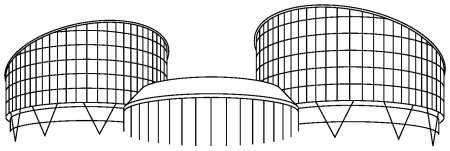

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MEFAALANI v. CYPRUS

(Applications nos. 3473/11 and 75381/11)

JUDGMENT

STRASBOURG

23 February 2016

FINAL

23/05/2016

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

In the case of Mefaalani v. Cyprus,

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

Luis López Guerra, *President,*
Helena Jäderblom,
George Nicolaou,
Johannes Silvis,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 2 February 2016,

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

PROCEDURE

1. The case originated in two applications (nos. 3473/11 and 75381/11) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Nawaf Mefaalani, a Syrian national who was born in 1973. Application no. 3473/11 was lodged on 23 December 2010. Application no. 75381/11 was lodged on 14 November 2011.

2. The applicant was represented by Mr C. P. Christodoulides, a lawyer practising in Nicosia. The Cypriot Government ("the Government") were represented by their Agent, the Attorney-General, Mr C. Clerides.

3. The applicant's principal complaints were first, that his detention pending deportation was unlawful and thus in violation of Article 5 § 1 of the Convention, and second, that he did not have an effective remedy to challenge his detention, in violation of Article 5 § 4 of the Convention.

4. On 9 July 2014 the complaints under Article 5 §§ 1 and 4 were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

A. The applicant's immigration history

5. The applicant first visited Cyprus in 1991. He married a Cypriot national in 1993. As a result of this marriage he obtained Cypriot nationality in September 2000. Two years later the applicant divorced his wife and married his second wife, a Syrian national. He and the Syrian national divorced in 2005.

6. On 10 March 2006 the Council of Ministers informed the applicant of its intention to deprive him of his Cypriot citizenship. Following a request by the applicant an investigative committee was set up. The applicant was also heard by the committee as part of the investigation.

7. On 8 July 2007 the applicant married his third wife, a Cypriot national, in Syria.

8. On 23 July 2007, on the basis of the report of the investigative committee, the Council of Ministers decided to deprive the applicant of his Cypriot nationality on public interest grounds, pursuant to section 113 of the Census Bureau Law of 2002 (see relevant domestic law and practice at paragraph 37 below). The report concluded that the applicant had been involved in cigarette trafficking and in the trafficking of illegal immigrants between Syria and Cyprus.

9. The applicant filed a recourse with the Supreme Court (revisional jurisdiction) seeking the annulment of the Council of Minister's decision (recourse no. 1226/07). This recourse was dismissed at first instance on 7 May 2008. On 2 June 2008 the applicant appealed against the Supreme Court's decision (appeal no. 82/08). The appeal was dismissed by the plenary court on 12 May 2011: see paragraph 18 below.

B. The applicant's detention and deportation

10. On 25 August 2010 deportation and detention orders were issued against the applicant. These were served on the applicant on 22 September 2010 while he was in hospital recovering from a road accident. He was detained the same day. The next day, at the applicant's request, he was transferred to a private hospital and remained under police custody until his discharge from the hospital on 21 October 2010. After that he was detained at a police station in Pera Chorio Nisou (Nicosia District) and was transferred to the hospital on various occasions, where he remained in police custody.

11. On 24 September 2010 the applicant filed a recourse with the Supreme Court (revisional jurisdiction) against the deportation and detention orders (recourse no. 1303/10). The same day, the applicant filed a request for a provisional order seeking the suspension of his deportation and an order for his release. These recourse proceedings were then adjourned pending the outcome of the appeal concerning the removal of his citizenship (appeal no. 82/08, see paragraph 9 above).

12. On 30 September 2010, further to a complaint by the applicant's wife to the Commissioner for Administration (the Ombudsman), the Ombudsman asked the Minister of Interior to suspend the applicant's deportation because of his poor health and until she had completed an investigation. That investigation was completed on 27 October 2010 when the Ombudsman concluded that she did not have the authority to investigate the matter further as court proceedings were pending.

