. The applicant's complaint to the Ombudsman

92. The applicant also complained about his conditions of detention in his letter to the Ombudsman dated 11 June 2006 (see paragraph 18 above). In her reply of 5 December 2006 the Ombudsman informed him that she would be conducting an investigation into the conditions of detention of foreigners in general in order to make suggestions for improving the situation.

II. RELEVANT DOMESTIC LAW

A. Entry, residence and deportation of aliens

1. The Aliens and Immigration Law

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

94. 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, *inter alia*, any person who, not having received a pardon, has been convicted of murder or an offence for which a sentence of imprisonment has been passed for any term and who, by reason of the circumstances connected therewith, is deemed to be an undesirable immigrant (section 6(1)(d)). A "prohibited immigrant" can be ordered to leave the Republic under section 13 of the same Law.

95. Under the Law the deportation and, in the meantime, the detention of any alien who is considered "a prohibited immigrant" can be ordered by the Chief Immigration Officer, who is the Minister of the Interior (section 14). Section 4 of the Law allows the Minister to delegate the execution of his duties or other powers granted under this Law to any other official in his or her department. Section 14(6) provides that a person against whom a detention and/or deportation order has been issued shall be informed in writing, in a language which he understands, of the reasons for this decision, unless this is not desirable on public-security grounds, and has the right to be represented before the competent authorities and to request the services of an interpreter. In addition, Regulation 19 of the Aliens and Immigration Regulations of 1972 (as amended) provides that when the Immigration Officer decides that a person is a prohibited immigrant, written notice to that effect must be served on that person in accordance with the second

schedule of the Regulations (see *M.A. v. Cyprus*, no. 41872/10, §§ 63-65, ECHR 2013 (extracts)).

2. The Refugee Law

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

97. At the material time a decision by the Reviewing Authority could be challenged before the Supreme Court (in its first-instance revisional jurisdiction) by way of administrative recourse under Article 146 § 1 of the Constitution (see *M.A. v. Cyprus*, cited above, §§ 67-70). Such a recourse is now examined at first instance by the Administrative Court, which was established by Law 131(I)/2015 (Establishment and Operation of the Administrative Court, Law of 2015). An appeal lies with the Supreme Court (appellate jurisdiction).

98. Under section 8 of the Refugee Law an applicant no longer has the right to remain in the Republic following a decision by the Reviewing Authority. A recourse does not have automatic suspensive effect (*M.A. v. Cyprus*, cited above, § 75).

B. The Independent Authority for the Investigation of Allegations and Complaints against the Police

99. The IAIACAP was established in 2006 by the Police (Independent Authority for the Investigation of Allegations and Complaints) Law of 2006 (Law 9 (I)/2006; as amended by Law 100(I)/2007), which came into force on 17 February of that year. The IAIACAP started operating on 2 May 2006. It comprises five members, including the President, who are all appointed by the Council of Ministers (section 3).

100. The IAIACAP has the duty and power to investigate or supervise an investigation conducted by persons whom it has appointed into complaints against members of the police including, *inter alia*, those concerning violations of human rights (sections 3(1), 5(1) and 5(2)(b)). The

investigation of a complaint may commence upon a complaint filed by an individual, at the instructions of the Attorney General or the Minister of Justice and Public Order or by the authority itself *proprio motu*, when a complaint has come to its knowledge (section 5(3)). Complaints are investigated either by members of the IAIACAP or by other investigators appointed by it (section 3(2)).

101. Pursuant to section 3(4) of the Law, members of the IAIACAP or an appointed investigator have the power to conduct interviews in accordance with the Criminal Procedure Law (Cap.155).

102. The aim of the investigation is to collect all the necessary evidence to assist the Attorney General in reaching a decision as to whether criminal prosecution is merited and to assist the Chief of Police to decide whether disciplinary action should be taken (section 14(1)). Every member of the IAIACAP conducting an investigation or any investigator appointed for that purpose is for the purposes of the investigation subject to the Attorney General's instructions and may also refer to that official at any time about matters relative to the investigation (section 14(3)). When an investigation has been carried out in relation to a complaint that concerns an act that may constitute a criminal offence, the member of the IAIACAP or the appointed investigator must systematically and directly submit any material and documents collected during the investigation to the Attorney General. The aim of such a measure is to keep the Attorney General informed and to allow for instructions with regard to obtaining further material for the investigation (section 15(4) and (5)). An investigation is only considered as completed when the Attorney General finds that all the available evidence in connection with the complaint has been secured (section 15(6).

