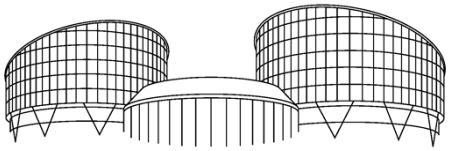

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF HAGHILO v. CYPRUS

(Application no. 47920/12)

JUDGMENT

STRASBOURG

26 March 2019

FINAL

26/06/2019

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

In the case of Haghilo v. Cyprus,

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

Vincent A. De Gaetano, *President,*
Branko Lubarda,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides,
María Elósegui, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 5 March 2019,

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

PROCEDURE

1. The case originated in an application (no. 47920/12) 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 an Iranian national, Mr Mustafa Haghilo ("the applicant"), on 9 October 2012.

2. The applicant was represented by Ms N. Charalambidou, a lawyer practising in Nicosia. The Cypriot Government ("the Government") were represented by their Agent, Mr C. Clerides, Attorney General of the Republic of Cyprus.

3. A request was made that the Court, under Rule 39 of the Rules of Court, adopt an interim measure to prevent the applicant's threatened deportation to Iran; that request was refused on 2 August 2012.

4. The applicant alleged that his detention had been unlawful and that he had not had an effective remedy at his disposal via which to challenge the lawfulness of his detention. He furthermore complained about the conditions of his detention in the detention facilities at the former Famagusta police station in Larnaca ("the Famagusta police station"), at Paphos Central police station ("Paphos police station") and at Aradippou police station. He relied on Articles 3 and 5 §§ 1 and 4 of the Convention.

5. On 7 September 2015 the above complaints were communicated to the Government and the remainder of the applicant's complaints (including those concerning the conditions of his detention at a fourth police station – namely Larnaca police station) were declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1973 and is currently living in Armenia.

1. The applicant's first arrest and his detention from 28 March 2011 until 22 December 2011

7. The applicant left Iran in March 2011 and travelled to Turkey. He entered Cyprus unlawfully through the "Turkish Republic of Northern Cyprus" (the "TRNC") on 21 March 2011.

8. On 28 March 2011 the applicant was arrested at Larnaca airport as he attempted to take a flight to London on a forged Romanian passport. He was arrested for the offences of (i) circulating a forged document (sections 331, 333, 335 and 339 of the Criminal Code (Cap. 154) – see *A.H. and J.K. v. Cyprus*, nos. 41903/10 and 41911/10, § 114, 21 July 2015), (ii) impersonation (section 360 of Cap. 154; ibid.) and (iii) unlawful entry into the Republic (section 12(1), (2) and (5) of the Aliens and Immigration Law (Cap. 105, as amended) – see *Seagal v. Cyprus*, no. 50756/13, §§ 91 and 93, 26 April 2016). He was placed in detention at Nicosia central prisons.

9. On 29 March 2011 the applicant appeared before the Larnaca District Court, which ordered his detention on remand for three days.

10. On 31 March 2011 criminal charges were brought against him (case no. 5220/2011). The Larnaca District Court adjourned the case until 5 April 2011 and extended the applicant's detention on remand until that date.

11. On 31 March 2011, however, the Attorney General decided to discontinue the criminal proceedings and gave instructions for the applicant to be deported.

12. In a letter dated 4 April 2011 sent by the District Aliens and Immigration Branch of the Larnaca Police to the Aliens and Immigration Service, the issuance of deportation and detention orders against the applicant was recommended in order to ensure that the applicant would not abscond following the expiration of the detention order issued by the Larnaca District Court.

13. On 4 April 2011 detention and deportation orders were issued by the Permanent Secretary of the Minister of the Interior under section 14(6) of the Aliens and Immigration Law (Cap. 105) on the grounds that the applicant was a prohibited immigrant within the meaning of sections 6(1)(k) and (l) of that law (see paragraph 97 below). A letter from the Ministry of the Interior dated 4 April 2011 was addressed to the applicant informing him (i) that he was an illegal immigrant under the above-mentioned

provisions on the grounds of illegal entry and (ii) of the decision to detain and deport him.

14. On that letter there is a note signed by a police officer stating that the letter was served on the applicant on 5 April 2011 at 12:05 p.m. but that he refused to sign for it.

15. The police also ascertained at the time that the applicant did not have a valid passport.

16. The applicant was transferred to the holding facility for immigration detainees at Famagusta police station.

2. The applicant's asylum claim and all relevant proceedings

17. On 12 April 2011, while in detention, the applicant applied for asylum.

18. In view of that development, on 14 April 2011, the Permanent Secretary of the Ministry of the Interior decided to suspend the deportation order pending the examination of the applicant's asylum application.

19. The application was dismissed by the Asylum Service on 30 April 2011.

20. On 5 May 2011 the applicant was served with a letter informing him of the above decision, but he refused to sign for it.

21. On 1 June 2011 the applicant lodged an appeal with the Reviewing Authority for Refugees ("the Reviewing Authority") against the Asylum Service's decision. This was dismissed on 10 August 2011; the applicant was served with the relevant decision on 17 August 2011.

22. On 21 September 2011 the applicant was transferred to the detention facility at Paphos police station.

23. On 10 October 2011 the applicant brought a recourse ("judicial review proceedings"; recourse no. 1320/2011) before the Supreme Court (as the first-instance revisional jurisdiction) under Article 146 of the Constitution, challenging the decision of the Reviewing Authority.

24. On 13 October 2011 the Director of the Aliens and Immigration Service re-examined the applicant's case and recommended that the authorities proceed with the applicant's deportation following the dismissal of his asylum application by the Reviewing Authority (see paragraph 21 above). Bearing in mind the circumstances of the case, the Director decided that the principle of non-refoulement was not an obstacle to his removal.

3. Habeas corpus proceedings

25. On 9 November 2011 the applicant lodged a habeas corpus application (application no.133/2011) with the Supreme Court (as the first-instance court) challenging the lawfulness of his detention owing to the length of its duration.

26. On 11 November 2011 the Permanent Secretary of the Minister of the Interior instructed the police to proceed with the applicant's deportation. According to an internal note subsequently sent by the Civil Registry and Migration Department to the Attorney General, the applicant's deportation had not been possible as the applicant had not had a valid passport and had not co-operated with the authorities in order to secure one.

27. On 25 November 2011, while the habeas corpus proceedings were pending, Amending Law no. 153(I)/2011 to the Aliens and Immigration Law (transposing into national law Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Members States for returning illegally staying third-country nationals – "the EU Returns Directive" (see paragraph 100 below)) came into force.

28. On 29 November 2011 the Minister of the Interior decided to extend the applicant's detention for up to eighteen months on the basis of section 18 ΠΣΤ(8)(α) of the Aliens and Immigration Law, as amended by Law no. 153(I)/2011 (see paragraphs 100 and 101 below).

29. On 22 December 2011 the Supreme Court ruled in favour of the applicant and ordered his immediate release. With regard to the preliminary issues raised, the Supreme Court firstly held that it had the authority to examine the application, as it had been called upon to examine the lawfulness of the applicant's protracted detention and its extension, and not the lawfulness of the deportation and detention orders. The Aliens and Immigration Law expressly provided that habeas corpus applications challenging the lawfulness of detention with a view to deportation could be lodged with the Supreme Court on length grounds.

30. The Supreme Court then examined the substance of the application and held that the applicant's detention after 4 October 2011 – that is to say following a period of six months – had been unlawful under the EU Returns Directive, which at the time had had direct effect in domestic law. In this connection it held that the six-month period provided in Article 15 § 5 of the above-mentioned Directive had started to run on 4 April 2011 and had ended on 4 October 2011. Although Article 15 § 6 of the Directive provided for the possibility of extending detention for a period not exceeding a further twelve months if there was a lack of cooperation on the part of a third-country national, it provided that this should be applied in accordance with the provisions of the national law; however, there had been no such national law in force when the six-month period had expired in this case. As Law no. 153(I)/2011, transposing the Directive into national law had come into force only after the expiration of the six-month period it could not have applied to the applicant. Furthermore, the extension of the applicant's detention by the Minister of the Interior on the basis of Law no. 153(I)/2011 had been made after the expiration of the six-month period. It had therefore not fallen within the legal framework applicable at the time, and the Ministry of the Interior had not been entitled to retroactively validate the

applicant's detention. The authorities had not been entitled to cite the applicant's refusal to cooperate as grounds for extending his detention after 4 October 2011.

31. The Government did not lodge an appeal against this judgment.

4. The applicant's second arrest and his detention from 22 December 2011 until 25 October 2012

32. On 22 December 2011, following the judgment in his favour given by the Supreme Court on that date, the applicant (who was present at the court) was immediately released but was then rearrested a few minutes later upon his leaving the courtroom.

33. The applicant was arrested on the basis of new detention and deportation orders issued against him on the same grounds as those cited in respect of the first detention and deportation orders – that is to say under sections 6(1)(k) and (l) and 14(6) of the Aliens and Immigration Law (see paragraph 13 above). The Government submitted that the decision to rearrest the applicant had been based on the Ministry of the Interior's decision of 29 November 2011 to extend the applicant's detention period to eighteen months (see paragraph 28 above). Upon his arrest, the police officers informed the applicant of his rights, pursuant to the 2005 Law on the Rights of Persons Arrested and Detained (Law no. 163(I)/of 2005 – see *Seagal,* cited above, § 99). He was also served with a letter dated 22 December 2011 from the First Chief Administrative Officer of the Ministry of the Interior informing him that he was an illegal immigrant under sections 6(1)(k) and (l) of the Aliens and Immigration Law on the grounds (i) of his having illegally entered and stayed in the Republic of Cyprus and (ii) the decision to detain and deport him.

34. On the letter there is a note signed by a police officer stating that it had been served on the applicant on 22 December 2011 at 12:10 p.m. and that the contents had been explained to him but that he had refused to sign it.

35. The applicant was taken back to Paphos police station.

36. On the same date the applicant's lawyer sent a fax to the Minister of the Interior and the Chief of Police, stating that the new detention and deportation orders were in conflict with the Supreme Court's judgment of 22 December 2011 and infringed the provisions of the EU Returns Directive. She pointed out that the orders had been issued on the same grounds as those cited in respect of the previous ones and that the applicant's detention had been found to be unlawful by the Supreme Court. She also stressed that the applicant had been detained despite the fact that he was an asylum seeker. She requested the applicant's release. She also requested, in the event that the authorities continued to detain him, that the applicant be transferred to another facility; she lodged that request because the applicant was being held at Paphos police station, along with criminal

suspects, in inhuman and degrading conditions. The applicant submitted that no reply had been received from the authorities.

37. On 28 December 2011 the applicant brought a recourse (no. 1724/2011) before the Supreme Court (as the first-instance revisional jurisdiction) challenging the lawfulness of the new detention and deportation orders on the basis of which he had been rearrested and detained.

38. By a letter dated 15 March 2012 the applicant's representative complained to the Minister of the Interior about the applicant's detention and requested that the applicant's detention order be reviewed, in accordance with section 18 ΠΣΤ(4) of the Aliens and Immigration Law (see paragraph 101 below). The applicant submitted that this letter had received no reply.

39. By a letter dated 22 May 2012 the applicant's lawyer complained again to the Minister of Justice and Public Order and to the Chief of Police about the applicant's continuing detention, as well as the conditions of his detention at Paphos police station and the psychological and psychosomatic effects that those conditions had had on him.

40. On 25 May 2012 the Minister of the Interior reviewed the applicant's detention and decided on its continuation for another six months as the applicant did not have travel documents and continued to refuse to visit the Iranian Embassy in order to secure the issuance of a passport to him, thus hampering the deportation process.