13. On 16 December 2010, the applicant withdrew his application for suspension of his deportation because he had decided to leave Cyprus voluntarily. It appears that the applicant took this decision because he had been in detention for too long.

14. On 20 December 2010, the applicant, whilst in detention, received a letter from the Civil Registry and Migration Department requesting payment, before his deportation, of EUR 30,356 for detention expenses as well as EUR 1,200 for the legal costs incurred in recourse no. 1226/07 (the appeal against removal of citizenship: see paragraph 9 above). The EUR 30,356 was broken down as follows: (i) EUR 20,675 for the salaries of the police officers who guarded him when he was in hospital; EUR 2,650 as expenses for his detention and maintenance at the police detention facilities for fifty-three days; and EUR 5,831 representing 25% of administrative fees. In his submissions to the Court, the applicant alleges that the authorities refused to allow him to leave Cyprus unless he paid the sums requested. He did not and claims that he thus remained in detention.

15. On 31 December 2010, the applicant applied to the Supreme Court for a writ of habeas corpus (application no. 155/2010). He argued that after 20 December 2010 his detention had been illegally prolonged as it was made conditional upon payment of the detention expenses.

16. On 29 January 2011 the applicant was deported to Syria.

C. Subsequent events

17. On 4 February 2011, in light of the applicant's deportation, counsel for the applicant withdrew the habeas corpus application which had been made on 31 December 2010 (see paragraph 15 above).

18. The Supreme Court dismissed the applicant's appeal against the removal of his citizenship (appeal no. 82/08) on 12 May 2011. The

applicant maintains that his representatives were notified of this judgment on 30 May 2011.

19. On 28 November 2012, the applicant withdrew his recourse against the deportation and detention orders (recourse no. 1303/10).

20. The applicant returned to Cyprus on 20 March 2012. He then married his third wife (that is, the woman he had already married in Syria in 2007: see paragraph 7 above).

21. On 21 April 2012 the applicant applied for a residence permit. The Civil Registry and Migration Department refused this application on 11 June 2012, stating that it considered the applicant a threat to public order for the same reasons for which he had been deprived of Cypriot nationality and then deported on 29 January 2011. The applicant was asked to leave the country. The applicant lodged a recourse against this decision, which the Supreme Court rejected on 3 February 2015, finding that refusal of the residence permit was lawful and disclosed no breach of the Convention.

22. On 24 October 2013, the Civil Registry and Migration Department commenced proceedings in the Nicosia District Court for payment of the detention expenses, which, as it considered, were still owed by the applicant (see paragraph 14 above). That claim was withdrawn on 31 July 2015.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

23. The right to liberty and security of person is safeguarded under Article 11 which, where relevant, at the material time provided:

> "1. Everyone has the right to liberty and security of person.
>
> 2. No person shall be deprived of his liberty save in the following cases when and as provided by law:-
>
> ...
>
> (f) the arrest or detention of a person to prevent him effecting an unauthorised entry into the territory of the Republic or of an alien against whom action is being taken with a view to deportation or extradition.
>
> ...
>
> 7. Every person who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> ..."

24. Deportation and detention orders can be challenged before the Supreme Court by way of administrative recourse under Article 146(1) of the Constitution of the Republic of Cyprus. This provision provides as follows:

"The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person."

25. Upon such a recourse the Court may, by its decision (a) confirm, either in whole or in part, such decision or act or omission; or (b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever, or (c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed (Article 146(4)).

26. The Supreme Court has exclusive jurisdiction to issue orders of habeas corpus (Article 155(4) of the Constitution).

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

1. General provisions

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

28. 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.

29. Under section 6(1) of the above Law a person is not permitted to enter the Republic if he is a "prohibited immigrant". A prohibited immigrant can be ordered to leave the Republic under section 13 of the same Law.