103. Upon completion of the investigation, the investigator submits to the IAIACAP all the material and documents that have been gathered as well as a report with his conclusions, findings and opinion as to whether the act complained of took place or not and as to the possible involvement of a specific member of the police or any other police officer (section 15(8)).

104. The IAIACAP is not bound by the conclusions, findings and opinion of the investigator (section 16(1)). It studies all the available material and if it finds that it is likely that a criminal offence has been committed, the complaint and material collected are transferred to the Attorney General, who has the competence to decide whether or not to instigate criminal proceedings against the police officers in question (section 16(1)(b)(i)). In the event that the IAIACAP considers that it is likely that a disciplinary offence has been committed, the complaint and material collected are transferred to the Chief of Police (section 16(1)(b)(ii)). The case will be transferred to both the Attorney General and the Chief of police if the IAIACAP considers that it is likely that both a criminal and a disciplinary offence have been committed or that neither have been committed (section (16)(1)(b)(iii) and (iv)).

III. RELEVANT DOMESTIC AND INTERNATIONAL REPORTS

A. The Ombudsman's 2005 report

105. On 2 February 2005 the Ombudsman released a report on the conditions of detention of foreigners in establishments in Cyprus. In the report the Ombudsman observed the following with regards to Block 10 at Nicosia Central Prisons:

> "During the visit, the basic building of Block 10, which constitutes the detention area and can accommodate 76 people, was under renovation. For that reason, another area of the Block, which has ten cells that held two persons each, was being used. This area was in a relatively good condition and detainees had the opportunity to go out into an area of natural air and light and were provided with meals which were prepared at the Central Prisons. Given that this place is not the main area of detention in the Central Prison, I consider that the situation which was observed cannot be indicative of the conditions of detention in [Block 10].
>
> The detention facilities are, at least in theory, a place of temporary detention for which the maximum time of detention should be 15 days. For that reason, there is no provision for the protection of the physical and mental integrity of detainees, in contrast to the Central Prison, which is considered a place for longer periods of detention. The CPT's guidelines state that where the deprivation of a person's liberty is deemed necessary for a long period of time according to immigration legislation, such individuals must stay in centres specially designed for such a purpose, offering facilities which are compatible with their legal status. Those facilities must have trained personnel. The longer the deprivation of liberty, the more developed the facilities should be."

B. The CPT's 2008 report

106. On 15 April 2008, the CPT released its report on its visit to Cyprus from 8 to 17 December 2004.

107. During its visit, the CPT visited police establishments, among which was Block 10 of the Nicosia Central Prisons to which reference is made in the report as "Police Prison" in Nicosia. The relevant extracts of the report provide as follows (emphasis in the original):

> **"A. Police establishments**
>
> ...
>
> **5. Conditions of detention**
>
> ...
>
> 43. As already mentioned in the preliminary remarks (cf. paragraph 15), considerable efforts are being made to upgrade material conditions in police detention facilities. ... Further, in most of the detention facilities, cell doors remained open during the day, allowing detained persons to move within the detention area and giving them ready access to toilet facilities.

44. Despite the efforts made, the delegation still observed certain deficiencies which need to be addressed. ... Moreover, access to natural light was very poor, as metal shutters covering cell windows remained a common feature of most of the facilities visited, and artificial lighting was often mediocre. Some of the facilities visited had no heating and the temperature in them was rather low (e.g. at Paphos Central Police Station, it was just over 16ºC towards the end of the afternoon) and, clearly, could drop further at night.

...

45. Subject to remedying the shortcomings mentioned above – and in line with the CPT's findings during the 2000 visit – most of the police facilities visited were suitable for accommodating detained persons for a short period of time, i.e. a few days.

..

[The CPT] recommends that the Cypriot authorities take the necessary steps to address the shortcomings mentioned in paragraph 44 above and that they pursue their efforts to improve conditions in all police establishments throughout the country.