41. On 29 May 2012 the applicant was transferred to the detention facility at Larnaca police station.

42. On 13 June 2012 the Minister of the Interior reviewed the applicant's detention and decided to extend it for six months on the same grounds as those cited in respect of the previous decision (see paragraph 40 above).

43. On 14 June 2012 the Permanent Secretary of the Ministry of the Interior sent a letter to the applicant informing him of the above-mentioned decision taken by the Minister under section 18 ΠΣΤ(8)(α) of the Aliens and Immigration Law because of his refusal to cooperate with the authorities regarding his return to Iran (see paragraph 101 below). The Director of the Aliens and Immigration Service was also informed of this decision.

44. On 13 July 2012 the Supreme Court dismissed the applicant's recourse. It found that the applicant's main claims – namely that (i) the Aliens and Immigration Law, where it concerned the issuance of the deportation and detention orders, was unconstitutional, (ii) the deportation and detention orders had not been issued under the correct provision of that law, and (iii) he had the right under the Refugee Law to remain in the country pending the determination of his appeal by the Supreme Court (no. 1320/2011 – see paragraph 23 above) – had not been raised or dealt with adequately in the legal points of the recourse.

45. On 24 July 2012 the Minister of the Interior reviewed the applicant's detention and decided to extend it on the same grounds as those cited in respect of his previous decisions (see paragraphs 40 and 42 above).

46. On 30 July 2012 the applicant lodged an appeal with the Supreme Court (as the appellate revisional jurisdiction – appeal no. 156/2012) against the first-instance judgment on his recourse (see paragraph 44 above).

47. On 11 August 2012 the applicant was transferred to Aradippou police station.

48. On 27 August 2012 and again on 25 September 2012 the Minister of the Interior reviewed the applicant's detention and decided to extend it on the same grounds as those cited in respect of his previous decisions (see paragraphs 40, 42 and 45 above).

49. In the meantime, on 12 September 2012 the applicant's lawyer sent a fax to the Minister of the Interior complaining about the period of the applicant's detention and about the failure of the Minister of the Interior to review the applicant's detention order every two months, as provided by section 18 ΠΣΤ(4) of the Aliens and Immigration Law (see paragraph 101 below). The applicant submitted that no reply had been received from the authorities.

50. On 15 October 2012 the applicant was transferred to the detention facility at Larnaca police station.

51. On 18 October 2012 the Permanent Secretary of the Ministry of the Interior decided to annul the deportation and detention orders of 22 December 2011, as the applicant's deportation had not been effected within the above-mentioned eighteen-month time-limit.

52. On 25 October 2012 the applicant was released under conditions to which he agreed. The applicant was informed that he would be issued with a special residence/employment permit under the Aliens and Immigration Law and the relevant regulations for a period of six months from the date of his release. However, prior to the issuance of this permit he was obliged to sign a contract of employment with an employer indicated to and approved by the Department of Labour. He was also asked to (i) report to the police once a week, (ii) report his residential address to his local branch of the Aliens and Immigration Police within fifteen days of his release, and (iii) contact the Iranian Embassy in Nicosia in order to make appropriate arrangements for the issuance of a passport. The applicant was informed that the residence permit would not be extended unless he obtained a valid Iranian passport.

53. The last time the applicant presented himself at a police station, in line with the conditions of his release, was on 10 January 2013.

5. Subsequent Developments

54. The applicant was informed by a letter dated 4 January 2013 that the Reviewing Authority had decided to revoke its negative decision of

10 August 2011 and that it would re-examine his appeal and issue a new decision on his asylum application. Consequently, on 7 January 2013 the applicant withdrew recourse no. 1320/2011 (see paragraph 23 above). He provided the Reviewing Authority with a number of documents in support of his claims.

55. The applicant subsequently left Cyprus without informing his lawyer.

56. By a letter dated 14 October 2014 the Reviewing Authority requested him to attend an interview on 24 October 2014 and to provide original documents in support of his claims. The letter also stated that if he failed to contact the Authority he would be considered as non-co-operative and his application would be dismissed and his file closed, in accordance with the relevant provisions of the Refugee Law (Law 6(I) of 2000, as amended).

57. When his lawyer tried to contact the applicant she was informed by other Iranians in Cyprus that he had left the country.

58. By a letter dated 20 October 2014 the applicant's lawyer informed the Reviewing Authority that the applicant had left Cyprus and could not attend the interview.

59. By a letter dated 30 October 2014 the Reviewing Authority informed the applicant's lawyer that, following a second review, it had rejected his appeal under the above-mentioned provisions and that the first-instance decision of the Asylum Service had been upheld.

60. In a letter dated 7 April 2015 the applicant's lawyer informed the Registry that the applicant had left Cyprus through the "TRNC" and was living in Armenia but that his status there was undocumented. He informed her that he had left Cyprus because he feared he would be arrested and detained again and had no means of survival.

61. On 27 February 2018 the Supreme Court gave its judgment on the applicant's appeal in respect of the second deportation and detention orders (see paragraph 46 above). It upheld the first-instance judgment (see paragraph 44 above). In addition it noted that during the proceedings the applicant's lawyer had informed the court that the applicant had in the meantime left Cyprus. As this had been of his own free will, without any coercion, pressure or reservations, the applicant no longer had any legitimate interest in challenging the lawfulness of the deportation and detention orders; such a legitimate interest had to continue to exist up to the conclusion of the appeal.

6. The conditions of the applicant's detention

62. The applicant submitted that during his detention in the various police stations he had felt disoriented in terms of space and time. Moreover, he had been suffering from memory loss since his detention. He had been detained immediately upon his arrival in Cyprus and had never lived in

Cyprus before and had not known where each detention centre was. He had been completely disoriented when he had been transferred from one police station to another because he had not been given any information or explanations regarding his transferral.

(a) Famagusta police station (5 April 2011 - 21 September 2011)

(i) The applicant's description of the conditions

63. The applicant stated that Famagusta police station, during the period of his detention there, must have contained about twenty detainees. He had shared a cell, which he estimated had measured approximately 20 or 25 sq. m, with another eight detainees.

64. The sanitary facilities had been poor: the detention facility had only had a few toilets and showers, which had not been properly cleaned or disinfected. The detainees had lacked basic hygiene products, such as toilet paper, soap and shampoo; these had been provided by the officers only after persistent requests lodged by detainees.

65. The applicant had had to remain in his cell all the time: there had been no exercise yard and therefore no possibility for any outdoor activity.

66. The food had been very bad, and the quantities thereof had been insufficient and had not met the dietary needs of Muslim detainees during the Ramadan period.

67. Furthermore, detainees had been handcuffed during visits.

68. Lastly there had been violent incidents at the police station. He had informed a local non-governmental organisation, KISA, about one of these incidents; KISA had then reported it to the Commissioner for Administration of the Republic of Cyprus ("the Ombudsman"), resulting in a visit to the station by her office (see paragraph 120 below).

(ii) The Government's description

69. The Government submitted that this detention facility had stopped operating and had been subsequently demolished in 2015 following the issuance of a report by the Ombudsman dated 3 October 2011 (see paragraphs 120-122 below).

70. The applicant's personal file concerning his detention in the said facility had been destroyed, pursuant to the applicable police rules. As a result, the Government did not have any records concerning the dimensions of the cells in which the applicant had been kept or the number of inmates kept with the applicant in the same cell. The Government therefore accepted the Ombudsman's findings in her report of 3 October 2011 in this connection (see paragraph 121 below).

71. According to a report submitted by the Government dated 18 October 2011 prepared by the police officer in charge of the detention facilities at the time, all cells had had access to natural light and ventilation.

The cells had had windows measuring 1.5 by 2 metres which had been capable of being opened. The cells had also had sufficient artificial light. They had been equipped with a bed and a table with chairs.

72. The cells had been open during the day and detainees had been able to move freely in the common areas of the facility. The common area had been equipped with chairs, tables, a satellite television and books in various languages. Detainees had also been able to exercise in the common area.

73. The facilities had had an air cooling and heating system (referred to by the Government as "split units"). The detainees had been able to regulate the temperature as they wished. The sanitary facilities had been for common use. Detainees had been provided each day with toilet paper, soap and shampoo upon request. Detainees had been able to go outside for three and a half hours per day, accompanied by a police officer, in a yard measuring 5 by 5 metres.

74. Detainees had been served three meals a day of adequate quantity, in line with their religious needs. They had also been able to order takeaway meals and receive food or other items from friends or relatives.

75. Detainees had been allowed to have their telephones in their possession and they had been able to receive visitors at any time during the day. They had been able to meet with their visitors in the offices of police officers outside the facility. They had been handcuffed only during their transfer from the facility to the police offices and back.

76. Detainees had been kept together according to their ethnic origin.

(b) Paphos police station (21 September 2011- 29 May 2012)

(i) The applicant's description of the conditions

77. In this station the applicant had been in a cell on his own. The cell had measured between approximately 8 and 10 sq. m. There had been a toilet and a shower in the cell; these had not, however, been separated from the rest of the cell and had been visible to the staff. The cells had not had proper windows – just small glass windows that it not been possible to open. Thus, there had been no natural ventilation, and the cell had lacked adequate natural light. Furthermore, the police officers had often switched off the ventilation system as a form of punishment when detainees had protested about various issues in the facility. His lawyer stated that on one of her visits, the ventilation system had been turned off and the atmosphere – including in the visitors' area – had become unbearable. The applicant had been brought to the visitation area handcuffed.

78. The applicant had been responsible for cleaning his cell himself but no cleaning products had been given to the detainees. Apart from toilet paper, no other hygiene products had been provided.

79. There had been an indoor exercise area. There had been no specific schedule for exercise and on some days detainees had not exercised at all

and had remained in their cells. As a result of this the applicant had felt completely disoriented and had lost all sense of time.

80. The food had been bad and the quantities inadequate: detainees had been provided with only two small meals per day.

81. Furthermore, immigration detainees and criminal suspects had been held together.

82. The applicant submitted that the conditions at this station had been very harsh and had caused him great psychological distress, as well as prompting suicidal tendencies. For this reason his lawyer had sent letters to the Minister of the Interior, the Minister of Justice and Public Order and the Chief of Police requesting his transfer to other facilities.

(ii) The Government's description of the conditions

83. The applicant had been kept alone in single-occupancy cells – specifically, cells nos. 32 and 29. Cell no. 32 had measured 11.7 sq. m (4.50 by 2.60 metres), and cell no. 29 had measured 15.95 sq. m. (5.50 by 2.90 metres). All cells had had properly insulated windows measuring 120 cm by 76 cm and made of glass bricks that had allowed natural light to enter. Ventilation in the cells had been artificial. There had been two lamps in each cell, providing adequate artificial light.

84. All cells had been equipped with a plinth, a fixed stool, a table and an in-cell toilet, sink and shower. The toilet, sink and shower had together accounted for about 2.1 sq. m. Detainees using the sanitary facilities in their cells had not been visible from the outside. There had been a central-heating and ventilation system which had operated twenty-four hours per day. During the summer, room temperature had been between 20˚C and 23˚C, and during the winter between 24˚C and 25˚C.

85. Upon being placed in the cells, detainees had been provided with toilet paper, soap and shampoo, as well as with clean sheets and blankets. Each detainee had had the right to have additional hygiene products but this had had to be at their own expense or provided by their visitors. Each detainee had been offered sufficient cleaning materials with which to clean his or her own cell if they wished to do so. Common areas had been cleaned by the police station's cleaners. The Government provided invoices for December 2011, April and May 2012 in respect of the purchase of, *inter alia*, cleaning materials and hygiene products (namely toilet paper and liquid hand soap) by the headquarters of the Paphos Divisional Police (which, the Government submitted, also covered the detention facility).