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

2. Amendments to transpose Directive 2008/115/EC

31. Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals ("the Return Directive") took direct effect in Cyprus when the two-year deadline for its transposition expired on 24 December 2010.

32. Article 15 of the Directive provides:

"**Detention**

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

(a) there is a risk of absconding or

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

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

2. Detention shall be ordered by administrative or judicial authorities.

Detention shall be ordered in writing with reasons being given in fact and in law.

When detention has been ordered by administrative authorities, Member States shall:

(a) either provide for a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention;

(b) or grant the third-country national concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of the relevant proceedings. In such a case Member States shall immediately inform the third-country national concerned about the possibility of taking such proceedings.

The third-country national concerned shall be released immediately if the detention is not lawful.

3. In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.

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

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

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

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

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

33. The provisions of Article 15 were subsequently transposed into Cypriot law by a series of amendments to the Aliens and Immigration Law which took effect on 25 November 2011.

34. Section 18ΠΣΤ(1) transposed Article 15(1) of the Return Directive in virtually identical terms, providing that it is for the Minister of Interior to issue the relevant detention order.

35. Sections 18ΠΣΤ(4) and 18ΠΣΤ(5) transposed Article 15(3) of the Return Directive and provide that a detention order shall be reviewed every

two months or within a reasonable time and that the length of detention may be reviewed by the Supreme Court in the course of an application for a writ of habeas corpus.

36. Section 18ΠΣΤ(7), which transposed Article 15(5) of the Return Directive, provides that, as a general rule, the period of detention cannot exceed six months.

C. Census Bureau Law of 2002 (N. 141(I)2002)

37. Under section 113(2) and (5) of the above Law, the Council of Ministers may deprive a person of his or her Cypriot citizenship if it is satisfied that first, citizenship has been acquired through fraud, false representation or concealment of a substantial fact and second, that maintaining the individual's citizenship is against the public interest. Before an order for removal of citizenship is made the individual has the right to an investigation (section 113(6)).

D. Supreme Court jurisprudence on challenging deportation and detention orders

38. The legality of deportation and detention orders can only be challenged before the Supreme Court by way of a recourse brought under Article 146 of the Constitution (see paragraphs 24 and 25 above) and not in the context of a habeas corpus application. This is because the issue of legality of detention under administrative orders falls within the scope of administrative law (see, for example, the Supreme Court's judgment of 30 December 2004 in *Elena Bondar*, appeal no. 12166 against the refusal of an application for a writ of habeas corpus, (2004) 1 (C) CLR 2075).

39. However, in the context of a habeas corpus application, the Supreme Court can examine the legality of an individual's detention for the purposes of deportation if it appears that detention which was initially lawful subsequently has become unlawful by exceeding a reasonably permissible length (see *Essa Murad Khlaief* (2003) 1 (C) CLR 1402).

40. A recourse under Article 146 does not have automatic suspensive effect under domestic law. In order to suspend deportation, an application for a provisional order must be made. A provisional order is an exceptional, discretionary measure and is decided on a case-by-case basis (Rule 13 of the Supreme Constitutional Court Rules 1962). The Supreme Court will grant a provisional order if an applicant establishes that the contested decision is tainted by flagrant illegality or that he or she will suffer irreparable damage from its enforcement (see among other authorities, *Stavros Loizides v. the Ministry of Foreign Affairs* (1995) 3 C.L.R. 233; *Elpida Krokidou and others v. the Republic*, (1990) 3C C.L.R. 1857; and *Sydney Alfred Moyo & another v. the Republic* (1988) 3 CLR 1203).

THE LAW

41. Before considering the admissibility and merits of the applicant's complaints, the Court will consider the issue of joinder of the applications, and then the Government's objections as to the authority of the applicant's legal representative to act for him and as to compliance with the six-month rule.