46. That said, even once the shortcomings mentioned above are remedied and the conditions in police establishments are improved, for reasons outlined by the CPT in the reports on its previous visits to Cyprus, police detention facilities will remain inadequate for holding persons for prolonged periods (i.e. more than a few days), whether they are criminal suspects remanded in custody by a judge or immigration detainees.

As was the case during the 2000 visit, in all the establishments visited in December 2004, the delegation met persons who had been detained for several weeks, or even, as regards foreign nationals detained under immigration legislation, several months.

...

49. The Committee is concerned by the persistence of the Cypriot authorities in using premises which are, by their very nature, inherently unsuitable for holding persons deprived of their liberty under the aliens legislation. Whatever the investment in renovating and improving such premises, their unsuitability for long-term detention purposes is unlikely to be addressed.

In the CPT's opinion, centres designed for persons deprived of their liberty for prolonged periods under aliens/asylum legislation should provide accommodation which is adequately furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. Care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment.

...

The CPT recommends that the Cypriot authorities urgently review the conditions in the existing centres designed to hold persons deprived of their liberty under the aliens/asylum legislation in the light of the above standards, and that they ensure that any additional centres they intend to establish comply with these standards."

C. The CPT's 2012 report

108. On 6 December 2012, the CPT released its report on its visit to Cyprus from 12 to 19 May 2008.

109. The CPT visited, among other police establishments, Block 10 to which reference is made in the report as "Police Prison Block 10" of Nicosia Central Prisons. The relevant extracts of the report provide as follows (emphasis in the original):

"A. Police establishments

...

2. Torture and other forms of ill-treatment

...

22. It should also be noted in this section of the report that a combination of inadequate conditions of detention (see paragraphs 55 to 57), and lengthy detention periods (see paragraphs 10, 11 and 58 to 61) can amount to inhuman and/or degrading treatment. Ever since the first visit to Cyprus in 1992, the CPT has pointed out the problems associated with holding persons for prolonged periods on police premises. Despite certain improvements made over the years to the material conditions at police establishments, the situation, on the whole, has remained unsatisfactory: many more persons are detained for much longer periods, and conditions of detention for such persons are still inadequate. **The CPT calls upon the Cypriot authorities to put an end to the practice of holding persons for prolonged periods on police premises**.

...

5. Conditions of detention

54. In general, the delegation noted a number of improvements in material conditions at the police establishments visited, compared to the situation observed in 2004. ... Conditions at Police Prison Block 10 had also improved, ...

...

58. Subject to remedying the shortcomings identified above, the existing police detention facilities visited in Cyprus were suitable for accommodating detained persons for short periods of time, i.e. for a few days. However, as the CPT has stressed in the past, police detention facilities will generally remain inappropriate for holding persons for prolonged periods. Indeed, none of the police establishments visited offered the material conditions or the opportunities for activities that persons detained for prolonged periods are entitled to expect.

...

61. The CPT remains concerned by the persistence of the Cypriot authorities in using unsuitable premises for persons detained pursuant to the aliens legislation, and for prolonged periods.

...

The CPT once again recommends that the Cypriot authorities urgently review the conditions in the existing centres designed to hold persons deprived of their liberty under aliens/asylum legislation, in the light of the aforementioned

standards, and that they ensure that any additional centres they establish comply with those standards.

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 WITH REGARD TO ILL-TREATMENT DURING DEPORTATION

110. The applicant complained under Article 3 of the Convention that he had been ill-treated on 9 March 2007 by members of the Police Aliens and Immigration Unit and by officers in military uniform during the deportation process. Article 3 reads as follows:

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

111. The Government contested the applicant's arguments.

A. Admissibility

112. The Government submitted that as the authorities had acknowledged that the applicant's complaints of ill-treatment were arguable and had conducted an independent investigation, the applicant could no longer claim to be a victim of a violation of the procedural aspect of Article 3.

113. The applicant did not comment on that submission.

114. The Court notes that an applicant can only be deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for, a breach of the Convention (see *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010). In cases of willful ill-treatment by State agents in breach of Article 3, the Court has repeatedly found that two measures are necessary to provide sufficient redress. Firstly, the State authorities must have conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible. Secondly, an award of compensation to the applicant is required where appropriate or, at least, the possibility of seeking and obtaining compensation for the damage which the applicant sustained as a result of the ill-treatment (ibid., § 116).