86. During his detention, the applicant had been served with three meals a day (breakfast, lunch and dinner). The Government provided the contract with the company providing the meals for the relevant period and the weekly three-meals-a-day plan that it had followed. The applicant had not been served with food unacceptable to Muslims. In addition, he had had the

right to obtain additional food at his own expense or from friends or relatives.

87. The station's detention facility had had an open courtyard where the applicant had been allowed to move around and exercise freely during the day, given his status as a long-term immigration detainee. During the day the applicant's cell had been open and he had been able to move freely in the facility's corridors and common areas.

88. According to the entries in the station's record ledger in respect of the period of the applicant's detention at Paphos police station (which the Government submitted), the applicant had had a psychiatric condition for which he had been provided with prescribed medication and had received psychiatric care at Paphos General Hospital. It could also be seen from this ledger that the applicant had attempted to self-harm and to commit suicide and had also threatened to commit suicide if he was not transferred to another detention facility.

(c) Aradippou police station (11 August 2012 - 15 October 2012)

(i) The applicant's description of the conditions

89. The applicant had been detained in a cell which he estimated had measured approximately between 7 and 8 sq. m and which he had shared with another detainee. The sanitary facilities had been outside the cell and common to all detainees. There had been a television which detainees had been sometimes able to watch. There had been no natural light or ventilation and the hygiene conditions had been poor. The food had been bad and insufficient.

(ii) The Government's description of the conditions

90. The Government submitted that the applicant's personal custody file concerning his detention at this station had been destroyed, in line with the applicable police rules.

91. Cells in this facility had measured 7.08 sq. m (2.92 by 2.42 metres). As the applicant alleged that he had shared a cell with another detainee this meant that he would have had about 3.5 sq. m of personal space in his cell. All cells had had insulated windows measuring 1 by 0.8 metres, which it had been possible to open. The cells had had sufficient natural and artificial light. The station had had a central air-cooling and heating system. Room temperature during the summer had been between twenty and twenty-three degrees Celsius and during the winter between 24˚C and 25˚C.

92. During the applicant's detention the cells had been open during the day and the applicant had been allowed to move freely in the station's common areas and interior yard. There had been benches and a television in the yard. Fresh drinking water (cold and hot) had also been available.

93. Sanitary facilities had been for common use. There had been two toilets and two showers for every eight detainees.

94. The detainees had been provided with toilet paper, soap and shampoo once a day

95. Detainees had been offered three meals per day: breakfast and two cooked meals (lunch and dinner), prepared in line with their religious needs. In addition, detainees had been able to order takeaway food and to receive food from friends or relatives.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Entry, residence and deportation of aliens

1. The Aliens and Immigration Law

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

97. 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 (i) any person who enters or resides in the country in contravention of any prohibition, condition, restriction or limitation contained in the Law or in any permit granted or issued under the Law (section 6(1)(k)), and (ii) any alien who wishes to enter the Republic as an immigrant but who does not have in his or her possession an immigration permit granted in accordance with the relevant regulations (section 6(1)(l)). A "prohibited immigrant" can be ordered to leave the Republic under section 13 of the same Law.

98. Unauthorised entry into and/or an unauthorised stay in Cyprus are criminal offences (section 19(1)(l) of the Aliens and Immigration Law). 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 possibility of punishment by imprisonment for the above contraventions; however, they remained criminal offences that could be punished by a fine (section 18; see *M.A. v. Cyprus*, no. 41872/10, § 65, ECHR 2013 (extracts)).

99. Under the Law the deportation (and, pending which, 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.

100. The EU Returns Directive took direct effect in Cyprus when the two-year deadline for its transposition expired on 24 December 2010. In November 2011, Law no. 153(I)/2011 introduced amendments to the Aliens

and Immigration Law with the aim of transposing the Directive into domestic law. Under section 18 ΠΣΤ(1) – unless other sufficient but less coercive measures can be applied effectively – the Minister of the Interior may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when: (a) there is a risk of the third-country national concerned absconding; or (b) the third-country national concerned avoids or hampers the preparation of his or her return or the removal process. Any detention shall be for (a) as short a period as possible, (b) only maintained as long as removal arrangements are in progress, and (c) executed with due diligence.

101. Under section 18 ΠΣΤ(7) detention shall be maintained for as long as the conditions set out above are in place, but for no longer than six months. Exceptionally, if a deportee refuses to cooperate with the authorities (section 18 ΠΣΤ(8)(a)) or there are delays in obtaining the necessary travel documents (section 18 ΠΣΤ(8)(b)), detention may be prolonged for a further twelve months by the Minister of the Interior, up to a maximum of eighteen months. The Minister of the Interior should review detention orders on his or her own initiative every two months and within a reasonable space of time following an application by the detainee (section 18 ΠΣΤ(4)).

2. The Refugee Law

102. Asylum applications are lodged with the Asylum Service of the Ministry of the Interior's Migration Department. Asylum seekers can appeal against decisions issued 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 the 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 have a 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; see also *M.A. v. Cyprus*, cited above, § 74).

103. At the material time a decision by the Reviewing Authority could be challenged before the Supreme Court (as the 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 no. 131(I)/2015 (Establishment and Operation of the

Administrative Court, Law of 2015). Any appeal must be lodged with the Supreme Court.

104. Under section 8 of the Refugee Law, as applicable at the material time, an applicant no longer had the right to remain in the Republic following a decision by the Reviewing Authority. Any recourse to the Supreme Court did not have an automatic suspensive effect (see *M.A. v. Cyprus*, cited above, § 75). Following the establishment of the Administrative Court, this section was amended, and recourse to that court now has a suspensive effect (Amending Law no. 106(I)/2016).

B. Challenging the lawfulness of immigration detention

1. Recourse and habeas corpus proceedings

105. The legality of deportation and detention orders can only be challenged by way of administrative recourse brought under Article 146 § 1 of the Constitution of the Republic of Cyprus. At the material time such a recourse had to be brought before the Supreme Court (see *M.A. v. Cyprus*, cited above, § 67). Since the establishment of the Administrative Court, such a recourse must now be brought before the Administrative Court. An appeal must be lodged with the Supreme Court (appellate jurisdiction).

106. The Supreme Court has exclusive jurisdiction to issue orders of habeas corpus (Article 155 § 4 of the Constitution). The Supreme Court has held that the lawfulness of deportation and detention orders can only be examined within the context of a recourse and not within the context of a habeas corpus application (see *M.A. v. Cyprus*, cited above, § 70). However, applications for a habeas corpus order lodged with the Supreme Court challenging the lawfulness of detention with a view to deportation can be made on length grounds (section 18 ΠΣΤ(5)(a) of the Aliens and Immigration Law; as regards the previous situation, see *Kane v. Cyprus* (dec.), no.33655/06, 13 September 2011). Under section 18 ΠΣΤ(5)(γ), if such an application is granted by the Supreme Court, the Ministry of the Interior must immediately release the person concerned.

107. *Res judicata* obtains from successive habeas corpus applications that are based on the same facts without new intervening factors. This also applies to questions that could have been raised in the first habeas corpus claim but were not (*Refaat Barquwi*, habeas corpus application no. 131/2003 (2004) 1 CLR 2004, judgment of 12 January 2004).

2. Cases relied on by the parties concerning habeas corpus proceedings

108. In the case of *Essa Murad Khlaief* (habeas corpus application 91/2003, (2003) 1 (C) CLR 1402) the applicant lodged a habeas corpus application submitting, *inter alia*, that detention for the purposes of

deportation could not be indefinite and that the Supreme Court could, within the context of a habeas corpus application, examine its lawfulness if it had exceeded a reasonable time. The applicant had also brought a recourse challenging the deportation and detention orders issued against him, which were still pending at the time of the examination of his habeas corpus application (recourse no. 802/2003). On 14 October 2003 the Supreme Court, at first instance, held that a detainee could challenge through a habeas corpus application the lawfulness of his or her protracted detention for the purpose of deportation. In such an application, the Supreme Court would not examine the lawfulness of the decisions ordering deportation and detention; rather, it would examine whether a detention that had initially been lawful had subsequently become unlawful by virtue of it exceeding a reasonably permissible length. In deciding whether the detention in question was excessively long the court would take the specific facts of the case into account. The Supreme Court furthermore held that detention under Article 11 § 2 of the Constitution for the purpose of deportation could not possibly be unlimited but was restricted to a reasonable period, taking into account all the circumstances of the deportation execution process. If deportation was not completed within a reasonable time, the grounds for detention would cease to exist. On the facts of the case, the Supreme Court noted that the administration had encountered difficulties in ascertaining the applicant's identity and the country to which he should be deported. Considering all the circumstances of the case, it held that the applicant's detention had not been unreasonably lengthy at that stage.

109. In the case of *Mohammad Khosh Soruor* (habeas corpus application no. 132/2011 (2011) 1 CLR 2170, judgment of 21 December 2011), which was decided one day before the present applicant's habeas corpus application, the Supreme Court, at first instance, found in favour of the Mr Soruor and issued a habeas corpus order. It found that his continuous detention beyond the end of the six-month period on the basis of deportation and detention orders had been illegal in the light of the EU Returns Directive, which at the time in question had had direct effect in domestic law. There had been no national law in force when the six-month period had expired and the Ministry of the Interior could not retroactively validate the applicant's detention (see paragraph 30 above). On the same day, however, new deportation and detention orders were issued against Mr Soruor on the same grounds as those cited in respect of the previous ones; he challenged those new orders by bringing a recourse (no. 1723/2011). An application lodged by him in the course of those proceedings for a suspension of the deportation and detention orders was dismissed by the Supreme Court (the first-instance revisional jurisdiction).

110. In the case of *Yuxian Wang* (habeas corpus application 13/2012, (2012) 1 CLR 406, judgment of 15 March 2012) the applicant had been detained on the basis of deportation and detention orders that were

subsequently annulled by the Supreme Court after she brought a recourse challenging their lawfulness. On the same day the judgment was delivered and while the applicant was still in detention, the authorities issued fresh deportation and detention orders on the same grounds as those cited in respect of the previous orders. The applicant brought a recourse against those orders but also lodged an application for a writ of habeas corpus challenging the lawfulness of her continuing detention, which had exceeded the six-month period stipulated by Article 15 § 5 of the EU Returns Directive. The Supreme Court allowed the application and issued an order for her immediate release. It ruled that it had the authority to examine the application, given the fact the applicant was not challenging the lawfulness of the deportation and detention orders but was rather challenging the lawfulness of her detention on the basis of its duration. Therefore, section 18 ΠΣΤ(5)(a) of the Aliens and Immigration Law was applicable. The court held, that given the circumstances of the case, the applicant's detention had to be considered as continuous and uninterrupted. Any other conclusion would have been in contravention of Article 15 § 5 of the EU Returns Directive as it would have rendered it possible to circumvent the Directive's provisions by the issuance of successive detention orders.

111. In the case of *Zoran Todorovic* (habeas corpus application no. 197/2013 (2013) 1 CLR 2578, judgment of 19 December 2013) Mr Todorovic was arrested on 9 April 2013 and was detained on the basis of deportation and detention orders. Just before the expiry of the six-month period, the Minister of the Interior extended his detention for another twelve months on the grounds that the applicant had not been cooperating with the authorities in order to secure the issuance of travel documents. The Supreme Court, at first instance, issued a habeas corpus order, having found that the continuous detention of Mr Todorovic following the end of the six-month period had been unlawful, as the extension of his detention for another twelve months had not been executed in accordance with the applicable law. In particular, there had not been enough evidence before the Minister of the Interior at the time showing (i) that Mr Todorovic had not been cooperating in the efforts to secure the issuance of travel documents and (ii) in what way he had failed to cooperate. Furthermore, no details had been given of the actual steps taken by the authorities in this respect. Consequently, the court was not in a position to verify whether in fact the conditions for extending his detention for such a long period had been fulfilled. The court emphasised that the Aliens and Immigration Law set strict conditions in respect of both the initial period of detention and the subsequent periods of extension and for this reason it also gave the right to seek a review of the length of that detention through habeas corpus proceedings. Detention could not be extended for twelve months on the basis of general statements.

112. On 19 December 2013, immediately after the Supreme Court gave judgment in favour of Mr Todorovic, the authorities rearrested him on the

Supreme Court premises on the basis of new deportation and detention orders. He lodged a second habeas corpus application challenging the lawfulness of his rearrest and detention (*Zoran Todorovic*, habeas corpus application no. 2/2014, judgment of 2 February 2014). The Supreme Court issued a habeas corpus order ordering his immediate release. The Supreme Court, at first instance, ruled that the actions of the Director of the Civil Registry and Migration Department and of the Minister of the Interior had constituted a blatant (*απροκάλυπτη*) and flagrant violation of the express provisions of Law no. 153(1)/2011 as well as of the Republic's obligations *vis-α-vis* the European Union. Under the pretext of issuing new orders, they had shown unprecedented disrespect towards a judgment of the Supreme Court by not accepting its verdict and its order for the immediate release of Mr Todorovic. Mr Todorovic had also been deprived of his right to be immediately released on the basis of that judgment. It was evident from the case file that the Director of the Civil Registry and Migration Department had already prepared the suggestion that new orders be issued in the event that the Supreme Court allowed the application. She had also attempted to retroactively supplement the inadequate reasoning of the decision in order to justify the issuance of the new orders. This had been in violation of the right of Mr Todorovic to have the whole period of his detention reviewed and had, moreover, been in contravention of section 18 ΠΣΤ of the Aliens and Immigration Law.

113. In the habeas corpus proceedings brought in the cases of *A.H. and J.K. v. Cyprus* (cited above, §§ 48-54) and *F.A. v. Cyprus* ((dec.), no. 41816/10, §§ 24-27, 25 March 2014) the Supreme Court, in its respective judgments of 23 February 2011, noted that the applicants in question had complained of the conditions of their detention but had not submitted sufficient information for the court to be able to examine whether or not there was any scope to examine them within the context of the habeas corpus proceedings.

III. RELEVANT INTERNATIONAL AND DOMESTIC REPORTS

A. Reports of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT")

1. The CPT's 2012 report

114. On 6 December 2012 the CPT released a report on its visit to Cyprus from 12 until 19 May 2008. The relevant extracts of the report read as follows (footnotes omitted):

"Police Establishments

1. Preliminary remarks

11. [...] In the course of the visit, the CPT's delegation met persons, detained pursuant to aliens legislation, who were held on police premises for wide-ranging periods: from a few hours to, potentially, six days at Larnaca airport holding facility, to over 15 months, e.g. at Police Prison Block 10. Custody records showed that lengthy detention could occur at any police station and many persons detained for very long periods had been moved several times from one station to another. During the week prior to the visit, a group of 27 aliens had been released, all of whom had been in detention for over six months and some for close to four years.

...

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. In particular, the newly refurbished police cells at *Pafos Police Station* provided for access to natural light and ventilation and were equipped with a plinth, a fixed stool and table, an in-cell toilet, sink and shower, and a call-bell. Conditions at *Police Prison Block 10* [of Nicosia Central Prisons] had also improved, through the installation of air-conditioning in the detention block's central corridor and the creation of a basket-ball court in the exercise yard. Further, sanitary facilities were entirely renovated at the *former Famagusta police station in Larnaca*, where conditions were also much improved in view of the lowering of occupancy levels.

...

56. Once again, the delegation heard consistent complaints about the provision of food, especially as regards quantity, but also as regards quality. Persons remanded in police custody were not provided with food in the evening for the first eight days at *Larnaca Central Police Station*. For the first 15 days of custody at *Pafos* and *Limassol Police Stations*, only cold food was provided, once a day. **The CPT recommends that all persons held on police premises are provided with appropriate food at regular intervals (including at least one full meal every day)**.

57. The CPT has reiterated in the report on each visit to Cyprus that all persons detained longer than 24 hours must be offered the opportunity of one hour of outdoor exercise every day. However, in 2008, outdoor exercise was provided only at *Police Prison (Block 10)* and *Larnaca* and *Paralimni Police Stations*. At *Aradippou* and *Limassol Police Stations*, detained persons were offered, at best, access for several hours to a courtyard covered by corrugated plastic sheeting. Thus, outdoor exercise was still not provided at most police establishments, including those which held primarily or exclusively long-term immigration detainees, such as the *former Famagusta detention facility in Larnaca* and *Lakatamia Police Stations*.

By a letter of 8 September 2008, the Cypriot authorities referred to the impossibility of making the outdoor space at these two establishments available to detained persons, due to the fact that the space is open to the public or shared with other police departments. In the CPT's view, such arguments indicate a lack of concern for the basic needs of persons deprived of their liberty for extended periods. **The CPT calls**

upon the Cypriot authorities to ensure that all persons detained in police stations for longer than 24 hours are offered one hour of daily outdoor exercise.

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.

...

At the end-of-visit talks with the Cypriot authorities, the visiting delegation made an immediate observation pursuant to Article 8, paragraph 5, of the European Convention for the prevention of Torture and Inhuman or Degrading Treatment or Punishment, requesting that the Cypriot authorities take immediate steps to improve the conditions of detention of persons held in police custody for prolonged periods. The delegation requested to be informed, within three months, of action taken in response to the immediate observation.

...

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.

It is certainly positive that the Cypriot authorities state that they intend not to keep aliens in detention for longer than 6 months. However, the fact remains that holding such persons in police stations for months on end is not acceptable. A solution to this problem cannot await the opening of the new aliens centre planned for 2012. The CPT has already described, in its previous report, the standards that accommodation provided to persons detained for prolonged periods under aliens and asylum legislation should meet.

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.

Further, the Committee invites the Cypriot authorities to introduce a maximum time limit for the detention of foreign nationals under aliens legislation (as is already the case in the majority of European countries)."

2. The CPT's 2014 report

115. On 9 December 2014 the CPT released its report on its visit to Cyprus from from 23 September to 1 October 2013. It should be noted that before this visit, on 28 January 2013, the Menoyia Detention Centre for holding illegal immigrants was opened.

116. The relevant extracts of the report read as follows (footnotes omitted):

"...

4**. Conditions of detention**

23. At the outset of the visit, the delegation was informed that Police Prison Blocks 9 and 10, which had previously accommodated, respectively, criminal suspects and irregular migrants, had recently been taken out of service and transferred back to Nicosia Central Prisons. It was also reported that certain police stations had now been designated specifically as being suitable for detention periods in excess of 24 hours; namely, Lakatamia, Pera Chorio, Aradippou, Limassol, Ayia Napa, Paphos and Polis Chrysochous Police Stations. The remaining police stations were classified as only being suitable for holding persons for up to 24 hours.

24. The CPT's delegation observed that most of the police establishments for the detention of persons longer than 24 hours it visited had been renovated, and that they generally offered satisfactory material conditions of detention. For example, at Lakatamia and Ayia Napa Police Stations, the single-occupancy cells were of an adequate size (measuring from 9 to 12 m2 with a partitioned sanitary annex) and were all equipped with a plinth, a fixed stool and a table as well as a call bell. Further, they enjoyed adequate access to natural light and had sufficient artificial lighting and ventilation. However, at Aradippou Police Station, cells measuring 7m2 were accommodating two persons in bunk beds and the detention area was malodorous due to the malfunctioning of the air extraction system and poor conditions of hygiene. The artificial lighting was also not functioning in some cells. Further, at Aradippou and Pera Chorio Police Stations access to natural light was unsatisfactory in most of the cells due to the design of the small opaque windows covered with layers of mesh.

The CPT recommends that the Cypriot authorities take steps to ensure that cells at Aradippou Police Station do not accommodate more than one person. Further, the abovementioned deficiencies at this police station as well as at Pera Chorio Police Station should be remedied.

25. All police stations designated to detain persons for longer than 24 hours have now been equipped with recreational areas for out-of-cell exercise. This represents an improvement since the previous visit to Cyprus in 2008. Such areas were equipped with tables and chairs fixed to the floor and in some cases also a television; they had access to natural light. Detainees could spend several hours or more every day in these recreational areas. However, none of these out-of-cell areas provided outdoor exercise. The CPT recommends that this deficiency be remedied in all these police stations

26. In sum, conditions of detention in these police stations could be considered as acceptable for periods of a few days. (...)

..."

B. Amnesty International report concerning the detention of migrants and asylum-seekers in Cyprus

117. In June 2012 Amnesty International published a report on the detention of migrants and asylum-seekers in Cyprus entitled "Punishment without a crime".

118. In the report Amnesty International observed, *inter alia*, that it was particularly alarmed by cases in which successful challenges against

immigration detention had been mounted by way of habeas corpus applications but had not led to the release of the detainees concerned, as ordered by the Supreme Court, or release had happened only after considerable delay. The report noted that the Supreme Court had found in those cases that the continuation of detention beyond six months had been unlawful and had ordered the individual's immediate release. However, the persons concerned had instead been rearrested before leaving the Supreme Court building (or immediately thereafter) on the basis of new detention orders issued on the same grounds as those cited in respect of the previous detention orders. The report observed that in at least one such case, the new detention order predated the Supreme Court's decision by a day. Cypriot legislation provides the immediate release of any third-country national in the event that his or her application under Article 155 § 4 of the Constitution was successful.

119. The report concluded that the routine detention of irregular migrants and of a large number of asylum-seekers had been in clear violation of Cyprus' human rights obligations. It considered that this pattern of abuse had been partly due to inadequate legislation, but that more often it had been down to the practice of the authorities. Lastly, the report set out a number of recommendations to the Cypriot authorities. These included, in so far as relevant:

- Ending the detention of asylum-seekers for immigration purposes in law and in practice, in line with international human-rights standards, which require that such detention be only used in exceptional circumstances;

-Ensuring that detention is always for the shortest possible time;

-Ensuring that Supreme Court orders to release detainees when their detention is found to be unlawful are complied with immediately;

-Ensuring that conditions for migrants and asylum-seekers held in immigration detention conform to international and regional human rights standards – including the UN Body of Principles for the Protection of All Persons under Any Form of Detention and the UN Standard Minimum Rules for the Treatment of Prisoners;

-Ensuring that irregular migrants and asylum-seekers held for immigration-related purposes are (i) detained in purpose-built facilities that are not punitive in nature and (ii) separated from criminal detainees;

-Ensuring that a separate bed with clean bedding and personal-hygiene products are provided for each detainee and that detainees have at least one hour of outdoor exercise daily.

C. Reports by the Ombudsman

1. Report of the Ombudsman on her visit to Famagusta police station

120. On 3 October 2011 the Ombudsman, in her capacity as the National Mechanism for the Prevention of Torture, issued a report following a visit to Famagusta police station on 5 August 2011. According to her report, the visit was prompted by a significant number of complaints to her office concerning an alleged instance of ill-treatment on the premises. Although a separate visit had been carried out in respect of the incident in question, she considered that it was necessary to visit the station and to investigate the general conditions of the detention of detainees.