115. In the present case, taking into account the outcome of the investigation and, in particular, the findings of the IAIACAP and the Attorney General (see paragraphs 72 and 74 above), it is evident that the

applicant has neither obtained acknowledgement of a breach of Article 3, whether express or in substance, nor had any redress.

116. It follows that the Government's inadmissibility plea must be dismissed.

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

B. Merits

1. The parties' submissions

(a) The applicant

118. The applicant submitted that he had not been given the opportunity to submit a written complaint of ill-treatment. He had also been refused medical treatment and had thus not been able to provide a medical report in support of his allegations.

119. Moreover, the applicant observed that the respondent Government had failed to take all the necessary steps to investigate his allegations in good time despite being informed by the president of the IAIACAP in 2008 that his complaint merited investigation.

120. He further submitted that it was evident that there had been a lack of coordination between the governmental authorities, which had led to weakness in establishing the true facts of the case.

(b) The Government

121. The Government submitted that they had only became aware of the applicant's complaints of ill-treatment during the deportation process on 23 February 2008, approximately a year after his deportation, when he had lodged a complaint with the IAIACAP.

122. The IAIACAP had carried out a preliminary investigation into the applicant's complaint and had requested the Attorney General's opinion as to the practical difficulties arising from the fact that the applicant had been abroad at the time and had been forbidden entry into the Republic.

123. On 5 December 2007, prior to that request, the Attorney General had informed the president of the IAIACAP that when a person complaining to the IAIACAP was abroad, he or she should be asked to visit the IAIACAP in person and provide a statement. The Government would pay the expenses for a complainant's return to Cyprus. On 28 July 2008, however, counsel for the Attorney General, unaware of the above instructions, had informed the IAIACAP that an investigation into the applicant's claims could not be carried out as the applicant was no longer in Cyprus. The Attorney General had only become aware of counsel's

instructions after the present application had been communicated to the Government. Consequently, on 17 June 2009 the Attorney General had informed the IAIACAP that he disagreed with counsel's instructions and had instructed the IAIACAP to investigate the applicant's complaint, advising that the applicant should be asked to return to Cyprus to provide a statement. The competent authorities had then contacted each other to coordinate and arrange the procedural aspects of the investigation and other formalities for the applicant's return to Cyprus.

124. The Government submitted that when the applicant had lodged his complaint with the IAIACAP he had not substantiated his claims with medical evidence establishing that he had suffered ill-treatment falling within the scope of Article 3. During the preliminary investigation, the police had given a different version of the facts from the applicant's. Indeed, there had been no evidence to support beyond all reasonable doubt the allegation that the applicant had been subjected to ill-treatment or to treatment which attained the minimum level of severity under Article 3.

2. The Court's assessment

(a) Alleged breach of Article 3 under its procedural limb

125. Where an individual makes an arguable claim that he has been ill-treated by the State authorities, in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention, requires by implication that there should be an effective official investigation. The Court refers to the general principles with respect to the obligation of the High Contracting Parties under Article 3 of the Convention to investigate acts of ill-treatment by State agents which were set out in detail in paragraphs 115-123 of the Court's judgment in *Bouyid v. Belgium* ([GC], no. 23380/09, ECHR 2015, with further references).

126. In the present case, the applicant stated in his complaint to the Ombudsman and the IAIACAP that he had been ill-treated throughout the deportation process: at Nicosia Central Prisons, at Larnaca Airport and on the aircraft to Milan. He submitted a detailed timeline of his deportation and the treatment complained of and stated that he was able to identify three of the officers involved (see paragraphs 26-32 above). The president of the IAIACAP in the preliminary investigation found that given the seriousness of the applicant's allegations, his complaint ought to be investigated, despite the initial position of the police that no force at all had been used and that nothing untoward had happened (see paragraph 38 above). The arguability of the applicant's claims was confirmed by the Attorney General when, on 17 June 2009, he ordered the IAIACAP to carry out an investigation into his complaint (see paragraph 41 above).