121. In her report the Ombudsman observed, *inter alia*, the following:

-the detention facility had had one big cell with ten beds, one cell with eight beds, and two smaller cells with two beds each;

-none of the cells had met the minimum size recommended by the CPT;

-on the day of her visit there had been twenty detainees in total (the capacity of the facilities being for twenty-two persons);

-although the temperature and natural light had been adequate there had been a strong stench that had indicated a lack of hygiene;

-there had been three toilets and four showers;

-there had been no toilet paper, soap or shampoo in the cells, and the staff had said that these were provided to detainees upon request;

-detainees had received three meals per day, one of which had been warm; during confidential interviews the Ombudsman had received complaints about the quantity of food, a lack of fruit and the fact that the food had not met the dietary needs of Muslim detainees during the Ramadan period;

- there had been no outdoor exercise yard, as a result of which the detainees had remained throughout their detention locked up in the detention wing without contact with the outside world, natural light and fresh air;

-some detainees had been held at the station for more than ten months, and the lack of exercise had had serious repercussions on their physical and psychological health;

-visits had taken place in a staff office as there had been no visiting area, and detainees had been handcuffed during all visits from their family and friends;

- the three police officers on duty at the facility had not been permanent staff of the facility and had received no special training in respect of the execution of their duties. They had worked twelve-hour shifts from a small prefabricated construction, which had served as an office. The working hours, the training and the working conditions of the officers had been inappropriate for the execution of their duties in a facility housing people of

various nationalities who had been detained for the purpose of their deportation.

-the inadequate conditions of detention, in combination with the difficult working conditions of the officers, had created conditions that could easily have given rise to tension and protests. (Indeed, an incident had taken place in the facility on 12 July 2011 between detainees and officers.)

122. The Ombudsman concluded that the detention facility was not compatible with the basic principles governing the treatment of detainees and international standards. The conditions in which detainees were kept, had led on many occasions to the degrading and humiliating treatment of detainees and the violation of their basic rights. She recommended that the detainees be transferred to a safe area and that the facility stop operating as it was unsuitable for the detention of people. Its continued operation meant that the Republic of Cyprus ran the risk of being exposed internationally.

2. Report of the Ombudsman on her visit to Paphos police station

123. On 2 March 2015, the Ombudsman issued a report following a visit undertaken by her to Paphos police station on 3 October 2014.

124. In her report the Ombudsman made the following observations:

-persons detained with a view to deportation had been held together with criminal suspects, in contravention of CPT standards (the Ombudsman cited a document entitled "CPT Standards" (CPT/Inf/E (2002) 1 – Rev. 2010, p.p. 53-55);

-one of the detainees had been kept at the station for over five months, even though the facility had been unsuitable for detention of such duration;

-although the cells had been of a satisfactory size, the sanitary facilities inside the cells had been visible to the staff due to the lack of a partition;

- the detainees had had to clean their own cells;

-no cleaning products had been provided and there had been no disinfection and cleaning when changing over detainees;

-although the temperature in the cells had been satisfactory, there had been no windows – just glass bricks, which had let in only a limited amount of natural light and had prevented the natural ventilation of the cells;

-detainees had reported that they were only given toilet paper when they requested it, but no soap or shampoo;

-although there had been an internal yard with natural light and ventilation, according to the interviews with the detainees, there had been no regular exercise programme;

-there had been no clock in the wings or the common detention area; this, along with the limited amount of natural light and the lack of a daily routine, had over the passage of time brought about a feeling of disorientation;

-there had been no clearly set visiting hours and there had been a partitioning glass in the visiting area separating visitors from detainees,

even though foreign detainees had only been held with a view to their deportation;

-regardless of the duration of their detention, detainees had been provided with only two meals instead of three: (i) one meal in the morning hours comprising bread, an egg, tinned meat and coffee, which had been meant to cover their night meal (this food had had to be kept in the cell until the evening), and (ii) one warm meal at lunch.

125. The Ombudsman concluded that the detention facility at the station had serious deficiencies and inadequacies, despite the fact that they had been constructed recently. In particular, the lack of natural ventilation, the failure to ensure hygienic conditions and the failure to separate detainees held for deportation and criminal suspects had rendered this facility completely unsuitable for the detention of persons for more than a few days. In addition, she expressed her concern about the problems referred to in her report that concerned the implementation of domestic and international legislation aimed at ensuring the respect and protection of the basic rights of the detainees.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

126. The applicant complained that the conditions of his detention at Famagusta, Paphos and Aradippou police stations for such a long duration had amounted to inhuman and degrading treatment in breach of Article 3 of the Convention, which reads as follows:

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

127. The Government contested that argument.

A. Scope of the complaint

128. The Court reiterates that the applicant's complaint under Article 3 of the Convention in so far as it concerned the conditions of his detention at Larnaca police station was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court (see paragraph 5 above). The Court will therefore examine the complaint in so far as it concerns Famagusta, Paphos and Aradippou police stations.

B. Admissibility

1. Preliminary remark

129. The Government, in their pleadings concerning Article 5 § 4 of the Convention, argued that the applicant could have complained, within the context of his habeas corpus application, of the allegedly poor conditions of his detention but had not done so.

130. The Court finds that this in fact constitutes a preliminary objection of non-exhaustion of domestic remedies in relation to the applicant's complaint under Article 3 and needs, therefore to be examined under that head.

1. Exhaustion of domestic remedies

(a) The parties' submissions

(i) The Government

131. The Government submitted that the applicant could have complained within the context of his habeas corpus application of the alleged illegality of his detention on the basis of the material conditions thereof but had failed to do so. Under Article 155 § 4 of the Constitution, the Supreme Court had exclusive jurisdiction to issue, *inter alia*, habeas corpus orders. Any person in detention was entitled to challenge the lawfulness of his or her detention by way of applying for a writ of habeas corpus. The habeas corpus procedure was speedy and led to a detainee's release if the Supreme Court found that he had been unlawfully detained.

132. The applicants in the habeas corpus proceedings brought in the cases of *A.H. and J.K. v. Cyprus* and *F.A. v. Cyprus* (all cited above) had also complained of the allegedly inadequate conditions of their detention but had failed to provide the Supreme Court with sufficient evidence. The Supreme Court had not examined the issue for that reason. It had not ruled that it lacked jurisdiction to examine a complaint about poor conditions of detention in the context of a habeas corpus application (see paragraph 113 above). Citing the Court's decision in the case of *Kane v. Cyprus* ((dec.), no. 33655/06, 13 September 2011), the Government pointed out that, according to the Court's case-law, the existence of mere doubts as to the prospects of the success of a particular remedy that was not obviously futile was not a valid reason for failing to exhaust the domestic remedies; where there was doubt as to the prospects of success in a particular case, it should be submitted to the domestic courts for resolution. This was particularly so in a common-law system since – given that the courts extended and developed principles through case-law – it was generally incumbent on an aggrieved individual to allow the domestic courts the opportunity to develop existing rights by way of interpretation (ibid.).

(ii) The applicant

133. The applicant disagreed and submitted that contrary to the Government's submissions, the Supreme Court – in the context of the applicant's habeas corpus application – could have only examined the lawfulness of his detention in terms of its duration. It could not have examined the conditions of his detention. No support could be found in the applicable legislation for the Government's position and the Supreme Court's case-law in this respect. The fact that in the cases referred to by the Government, a judge of the Supreme Court had mentioned the matter did not constitute sufficient authority to support the view that a habeas corpus application was an effective remedy in respect of conditions of detention.

(b) The Court's assessment

(i) General principles

134. The rule on exhaustion of domestic remedies set out in Article 35 § 1 of the Convention requires those seeking to bring their case against the State before the Court to first use the remedies provided by the national legal system. Consequently, the High Contracting Parties are dispensed from having to answer for their acts or omissions in proceedings before the Court before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention (with which it has close affinity) that the domestic legal system provides an effective remedy that can deal with the substance of an arguable complaint under the Convention and grant appropriate relief. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 177, 27 January 2015, and *Ananyev and Others*, cited above, § 93, both with further references).

135. An applicant is normally only required to have recourse to domestic remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of these remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. It is incumbent on the Government claiming non-exhaustion to satisfy the Court on these points – that is to say, that the remedy to which they refer was accessible and capable of providing redress in respect of the applicant's complaints, and offered a reasonable prospect of success. However, once this burden of proof has been satisfied it falls to applicants to establish that the remedy advanced by the Government had in fact been used or was for some reason inadequate or ineffective in their case, or that there existed special

circumstances exempting them from the requirement to have recourse to it (see *Neshkov and Others*, cited above, § 178).

136. The application of the rule of exhaustion of domestic remedies in proceedings before the Court must make allowance for the fact that it is being applied in the context of machinery for the protection of human rights. This means that the rule is to be applied with some degree of flexibility and without excessive formalism, that it is neither absolute nor capable of being applied automatically, and that in reviewing whether it has been complied with it is essential to have regard to the particular circumstances of each case. This entails, among other things, that realistic account must be taken not only of the formal existence of remedies in the legal system of the High Contracting Party concerned but also of the general context in which these remedies operate, as well as the applicants' personal situation (ibid., § 179).

137. In the context of complaints of inhuman or degrading conditions of detention, the Court has already observed that two types of relief are possible: an improvement in the material conditions of detention and compensation for the damage or loss sustained on account of such conditions (ibid., § 181; see also *Ananyev and Others,* cited above, § 9). If an applicant has been held in conditions in breach of Article 3, a domestic remedy capable of putting an end to the ongoing violation of his or her right not to be subjected to inhuman or degrading treatment is of the greatest value. However, once the applicant has left the facility in which he or she has endured the inadequate conditions, what remains relevant is that he or she should have an enforceable right to compensation for the violation that has already occurred (see *Neshkov and Others*, cited above, § 181).

(ii) Application to the present case

138. In the present case, the Government argued that the applicant should have raised his conditions-of-detention complaint before the Supreme Court in the context of his application for a writ of habeas corpus.

139. The Court is not, however, convinced that raising such a complaint in the context of his habeas corpus application would have provided the applicant with an effective remedy as required by the Court's case-law (see paragraph 137 above). In this connection, the Court notes that there is no indication on the basis of the domestic case-law that unacceptable conditions of detention could per se render such detention unlawful and thus constitute a ground in themselves for the issuance of a writ of habeas corpus. The Court further notes in this respect that the habeas corpus jurisdiction of the Supreme Court in relation to the lawfulness of detention in deportation cases is even more limited as such applications can only be made on length grounds; it is indeed on these grounds the applicant made his application and was successful.

140. Given the above, the Court does not consider that the Government have discharged their burden of proof as to the effectiveness of this remedy in relation to a conditions-of-detention complaint.

141. The Court therefore finds that the applicant's complaint under this head cannot be rejected for non-exhaustion of domestic remedies and rejects the Government's objection in this respect.

2. Compliance with the six-month time-limit

(a) The parties' submissions

(i) The Government

142. The Government also raised a preliminary objection of non-compliance with the six-month time-limit, claiming that the applicant's complaints concerning the conditions of his detention at Famagusta police station from 5 April 2011 until 21 September 2011 had been lodged out of time.

143. Citing the Court's judgment in the case of *Ananyev* (cited above, § 78), the Government argued that Paphos police station, where the applicant had been transferred after being held at Famagusta police station, had been a different type of detention facility. In addition, the conditions of the applicant's detention in the two facilities had been substantially different. Citing the applicant's assertions and the Ombudsman's reports on the two stations, they highlighted the following differences: (a) at Famagusta police station there had been one big cell with ten beds, one cell with eight beds and two cells with two beds, whereas at Paphos police station all cells had been single-occupancy; (b) at Famagusta police station the sanitary facilities had been for common use, while at Paphos police station each cell had been equipped with a toilet, a sink and a shower; and (c) the Famagusta police station had not had an outdoor exercise yard, whereas there had been one at Paphos police station, where the detainees had been able to move around freely all day.

(ii) The applicant

144. The applicant submitted that from the day on which he had entered Cyprus until his release on 25 October 2012 he had been detained in police detention facilities that had not been specialised detention facilities for third-country nationals pending their deportation but had been designed for periods of detention lasting only for a few days. Furthermore, none of the police-station detention facilities had complied with CPT standards or the standards regarding detention stipulated in the Council of Europe's Twenty Guidelines on Forced Return. The applicant's detention in these facilities had therefore constituted a "continuing situation". His situation had been completely different to that of Ms Bashirova in the *Ananyev* case (cited

above), which the Government had cited, as his detention had constituted a "continuing situation" in the same type of detention facilities and in substantially similar conditions without any interruption at all over a period of eighteen months and six days. His complaint concerning the facilities at Famagusta police station had therefore been lodged in time.

(b) The Court's assessment

145. The Court reiterates that the purpose of the six-month rule under Article 35 § 1 of the Convention is to promote legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time and that past decisions are not continually open to challenge (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 129, 19 December 2017). In cases where there is a "continuing situation", the six-month period runs from the date of the cessation of the situation. The concept of a "continuing situation" refers to a state of affairs in which there are continuous activities by or on the part of the State such as to render the applicant a victim (see *Ananyev*, cited above, § 75). Normally, the six-month period runs from the final decision in the process of exhausting the domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of (ibid., § 72).

146. A complaint about conditions of detention must be lodged within six months of the end of the situation complained of if there was no effective domestic remedy to be exhausted. The Court's approach to the application of the six-month rule to complaints concerning the conditions of an applicant's detention may be summarised in the following manner: the period of an applicant's detention should be regarded as a "continuing situation" as long as the detention has been effected in the same type of detention facility in substantially similar conditions. The applicant's release or transfer to a different type of detention regime, both within and outside the facility, would put an end to the "continuing situation" in question (ibid., § 78).

147. In the present case the application was lodged on 9 October 2012. Hence, the applicant's complaints about the conditions of his detention at Paphos police station between 21 September 2011 and 29 May 2012 and at Aradippou police station between 11 August 2012 and 15 October 2012 were lodged within six months, in accordance with Article 35 § 1 of the Convention. The question of compliance with the six-month-rule arises solely in relation to his complaint concerning his initial detention at Famagusta police station, where he was held between 15 April 2011 and 21 September 2011. In particular, it has to be determined whether his detention in that station and subsequently at Paphos police station can be regarded as a "continuing situation" or as two distinct periods.

148. The Court observes that both stations were police establishments with the same type of detention facilities, designed for short-term custody only (see CPT's 2012 report, mentioned in paragraph 114 above). The applicant's complaints concern (i) the inadequacy of these facilities for the purposes of long-term detention (see paragraph 144 above), and (ii) a whole range of problems in respect of the overall material conditions in both these police establishments – including the sanitary conditions and hygiene problems, and the lack of access to outdoor activity, fresh air and natural light (see paragraphs 63-67 and 77-82 above). The applicant did not put any emphasis on any particular negative feature of his detention with respect to any particular detention facility (see, for example, *Haritonov v. Moldova*, no. 15868/07, § 27, 5 July 2011; also contrast *Savca v. the Republic of Moldova*, no. 17963/08, § 23, 15 March 2016, and *I.D. v. Moldova*, no. 47203/06, § 30, 30 November 2010).

149. It is true that certain aspects of the conditions of the applicant's detention varied in the two facilities. However, bearing all the above in mind, the Court does not consider that these differences are sufficient to allow it to distinguish between the conditions of the applicant's detention and to separate it into two periods. It finds that the detention of the applicant was effected in the same type of detention facilities in substantially similar conditions.

150. Accordingly, the Court finds that the detention of the applicant at Famagusta police station and at Paphos police station amounted to a "continuing situation" and that the applicant's complaint about the conditions of his detention at the former station was therefore lodged within six months, in accordance with Article 35 § 1 of the Convention.

151. It follows that the Government's objection as to non-compliance with the six-month rule must be dismissed.

3. Conclusion as to admissibility

152. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore 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

153. The applicant submitted that the conditions under which he had been detained at the three police stations for such a long duration had constituted inhuman and degrading treatment, in breach of Article 3 of the

Convention. Those establishments had been inadequate for the purposes of custody exceeding a few days. The CPT in its reports of 2012 and 2014 on Cyprus had expressed its concern regarding the detention of persons under the Aliens and Immigration legislation in police stations. Furthermore, those police stations had not been specialised detention facilities designed for third-country nationals, pending their deportation in accordance with the domestic law – specifically, the Law and the Regulations for the Establishment and Regulation of Premises of Illegal Immigrants (respectively Law no. 83(I)/2011 and Regulations 161/2011). More specifically, the Minister of Justice had never declared them to be facilities in which third-country nationals found to be illegally staying in the country could be detained; moreover, the facilities had not complied with the minimum standards provided in the above-mentioned Regulations.

154. In addition, none of the above-mentioned facilities had complied with CPT standards or the standards regarding detention set out in the Council of Europe's Twenty Guidelines on Forced Return. Totally unacceptable conditions in police-station detention facilities in Cyprus, amounting to inhuman and degrading treatment, had been repeatedly reported by, *inter alia,* the Council of Europe's European Commission against Racism and Intolerance, the CPT and the Cypriot Ombudsman. The applicant relied on the CPT's reports of 2012 and 2014 and on the Ombudsman's reports of 3 October 2011 and 2 March 2015, which he argued supported his description of the conditions of his detention at the three facilities (see paragraphs 114-116, 120-122 and 123-125 below).

155. Lastly, the applicant submitted that the conditions of his detention throughout all of those months had seriously affected him physically, mentally and psychologically; this could be seen from the documents submitted by the Government. In particular it was evident from the police stations' logbooks that the applicant had attempted to commit suicide during his detention and had been on medication for most of the period of his detention.

(b) The Government

156. The Government submitted that the authorities had not failed to comply with their obligation to ensure that the applicant was not subjected to distress or hardship exceeding the unavoidable level of suffering inherent in detention. In any event, they argued that the conditions of the applicant's detention had not met the threshold required in respect of a violation of Article 3. They submitted documents concerning the conditions at the three facilities and photographs of the premises.

157. Furthermore, the Government rejected the allegations made by the applicant that the officers at Paphos police station had often switched off the ventilation system as a form of punishment when detainees had protested about different issues in the facility. In this connection, they noted that the

fact that the ventilation system had not been working properly during one of the visits made by the applicant's lawyer to the station did not constitute proof that this had been deliberately effected by the officers. The officers had been working in the same space and would also have been affected by the lack of ventilation. It was highly likely that the ventilation system had simply malfunctioned on that day.

2. The Court's assessment

(a) General principles

158. In the context of deprivation of liberty the Court has consistently stressed that, in order for it 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 that 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).

159. The applicable general principles were set out by the Court in its recent Grand Chamber judgment in the case of *Muršić* (ibid., §§ 96-141).

(b) Application to the present case

160. The Court notes at the outset that the applicant was detained for over fifteen months at three police establishments: Famagusta police station for over five months; Paphos police station for just over eight months; and Aradippou police station for just over two months. 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, for example, *Thuo v. Cyprus*, no. 3869/07, § 159, 4 April 2017, with further references; see also *S.Z. v. Greece*, no. 66702/13, § 40, 21 June 2018, with further references). On that point, the Court observes that the Cypriot authorities' practice of detaining aliens subject to deportation procedures in police facilities for long periods has been explicitly mentioned by the CPT – *inter alia* in its 2012 report, which described such establishments as unsuitable for detaining people under immigration legislation for prolonged periods (see paragraph 114 above; see also *Thuo,* cited above, § 159). The CPT in its 2012 report emphasised that the existing police detention facilities in Cyprus, which included these three stations, were only suitable for accommodating detained persons for a maximum

period of a few days (see paragraph 114 above). The CPT re-emphasised this in its 2014 report, which included visits to Paphos and Aradippou police stations (see paragraph 116 above). By then, following the Ombudsman's 2011 report, the detention facilities at Famagusta station had ceased operations (see paragraph 69 above).

161. Furthermore, bearing in mind the above and having regard to the applicant's specific allegations concerning each of the facilities, the Court notes, *inter alia*, the following.

162. None of the stations provided the possibility for outdoor exercise (see the CPT's reports of 2012 and 2014 and the Ombudsman's reports of 2011 and 2014; see in particular paragraphs 114-116, 121 and 124 above). This meant that the applicant had no access to any outdoor exercise for a period of thirteen consecutive months when detained at Famagusta and Paphos police stations and for two months when detained at Aradippou police station. Both Paphos and Aradippou stations only had indoor exercise areas. The Court reiterates that access to outdoor exercise is a fundamental component of the protection afforded to persons deprived of their liberty under Article 3 and as such it cannot be left to the discretion of the authorities (see, *inter alia*, *Alimov v. Turkey*, no. 14344/13, § 83, 6 September 2016; *Abdi Mahamud v. Malta*, no. 56796/13, § 83, 3 May 2016; and *Ananyev*, cited above, § 150); according to the CPT, all detainees – even those confined to their cells as a punishment – have a right to at least one hour of exercise in the open air every day, regardless of how good the material conditions might be in their cells (see the publication entitled "CPT Standards" (document no. CPT/Inf/E (2002) 1-Rev. 2013), § 48; see also all three cases cited above).

163. With regard to the detention facility at Famagusta police station, the Court notes that the information in the case file does not allow it to ascertain whether the applicant had less or more than 3 sq. m of personal space. The Government did not have any records regarding the dimensions of the applicant's cell and the number of detainees held with the applicant throughout his detention. The Ombudsman does not actually refer to the dimensions of the cells in the facilities in her report (see paragraph 121 above). The applicant estimated the cell to have measured about 20 to 25 sq. m, but he had to share it with another eight detainees. On the basis of this estimate, the personal space available to him must have been between 2.5 sq. m and 3.1 sq. m. Even assuming that the latter was the case, the applicant's personal space in the cell would still have amounted to less than 4 sq. m for a period of over five months. This has to be seen in conjunction with other aspects of his detention (see *Muršić*, § 139), and in particular, the fact that he was held in a facility with insanitary conditions and with no access to, *inter alia*, outdoor exercise or fresh air – inadequacies pointed by the Ombudsman in her 2011 report on that establishment, which was based

on her visit there during the applicant's detention (see paragraphs 120-121 above) and which lends credence to the applicant's allegations.

164. In her report the Ombudsman found that the said detention facility was not compatible either with the basic principles governing the treatment of detainees or with international standards. She pointed out that the conditions in which detainees were kept had led on many occasions to their being treated in a degrading and humiliating manner and to a violation of their basic rights. She recommended that the detainees be transferred to a safe area and that the facility stop operating; she added that if it continued to operate, the Republic of Cyprus ran the risk of being exposed internationally (see paragraph 122 above).

165. With regard to the detention facility at Paphos police station, where the applicant was detained for just over eight months, although no issue of personal space arises, the material conditions were inappropriate. In this connection, it is noted that the applicant's allegations regarding a lack of natural light and fresh air are corroborated by the Ombudsman's 2014 report and the photographs submitted by the Government (which were taken in April 2013). Besides not allowing access to outdoor exercise, the cells did not have a window in the proper sense of this word. Instead, there were glass bricks, which let in a limited amount of daylight but prevented any fresh air from entering the cell (see a similar situation described in *Vlasov v. Russia*, no. 78146/01, § 82, 12 June 2008). The Ombudsman's report also corroborates the applicant's allegations that there had been no regular exercise programme in the internal yard and that he had been confined with persons suspected of having committed criminal offences.

166. The Court is mindful of the fact that the Ombudsman's visit took place more than two years after the applicant's detention at that facility. Yet in view of the structural nature of the problems identified and taking into account the photographs submitted by the Government there is no indication that these problems did not exist during the period when the applicant was detained there – namely in 2011-2012.

167. Lastly, in so far as the detention facility at Aradippou police station is concerned, the applicant had about 3.5 sq. m of personal space. In addition to the lack of outdoor activity, the applicant's allegations of inadequate natural light and fresh air are supported by the photographs submitted by the Government and by the CPT's 2014 report. The photographs show an internal yard with limited access to natural light and cell windows covered with mesh, as noted also by the CPT.