127. Bearing in mind the above and the material before it, the Court considers that the applicant made an arguable complaint of ill-treatment

before the domestic authorities which triggered their procedural obligation under Article 3 of the Convention to carry out an effective investigation.

128. The Court observes that the applicant was slow to bring his allegations of ill-treatment to the authorities' attention. He lodged a complaint with the Ombudsman on 27 December 2007 and with the IAIACAP on 23 February 2008, more than nine and eleven months respectively after his deportation (see paragraphs 33 and 36 above). He has not provided an explanation for that delay. The Court does not rule out the possibility that such a delay could, in principle, have a negative impact on the efficacy of an investigation. In the present case, however, there are no reasons to regard it as having been a prima facie impediment to establishing the truth. As stated above, the applicant provided a detailed complaint and stated that he was able to identify three of the officers who had ill-treated him. It is also noteworthy that, firstly, the Government did not claim that the applicant had missed any domestic time-limits in raising his complaint, and, secondly, that the investigation authorities themselves never invoked his delay as an obstacle to the investigation (see *Kleutin v. Ukraine*, no. 5911/05, § 64, 23 June 2016, and *Aleksandr Smirnov v. Ukraine*, no. 38683/06, § 59, 15 July 2010).

129. When the applicant complained to the IAIACAP on 23 February 2008 (see paragraph 36 above), the IAIACAP carried out a preliminary investigation into his allegations. The president of the IAIACAP was provided with a police report and open statements by the two immigration officers who had accompanied the applicant throughout the deportation process. Despite the statements made by the police that they had not ill-treated the applicant, IAIACAP's president concluded that an investigation was called for (see paragraphs 37-39 above). No further steps were taken at that stage following the letter of 28 July 2008 by a lawyer at the Attorney General's office informing the IAIACAP that the complaint could not be investigated because the applicant had left Cyprus (see paragraph 40 above). That was despite the clear instructions issued by the Attorney General on 5 December 2007 (see paragraph 123 above). That also resulted in the applicant's complaint being dismissed by the Ombudsman, who relied on the difficulty of the applicant being abroad and on the limited evidence from the preliminary investigation (see paragraph 35 above). Consequently, an official investigation into the applicant's complaint was not launched until 14 July 2009, following communication of the application by the Court, that is, more than a year after the applicant's alleged ill-treatment had first been brought to the attention of the IAIACAP and the Attorney General's office. The Court reiterates that regardless of the difficulties in obtaining a statement from the applicant, the State had an obligation to investigate his complaint promptly. It is not an adequate justification to say that the delay was due to internal failures of communication. When the

investigator took statements from the applicant and the officers concerned, more than three years had passed since the events in question.

130. Furthermore, the Court finds that the investigation was marred by a number of deficiencies. In particular, it points out the following.

131. No effort was made by the investigator to organise face-to-face confrontations between the police officers in question and the applicant with a view to specifically addressing the applicant's allegations of ill-treatment. It is noted that when N.S. gave his open statement to the investigator, he stated that he did not object to the applicant seeing him or other members of the IRS (see paragraph 54 above). No steps, however, were taken to that end. Furthermore, while A.I. refused to answer any questions and referred the investigator to his lawyer (see paragraph 63 above), it appears that the investigator did not contact the legal representative in question.

132. Moreover, no attempt was made by the investigator to explain the discrepancies between the statements made by Officers Po.P and T.C. in the main investigation (see paragraphs 58-60 above) and the earlier open statements made during the preliminary investigation (see paragraph 37 above). The Court notes that Po.P. and T.C. stated in their earlier evidence that the applicant's deportation had gone smoothly, that the applicant had been calm and that they had offered him coffee in the passenger waiting area (see paragraph 37 above). They made no mention of the applicant trying to injure himself, of the IRS intervening and of the fact that bandages had been used, despite having been informed of the applicant's complaint. Their explanations for omitting to mention the incident appear to have been taken at face value by the investigator.

133. Similarly, although both immigration officers denied gagging the applicant, Po.P stated that the applicant had been bandaged from the forehead up while T.C. just used the word "head" without further clarification (see paragraphs 59 and 60 above). The investigator did not make any attempt to clarify the actual extent of the bandaging and how it had been fastened. That was despite the applicant's allegation that his entire head and neck had been covered and that adhesive tape carrying the Cyprus Airways logo had been used, a sample of which he identified during the investigation (see paragraphs 27 and 56 above).