168. Taking into account (i) the fact that the applicant was held for a significant amount of time in detention facilities that had been designed specifically to accommodate people for a short time only and had lacked the amenities indispensable for prolonged detention, and (ii) the specific physical conditions of detention in each station (as described above), the Court finds that the overall conditions of the applicant's detention in these

facilities subjected him to hardship going beyond the unavoidable level of suffering inherent in detention and that they thus amounted to degrading treatment prohibited by Article 3 of the Convention.

169. There has therefore been a violation of this provision.

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

170. The applicant complained that his detention from 4 April 2011 until his release on 25 October 2012 had been unlawful and therefore in breach of Article 5 § 1 (f) of the Convention, which reads 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."

171. The Government contested the applicant's arguments.

A. Scope of the complaint

172. The Court observes at the outset that the applicant in his application form complained about the lawfulness of his detention from 4 April 2011 (following the issuance of deportation and detention orders against him on that date – see paragraph 13 above) until his release; he did not complain about his detention between 28 March 2011 and 4 April 2011 (see paragraphs 8-13 above). This period is therefore not to be taken into consideration by the Court.

B. Admissibility

1. The Government's objection as regards non-exhaustion of domestic remedies with regard to the applicant's detention from 22 December 2011 until 25 October2012

(a) The parties' submissions

(i) The Government

173. The Government submitted that in so far as the applicant complained about the second period of immigration detention (from 22 December 2011 until 25 October 2012) his complaints should be declared inadmissible for failure to exhaust domestic remedies. More specifically, they argued that after his rearrest on 22 December 2011 the

applicant should have lodged with the Supreme Court a fresh habeas corpus application seeking his immediate release. The applicant's lawyer had faced a similar situation with another client; in that case she had lodged a second habeas corpus application after her client had been rearrested immediately after a successful first application had resulted in his release being ordered (see the habeas corpus applications in *Zoran Todorovic*, paragraphs 111-112 above). The Supreme Court, in respect of the second application, had held that in the circumstances the applicant's rearrest had constituted an egregious and flagrant violation of the provisions of Law no. 153(I)/2011 and had, moreover, been in breach Republic's obligations *vis-à-vis* the European Union (see paragraph 112 above). The Government thus maintained that the failure to lodge a second habeas corpus application had deprived the Supreme Court of the opportunity to put matters right (as it had been able to do in the *Todorovic* case). It had been highly unlikely that the authorities would have made the same mistake twice. The applicant's position that the authorities had systematically refused to comply with the Supreme Court judgments was unsubstantiated.

174. The fact that the applicant had already lodged a habeas corpus application concerning the lawfulness of his detention on the basis of the first detention and deportation orders had not exempted him from the requirement to avail himself of this remedy and to challenge the prolongation of his detention on the basis of the new orders. The arguments in support of his release would have been completely different, and (as established by the judgment given by the Supreme Court in *Refaat Barqawi* – see paragraph 107 above), the Supreme Court had had the authority to examine new habeas corpus applications that were based on new facts. The applicant's lawyer was experienced enough to know that pursuing a recourse against the orders would not have afforded the applicant a speedy review of the lawfulness of his decision and would thus have been incompatible with the provisions of Article 5 § 4 of the Convention. At the time there was well-settled domestic case-law to the effect that the Supreme Court had jurisdiction to examine the lawfulness of prolonged detention for deportation purposes and that this jurisdiction could only be effectively exercised in the context of habeas corpus proceedings (relying on the judgments in the habeas corpus applications of *Essa Murad Khlaief* and *Mohammed Khosh Soruor* paragraphs 108 and 109 above). This was also provided by section 18ΠΣΤ(5)(a) of the Aliens and Immigration Law (see paragraph 106 above).

(ii) The applicant

175. The applicant submitted that the only remedy to challenge the lawfulness of the new detention and deportation orders had been a recourse to the Supreme Court under Article 146 of the Constitution. In the context

of a habeas corpus application the Supreme Court could have only examined the lawfulness of detention in terms of its duration.

176. The applicant had already lodged a habeas corpus application and been successful. The Government had failed to explain what would have happened if he had been also successful with the second application but then rearrested again. The applicant questioned how many such applications he would have to have lodged in order to be considered by the Government as having complied with the rule of exhaustion of domestic remedies. The applicant could not have been expected to lodge repeated habeas corpus applications. There was no mechanism to enforce the Supreme Court's judgment in his application and even if the applicant had been successful a second time, the authorities could have immediately re-issued new deportation and detention orders in order to rearrest him. This had been the practice employed by the authorities in other cases to circumvent Supreme Court judgments in habeas corpus cases. The applicant had already been successful and should have been released, but the Government had not acted in compliance with domestic law.

177. The applicant had therefore made use of the only remedy available to him at the time.

(b) The Court's assessment

178. The Court refers to the general principles concerning exhaustion of domestic remedies, which are set out in paragraphs 134-136 above.

179. In this connection, the Court reiterates that the only remedies which an applicant is required to use are those that (i) relate to the breaches alleged and (ii) are likely to be effective and sufficient (see paragraph 135 above). Furthermore, it is also reiterated that under the established case-law, when a remedy has been pursued, the use of another remedy which has essentially the same objective is not required (see, *inter alia*, *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 40, 19 February 2009; and *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009).

180. The Court notes that there are two remedies in respect of immigration detention under domestic law. The lawfulness of the decisions ordering deportation and detention can be challenged only by way of recourse (see paragraph 105 above). The lawfulness of detention with a view to deportation on length grounds can be challenged by way of applying for a writ of habeas corpus (see paragraph 106 above). The lawfulness of deportation and detention orders cannot be examined in the context of a habeas corpus application (ibid.).

181. In the present case, although the applicant did not challenge the first decisions ordering his deportation and detention orders, he subsequently lodged a habeas corpus application, claiming that his detention was unlawful by virtue of its length. He was successful, and the Supreme Court ordered his immediate release. However, he was then rearrested a few

minutes later, upon his leaving the courtroom, on the basis of new detention and deportation orders issued against him on the same grounds as those cited in respect of the first orders. The applicant then lodged a recourse against the lawfulness of these orders. Indeed, that was at the time the only remedy under domestic law to challenge their lawfulness.

182. The Court points out in this respect that its judgment in the case of *M.A. v. Cyprus* (cited above), which found that recourse proceedings were ineffective for the purposes of Article 5 § 4 (§§ 164-170), was given on 23 July 2013 – that is to say well after the circumstances of this case. Furthermore, no case-law has been submitted by the Government that at the relevant time (that is to say the time at which he was released and then rearrested), in a situation such as that faced by the applicant, a second application for a habeas corpus would have constituted an effective remedy. The habeas corpus applications in the case of *Yuxian Wang* and *Zoran Todorovic* were brought after the judgment in *M.A* (see paragraphs 110-112 above). The well-settled domestic case-law of the Supreme Court cited by the Government concerned the examination of the lawfulness of detention on the basis of length in the context of habeas corpus applications. This is confirmed by section 18ΠΣΤ(5)(a) of the Aliens and Immigration Law. The applicant had actually already lodged such an application.

183. Given the above, and bearing in mind the nature of the applicant's complaints, the Court does not consider the applicant's choice of remedy unreasonable or that in the circumstances, in view of the fresh deportation and detention orders, that the applicant chose the inappropriate remedy.

184. The Government's plea of non-exhaustion of domestic remedies must therefore be rejected.

2. Otherwise as to admissibility

185. The Court observes that the Supreme Court in its judgment of 22 December 2011 held that the applicant's detention after 4 October 2011 had been unlawful (see paragraphs 29- 30 above) and ordered his immediate release. This was indeed an acknowledgement of the violation of the applicant's rights under Article 5 of the Convention in respect of part of his detention from 4 October until 22 December 2011. However, as noted above, within minutes of this ruling and the applicant's release, he was rearrested and again placed in immigration detention on the same grounds as those cited in respect of his initial detention. Moreover, in the absence of redress for the violation of his rights, the applicant's victim status for the purposes of Article 34 § 1 of the Convention in respect of this part of his detention is not affected and the applicant may still claim to be a victim within the meaning of Article 34 § 1 of the Convention in respect of the whole of his detention (for the general principles regarding victim status, see, *inter alia*, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-180, ECHR 2006-V).

186. Furthermore, the Court notes that despite the immediate release order issued by the Supreme Court on 22 December 2011 (see*, mutatis mutandis*, *Feldman v. Ukraine*, nos. 76556/01 and 38779/04, § 84, 8 April 2010), it is evident that the applicant was not in reality able to regain his liberty on the date as he was released but rearrested by the authorities within a few minutes upon his leaving the courtroom on the basis of new detention and deportation orders issued against him on the same grounds as those cited in respect of the first orders. As acknowledged by the Government, those orders were issued on the basis of the Minister's decision of 29 November 2011 which had extended the applicant's detention retroactively for up to eighteen months (see paragraphs 13, 28, 32-33 and 101 above and paragraph 199 below). It is clear from the Government's submissions but also from the facts of the case, that the applicant's detention on these new orders was not a new period of detention but an extension of his initial six-month detention. Indeed, following the expiry of the eighteen months, the applicant was released (see paragraph 51 above). Given these circumstances, the Court finds that the applicant's detention both prior to and after 22 December 2011 was in reality uninterrupted and that for this reason, no issue of compliance with the six-month time-limit arises in relation to his detention until that date.

187. Lastly, the Court finds that the applicant's complaint under this provision is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore 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

188. The applicant submitted that he had been unlawfully deprived of his liberty for over eighteen months and six days (in breach of Article 5 § 1 (f) of the Convention) from 12 April 2011 (the day on which he had lodged his asylum application) until his release on 25 October 2012. Although in his application form he had initially complained of the lawfulness of his detention from 4 April 2011, he accepted that from that date until 12 April 2011 he had fallen at least within the scope of section 6 (1) (k) of the Aliens and Immigration Law, given that he had entered Cyprus irregularly on a false passport.

189. The applicant maintained that from 12 April 2011 onwards his detention had been unlawful and arbitrary on a number of grounds.

190. Firstly, following the lodging of his asylum application he had been an asylum seeker, and it was the applicant's view that he had retained this status throughout his detention. He initially had had the right to remain in

the country until the Reviewing Authority had taken its decision. Although the Government had acknowledged that his deportation had been suspended during this period, at the same time they claimed that the deportation process in respect of him had still been in progress. Following the Reviewing Authority's decision on 10 August 2011 dismissing his claim he had no longer had the right to remain in the country on the basis of the provisions of the Refugee Law. However, he had still been an asylum seeker waiting for the issuance by the Supreme Court of a final decision on his asylum application. In this connection, the applicant also argued that an individual assessment of the circumstances of his case had not been made by the Cypriot authorities and the detention orders (in violation of the domestic law) had been issued automatically along with the deportation orders, in line with the usual practice of the authorities.

191. Secondly, the applicant submitted that he had been detained from 22 December 2011 onwards, despite the Supreme Court's judgment ordering his release, and contrary to section 18 ΠΣΤ(5)(γ) of the Aliens and Immigration Law (see paragraph 106 above). The authorities had shown disregard for and had not acted in compliance with domestic law but also the Court's case-law (relying on *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33; *Bozano v. France*, 18 December 1986, Series A no. 111; *Aerts v. Belgium*, 30 July 1998, § 46, *Reports of Judgments and Decisions* 1998-; and *Čonka v. Belgium*, no. 51564/99, ECHR 2002-I).