134. In addition, despite noting omissions on the part of the officers involved, that they had not been honest in relation to the colour of their uniform in an attempt to hide the truth (see paragraphs 54 and 68 above) and that they had neglected to record and report the incident, the investigator accepted their version of the events. The Court notes in that regard that he did not make a finding to the effect that the applicant's account was inconsistent or contradictory. Furthermore, it cannot be said that he had the full picture, in view of the fact that two of the five officers involved did not actually cooperate with the investigation and one of the officers did not recall the incident (see paragraphs 61 and 63 above).

135. The investigator concluded that the applicant had reacted negatively and shouted and had rendered the use of force necessary. He did not, however, describe the amount of force actually used, the extent of the bandaging (see paragraph 133 above) and whether the applicant had been gagged or not. His assessment of proportionality was contradictory (see paragraphs 69-70 above). Nor were any conclusions reached in relation to the applicant's allegations concerning what had happened at Nicosia Central Prisons and on board the aircraft.

136. The IAIACAP, without providing reasons, gave full weight to the police officers' testimony, completely disregarding the discrepancies in their statements (see paragraph 72 above) and ignoring the applicant's testimony in its entirety. It stated that it was certain that the applicant's actions had been self-serving and that he had been trying to make sure he stayed in Cyprus or benefitted financially. Relying on the cabin crew supervisor's report, which only concerned the situation on the aircraft, it concluded that if the applicant's claim that he had been gagged with bandages had been true, the cabin crew would have made a note of it. However, in the first place, it was an admitted fact that the applicant's head had been bandaged, at least when he had boarded, and, secondly, the applicant alleged that he had been gagged with brown paper and not bandages.

137. The Attorney General in substance endorsed the IAIACAP's findings (see paragraph 74 above).

138. As a result of all the above conclusions, neither criminal proceedings nor disciplinary action were taken against the officers involved (see paragraphs 74 and 76 above).

139. Given the above, the Court finds that the authorities did not make a serious attempt to find out what had happened and that hasty and ill-founded conclusions were drawn, giving full weight to the police officers' account without explanation. The Court notes that the applicant provided a detailed account of the events, was consistent from the very beginning and was able to identify suspects and remember details. The investigation, however, appears to have proceeded on the assumption that he was a self-serving person who had ulterior motives in making his complaint. It is striking that the authorities used the fact that the applicant lodged an application with the Court as an indication of those motives (see paragraphs 67, 72 and 74 above).

140. Accordingly, the Court finds that the domestic authorities failed to carry out an effective investigation into the applicant's complaint and that there has therefore been a violation of Article 3 of the Convention in its procedural limb.

(b) Alleged breach of Article 3 under its substantive limb

141. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Indeed the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity (see *Bouyid*, cited above, § 81, with further references). It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (ibid.).

142. The Court refers to the general principles with respect to the obligation of the High Contracting Parties under Article 3 of the Convention not to submit persons under their jurisdiction to inhuman or degrading treatment or torture in the course of encounters with the police which have been set out in detail in paragraphs 82-90 of its judgment in the case of *Bouyid* (cited above).

143. Turning to the case at hand, the Court points out that during the investigation the applicant provided the investigator with a medical certificate issued on 9 June 2010 by Tigoni District Hospital, a public hospital in Kenya, concerning an examination of the applicant on 10 March 2007, the day following his deportation (see paragraph 52 above). The applicant was described as having facial oedema/puffiness, bruises on one of his wrists and muscle pain and bruising on his thigh. No further details were given on the certificate and it did not identify the possible causes of the injuries or mention any traces of blows. The applicant was prescribed medication. He then returned to the hospital on 11 March 2007 "due to painful loose teeth and jaw". He was referred to a dentist for further examination and was recommended rest for four days. The certificate's authenticity was questioned in passing by the investigator (see paragraph 68 above).

144. The Court considers, however, that it need not decide on the authenticity of the certificate for the following reasons.