192. Thirdly, the authorities had taken no action throughout his detention to effect his deportation. The Government had not submitted any evidence as to the measures they had actually taken in furtherance of this aim. They had not provided a single record to show that the applicant had been taken (or even requested to go to) the Iranian Embassy. Nor was there any record of the authorities contacting the Iranian embassy for the purpose of securing the issuance of a temporary travel document to the applicant. Furthermore, the authorities had not approached the applicant to see if he had been willing to voluntarily return to Iran. The mere fact that national legislation had allowed for detention up to a maximum period of eighteen months did not give the Government the right to detain the applicant for the maximum period without making any attempts to deport him, irrespective of the circumstances of his case (see *J.N. v. the United Kingdom*, no. 37289/12, §§ 81-82 and 91-92, 19 May 2016).

193. Lastly, the applicant pointed out that during all of the material period he had been detained in conditions of detention that had amounted to a breach of Article 3 of the Convention.

(b) The Government

194. The Government submitted that from 5 April 2011 until 22 December 2011 the applicant had been deprived of his liberty on the basis of deportation and detention orders that had been issued on 4 April

2011, pursuant to section 6(1)(k) and (l) of the Aliens and Immigration Law, on the grounds that the applicant had been a prohibited immigrant staying in the Republic unlawfully. In particular, the decision ordering the applicant's detention had been based on section 14 of the Aliens and Immigration Law, which permitted the Chief Immigration Officer to order (i) the deportation of any alien who was a prohibited immigrant and (ii) his or her detention in the meantime. Therefore, the applicant's deprivation of liberty throughout this period fell within the ambit of Article 5 § 1 (f) of the Convention as he had been detained for the purposes of being deported, in accordance with domestic law.

195. During the examination of the applicant's asylum application his deportation had been temporarily suspended from 12 April 2011 until 17 August 2011, as under domestic law the applicant had had a right to remain in the Republic as an asylum seeker until the issuance of a decision by the Reviewing Authority. This did not, however, mean that the deportation process had not been in progress; rather, it had simply been temporarily suspended pending the examination of his asylum claim. The authorities had still envisaged deporting the applicant in the event that he was not granted asylum. The Government emphasised that the asylum proceedings had been conducted speedily.

196. Referring to the Supreme Court's judgment in respect of *Asad Mohammed Rahal*, (cited above), the Government submitted that under domestic law at the time, the authorities had had the power to maintain deportation and detention orders issued against an applicant so long as those orders had been issued on grounds unrelated to the asylum application and had a suspensive effect. Referring to *A.H. and J.K. v. Cyprus* (cited above, §§ 92 and 96), the Government argued that following the dismissal of his appeal by the Reviewing Authority, the applicant had no longer had the right to remain in the Republic, and a recourse against a decision of the Asylum Service and/or the Reviewing Authority would not have had an automatic suspensive effect.

197. The authorities had not been able to deport the applicant to Iran because he had not had a valid Iranian passport and he had refused to cooperate with the authorities by refusing to visit the Iranian Embassy in order to secure the issuance of a new passport. Although written records had not been kept, the police officers at the time had spoken to the applicant on various occasions during his detention, asking him whether he was willing to visit the Iranian Embassy in order to secure a valid passport. Referring to the case of *Mollazeinal* (cited above), the Government argued that there had been no point in contacting the Iranian Embassy in Cyprus without the applicant's cooperation, as the Iranian authorities did not issue travel documents to any Iranian national without his consenting to repatriation. The deportation proceedings against the applicant had been carried out with the required due diligence and there had been no legal barrier to his

deportation. Under domestic law it was permissible to detain illegal immigrants for up to eighteen months if they avoided or hampered the deportation process, as in the present case. Given the applicant's unwillingness to cooperate during the whole period of his detention, the said period could not be considered to have been excessive. Nor could it be said that the applicant's behaviour had rendered the prospect of his deportation to Iran unrealistic. If he had decided to cooperate in respect of the issuance of travel documents he would have been deported with no delay.

198. The Government thus concluded that from 5 April 2011 until 22 December 2011 the applicant had been detained lawfully with a view to his deportation under and in conformity with Article 5 § 1 (f) of the Convention. His detention had been in conformity with domestic law and procedure and had not been arbitrary in any way.

199. For the remaining period – that is to say from 22 December 2011 until 25 October 2012 – the Government accepted that the applicant's new arrest and detention had not been in accordance with domestic law. Under domestic law, after the Supreme Court's judgment on the former date granting the applicant's habeas corpus application, the applicant should have been released immediately. The second detention and deportation orders of 22 December 2011 had been based on the authorities' erroneous assumption that this had been permissible under domestic law, as the Minister of the Interior had previously decided to extend the applicant's detention period. However, under the EU Returns Directive and Law no. 153(1)2011, the applicant's detention period could not have been extended after the maximum period of six months had expired. The Ministry of the Interior could not have retroactively validated the applicant's detention. The Government emphasised, however, that this decision had not been taken in bad faith.

2. The Court's assessment

(a) General principles

200. Article 5 of the Convention enshrines a fundamental human right – namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty, and no deprivation of liberty will be lawful unless it falls within one of those grounds. One of those exceptions, set out in sub-paragraph (f), permits the State to control the liberty of aliens within the context of immigration (see *Saadi v. the United Kingdom* [GC], no. 13229/03 § 43, ECHR 2008). Article 5 § 1 (f) does not demand that detention be reasonably considered necessary – for example, to prevent the individual from committing an offence or fleeing. Any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified, however, only for

as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (ibid., § 72, with further references).

201. It is well established in the Court's case-law (under the above-mentioned sub-paragraphs of Article 5 § 1) that any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f), be "lawful". In other words, it must conform to the substantive and procedural rules of national law (ibid., § 67, with further references). In assessing the "lawfulness" of detention, the Court may have to ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied (see, *inter alia*, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 92, 15 December 2016 with further references).

202. In addition to the requirement of "lawfulness", Article 5 § 1 also requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among many other authorities, *Saadi*, cited above, § 6, and *Chahal v. the United Kingdom*, 15 November 1996, § 118, *Reports* 1996-V). It is a fundamental principle that no detention that is arbitrary can be compatible with Article 5 § 1, and the notion of "arbitrariness" in Article 5 § 1 extends beyond a 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.

203. 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, *Saadi*, cited above, § 74).

(b) Application to the present case

204. The Court begins by observing that the applicant was held in immigration detention from 4 April 2011 until 25 October 2012 for the purpose of his being deported from Cyprus. His detention therefore came within the ambit of Article 5 § 1 (f) of the Convention.

205. The applicant's complaint, as set out in paragraphs 190-192 above, is that his detention was in breach of Article 5 § 1 of the Convention on a number of grounds – namely, that it was unlawful as a matter of domestic law and also that the deportation proceedings against him had not been conducted with due diligence and that his detention had thus ceased to be justified under sub-paragraph (f) of that Article.

206. The Court firstly notes that the Supreme Court found that the applicant's detention from 4 October 2011 to 22 December 2011 had been unlawful: the six-month detention time-limit had expired on 4 October 2011 and it therefore held that there had been no legal basis at the time for keeping the applicant in detention beyond this period. Furthermore, the Ministry of the Interior could not retroactively validate the applicant's detention: the decision to extend his detention on the basis of Law no. 153(I)/2011 had been made after the expiry of the six-month period and had not fallen within the legal framework applicable at the time (see paragraph 30 above). Although the applicant was released immediately following this ruling, he was rearrested by the authorities within a few minutes (upon his leaving the courtroom) on the basis of new detention and deportation orders issued against him on the same grounds as those cited in respect of the first orders – that is to say under sections 6(1)(k) and (l) and 14(6) of the Aliens and Immigration Law (see paragraphs 13 and 32-33 above) and was kept in detention until 25 October 2012 with a view to his deportation. The Government have acknowledged in their observations that this was not in compliance with domestic law there having been no basis for the extension of the applicant's detention following the expiry of the six-month time-limit and that the Ministry of the Interior could not have retroactively validated his detention (see paragraph 199 above).

207. Taking into account the above, it is clear that the applicant's detention from 4 October 2011 until 25 October 2012 was unlawful under domestic law and that the applicant was therefore unlawfully deprived of his liberty throughout this period. There has therefore been a violation of Article 5 § 1 of the Convention.

208. In view of this conclusion the Court does not find it necessary to examine the preceding period of the applicant's detention or the remainder of the applicant's complaints under this provision.

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

209. The applicant furthermore complained that he did not have an effective remedy at his disposal via which to challenge the lawfulness of his detention. He relied on Article 5 § 4 of the Convention which 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."

210. The Court notes that this complaint is linked to applicant's complaint under Article 5 § 1 and must therefore likewise be declared admissible.

211. Having regard to its findings under Article 5 § 1 of the Convention (see paragraphs 204-207 above), the Court considers that there is no need for a separate examination of this complaint on its merits (see for example, *Fedotov v. Russia*, no. 5140/02, § 79, 25 October 2005).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

212. The applicant made various other complaints under Article 3 of the Convention.

213. 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

214. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

215. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage. Specifically, he claimed EUR 10,000 in respect of the mental and physical suffering that he had had to endure for being detained for over eighteen months and EUR 20,000 in respect of the conditions of his detention, which had amounted to inhuman and degrading treatment.

216. The Government considered the applicant's claim to be excessive.

217. Having regard to all the circumstances of the present case and the nature of the violations found, the Court considers that the applicant's claim should be granted in full. It therefore awards the applicant EUR 30,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

218. The applicant claimed EUR 4,421.53 in total for the costs and expenses incurred before the domestic courts and before the Court. This amount, which included VAT, was broken down as follows:

-EUR 2,851.03 for the costs and expenses incurred in relation to the domestic proceedings: specifically, EUR 2,071.76 for the recourse against

the deportation and detention orders of 22 December 2011 (no. 1724/2011); and EUR 743.27 for the subsequent appeal (no. 156/2012) (see paragraphs 37 and 46 above). He submitted that those sums had been calculated in accordance with the Supreme Court's fee scales.

-EUR 1,606.50 for the costs and expenses incurred before the Court. This sum included: EUR 297.50 for the submission of the Rule 39 request (see paragraph 3 above); EUR 535.50 for the lodging of the application and additional information; EUR 595 for the preparation of the observations; and EUR 178.50 in respect of correspondence.

219. The applicant submitted three separate pro forma invoices from his lawyer itemising the fees and expenses for the above amounts.

220. The Government contested the applicant's claim. They submitted that the costs had not been actually and necessarily incurred to prevent or redress any breach of the Convention, as required by the Court's case-law.

221. The Court reiterates that an applicant is entitled to be reimbursed for those costs actually and necessarily incurred in preventing or redressing a breach of the Convention, to the extent that such costs are reasonable as to quantum (see, among other authorities, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 256, ECHR 2009).

222. In the present case, for the costs and expenses incurred by the applicant before the Supreme Court, the Court considers that these were necessarily and reasonably incurred in the applicant's attempt to seek redress for the violation of the Convention that it has found under Article 5 § 1 of the Convention. Thus, they are in principle recoverable under Article 41 of the Convention. The sum claimed is also reasonable as to quantum. The Court considers, therefore, that this claim should be met in full.

223. As regards the costs incurred in the proceedings before it, the Court considers that these should be reimbursed to him only in part. It notes in this respect that the applicant's claim concerning the costs for his request under Rule 39 is not related to the violation found under Article 3 of the Convention.

224. The Court therefore considers it reasonable to award the applicant the amount of EUR 4,124 under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 3 concerning conditions of detention and Article 5 §§ 1 and 4 admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant's conditions of detention;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

4. *Holds* that no separate examination of the complaint under Article 5 § 4 of the Convention is required;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,124 (four thousand one hundred and twenty four euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points.

Done in English, and notified in writing on 26 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Vincent A. De Gaetano
President