145. The Court points out that in his complaint to the Ombudsman of 27 December 2007, the IAIACAP and to the Court (see paragraphs 26-31, 33 and 36 above), the applicant made no reference to his visit to the Kenyan hospital and only indicated that four of his top teeth had become loose owing to the ill-treatment he had been subjected to. He did not say that he had suffered any other injuries, nor did he mention any in his observations to the Court (see paragraphs 118-120 above). There is thus no basis for a finding that the use of force by the authorities caused the injuries noted at the Kenyan hospital. Furthermore, the medical certificate does not corroborate the injury to his testicles the applicant mentioned to the investigator and the treatment he said he had received for three months (see paragraph 51 above). In fact, no such injuries were detected by the hospital.

146. As to the allegations that his teeth became loose and needed replacing (see paragraph 32 above), the Court notes that the certificate

stated that the applicant had returned to the hospital on 11 March 2007 "due to painful loose teeth and jaw" and was referred to a dentist. The certificate provides no further details on that issue. Furthermore, the applicant has not submitted a certificate from the dental examination or any other evidence concerning that alleged injury. He has therefore not substantiated that allegation.

147. The Court points to its findings concerning shortcomings in the domestic investigation into the applicant's alleged ill-treatment (see paragraphs 130-139 above).

148. Having regard to the parties' submissions and all the material in its possession, the Court considers that the evidence before it does not enable it to find beyond all reasonable doubt that the applicant was subjected to treatment contrary to Article 3, as alleged. It particularly emphasises on that point that its inability to reach a conclusion as to whether there has been treatment prohibited by Article 3 is to a considerable extent due to the domestic authorities' failure effectively to investigate the applicant's complaint.

149. Consequently, the Court cannot establish that there has been a substantive violation of Article 3 of the Convention in respect of the applicant's alleged ill-treatment during the deportation process.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION AS REGARDS THE APPLICANT'S CONDITIONS OF DETENTION

150. The applicant complained under Article 3 of the Convention about the conditions of his detention at Nicosia Central Prisons.

151. The Government contested the applicant's arguments.

A. Preliminary Remark

152. The Court notes that the applicant's complaint and his description of his conditions of detention concern his detention in Block 10 of Nicosia Central Prisons' immigration facilities, where he was held pending his deportation (see paragraphs 77-79 above) rather than his time in detention in Wing 1B (see paragraphs 10 and 81 above). The Court will therefore confine its examination to the conditions of detention during the period he was held in Block 10, that is, from 14 November 2005 until 9 March 2007.

B. Admissibility

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

C. Merits

1. The parties' submissions

(a) The applicant

154. The applicant submitted that he had been detained in a police detention cell for a long time in conditions which had only been acceptable for a stay of a few days (see paragraphs 77-78 above). Furthermore, along with the other detainees, the applicant had had to endure the smell of paint and smoke (see paragraph 79 above). Although he had complained about the conditions of his detention, the Government had failed to look into them. The Government had also not provided an explanation for overcrowding at the detention facilities.

(b) The Government

155. The Government submitted that the applicant's description of his conditions of detention was wrong: neither the size of the cells nor the conditions of hygiene and exercise facilities matched the conditions in which the applicant had been detained. Furthermore, he had been provided with proper medical assistance on request and had often been visited by his lawyer and other people. Despite the fact that the applicant had had contact with his lawyer, he had never, while in detention, complained to the police of the conditions of his detention.

156. The Government submitted that the conditions of the applicant's detention had been in conformity with Article 3 and thus had not attained the minimum level of severity amounting to degrading treatment within the meaning of that provision. The authorities had ensured that the applicant had not been subjected to distress or hardship exceeding the unavoidable level of suffering inherent in detention. The applicant's health and well-being had also been adequately secured.

2. The Court's assessment

(a) General principles

157. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured

(see *Muršić v. Croatia* [GC], no. 7334/13, § 99, 20 October 2016, with further citations therein).

158. The applicable general principles have been set out by the Court in its recent Grand Chamber judgment in *Muršić* (ibid., §§ 96-141). According to these, when the personal space available to a detainee falls below 3 sq. m of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. The burden of proof is on the respondent Government which could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space (ibid., §§ 136-138 and also § 114, on the methology of the calculation). The strong presumption of a violation of Article 3 will normally be capable of being rebutted only if the following factors are cumulatively met: (1) the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor: (2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; (3) the applicant is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention (ibid.).

(b) Application of those principles to the present case

159. The Court notes at the outset that the applicant was detained for nearly sixteen months in Block 10, a police establishment designed for short periods of detention. The Court has already ruled that police stations and other similar establishments which, by their very nature, are places designed to accommodate people for very short durations, are not appropriate places for the detention of people who are waiting for the application of an administrative measure, such as deportation (see, among a number of authorities, *T. and A. v. Turkey*, no. 47146/11, § 96, 21 October 2014; *Horshill v. Greece*, no. 70427/11, § 47, 1 August 2013 and *Efremidi v. Greece*, no. 33225/08, § 41, 21 June 2011). On that point, the Court notes that the Cypriot authorities' practice of placing aliens subject to deportation procedures in police establishments for long periods, including in Block 10, was explicitly mentioned by the CPT in its reports in 2008 and 2012 and in the Ombudsman's report in 2005, describing such establishments as "inherently unsuitable" for detaining people under immigration legislation for long periods (see paragraphs 105 and 106-109 above). It is true that the CPT's first visit in 2004 took place almost a year before the applicant's detention in Block 10, while the second visit in 2008 took place more than a year after his release. However, there is nothing to suggest that the material conditions in Block 10 changed dramatically between 2004 and 2008. This is especially evident in the CPT's remarks in 2008 that whatever efforts were made for improvement, the unsuitability of police establishments in Cyprus for long-term detention purposes was unlikely to be addressed. The

CPT also said in the report of 2012, after several improvements made over the years in police establishments, that it still considered that the situation in such establishments remained unsatisfactory and that such premises were inadequate for detention for long periods of time (see paragraph 109 above).

160. The applicant stated that he had shared a furnished cell of 5.5 sq. m with another detainee, meaning that he had been afforded 2.75 sq. m of personal space (see paragraphs 77-78 above). The Government submitted that the applicant had been detained in a furnished cell measuring 5.46 sq. m, and that it was likely that he had shared his cell with another detainee (see paragraph 83 above). He had therefore had 2.73 sq. m of personal space. That is also supported by the description of the cells provided to the IAIACAP (see paragraph 89 above). It is therefore clear that the applicant's personal space in his cell at Block 10 fell below the acceptable minimum standard.

161. In view of the foregoing and taking into account the relevant principles enunciated in its case-law (see paragraph 158 above), the Court finds that a strong presumption of a violation of Article 3 arises in the case at issue. Accordingly, the question to be answered is whether there are factors capable of rebutting that presumption.

162. The Court notes that the applicant was detained in a cell and had 2.73 sq. m of personal space for a period of nearly sixteen months. That is undoubtedly a very significant period of time and cannot be considered as a short, occasional and minor reduction in the required personal space (see *Muršić*, cited above, §§ 151-153). The strong presumption of a violation of Article 3 cannot therefore be called into question.

163. Accordingly, the Court finds that during that period the conditions of the applicant's detention subjected him to hardship going beyond the unavoidable level of suffering inherent in detention and thus amounted to degrading treatment prohibited by Article 3 of the Convention.

164. In view of that conclusion, the Court does not need to examine the applicant's remaining complaints concerning the conditions of his detention in Block 10.

III. REMAINING COMPLAINTS

165. The applicant made various complaints under Articles 5, 6, 7, 12, 13, 14, 17 and 18 of the Convention.

166. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols arising from these complaints. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

167. 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."

168. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 3 concerning ill-treatment during the deportation process and the investigation thereof and the conditions of detention at the immigration detention facilities in Block 10 of Nicosia Central Prisons from 14 November 2005 until 9 March 2007 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb on account of the authorities' failure to investigate effectively the applicant's complaints about his alleged ill-treatment during the deportation process;

3. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb on account of alleged ill-treatment during the deportation process;

4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant's conditions of detention at the immigration detention facilities in Block 10 of Nicosia Central Prisons from 14 November 2005 to 9 March 2007.

Done in English, and notified in writing on 4 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Helena Jäderblom
Deputy Registrar	President