I. JOINDER OF THE APPLICATIONS

42. Both applications have been filed by the same applicant and have the same factual and legal background. For this reason the Court decides that the two applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

II. THE GOVERNMENT'S OBJECTION AS TO AUTHORITY TO ACT

43. In their final observations of 3 March 2015, the Government submitted for the first time that the applications should be declared inadmissible because the authority form authorising Mr Christodoulides to act on behalf of the applicant, which was submitted on 13 March 2012, was not duly signed by the applicant but rather by his wife.

44. The Court recalls that, according to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X).

45. In the present case, in their observations of 6 November 2014 on the admissibility and merits of the application the Government did not raise any objection as to the authority form: the issue was only raised in their additional observations on the merits of 3 March 2015. The Government did not provide any explanation for this delay and the Court cannot identify any exceptional circumstances that might exempt them from their obligation to raise any plea of inadmissibility in good time (see *Dhahbi v. Italy*, no. 17120/09, §§ 23–25, 8 April 2014). It follows that the Government are estopped from raising the objection of inadmissibility.

46. In any case, while the authority form might have been signed by the applicant's wife, the Court presumes that both parties to the proceedings, the applicant and the Government alike, act in good faith (see, in the context of authority forms, *Khudobin v. Russia*, no. 59696/00, §§ 72–75, ECHR 2006-XII (extracts)) and it is quite clear from the case files that Mr Christodoulides has authority to act for the applicant.

III. THE GOVERNMENT'S OBJECTION AS TO THE SIX-MONTH RULE AND THE ADMISSIBIITY OF APPLICATION No. 75381/11

47. As stated at paragraph 1 above, application no. 3473/11 was lodged with the Court on 23 December 2010 and application no. 75381/11 was lodged on 14 November 2011.

48. In their initial observations of 6 November 2014, the Government submitted that the second of the two applications (no. 75381/11) should be declared inadmissible for non-compliance with the six-month rule laid down in Article 35 § 1 of the Convention. This was because the final domestic decision in the case was the one concerning the applicant's deportation on 29 January 2011.

49. The applicant replied that the final domestic decision in respect of his detention was the judgment of the Supreme Court of 12 May 2011 rejecting his appeal against removal of citizenship (received by his lawyers on 30 May 2011). This was because the recourse challenging the deportation and detention orders in his case had been suspended pending the outcome of the citizenship appeal (see paragraph 11 above).

50. The Court observes that this issue has arisen because the applicant has made two sets of Article 5 complaints in his two applications.

51. In his first application (no. 3473/11) he made his principal two complaints: that the detention was unlawful and that he had no effective remedy to challenge that detention. There is no suggestion that these complaints were not made in time.

52. By contrast, in his second application (no. 75381/11) the applicant complained that he was detained at a police station for four months despite not being charged with any offences. He further stated that he remained a legal immigrant after losing his Cypriot nationality. He was not brought before a judge or other officer authorised by law to exercise judicial power and was never tried.

53. The Court considers that the terms in which the Article 5 complaints in the second application (no. 75381/11) have been expressed make it unnecessary to consider whether they have been lodged in time because they are, in any event, manifestly ill-founded. This is for the following reasons.

54. Article 5 of the Convention, in relevant part, provides:

> "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:
>
> ..
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

> ...
>
> (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.
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

55. The Court considers that, although the applicant has not expressly invoked Article 5 § 3 of the Convention, by couching his new complaints in the wording of that provision it clear that he wishes to rely on it. However, as Article 5 § 3 itself makes clear, it only applies when Article 5 § 1(c) applies, that is, when a person is arrested or detained for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

56. That is not the case here: both domestically and before this Court, the Government have sought to justify the legality of the applicant's detention by reference, not to any offences he was suspected of having committed, but to their attempts to deport him from Cyprus after he had been deprived of Cypriot citizenship. In other words, they argue that his detention fell within Article 5 § 1(f), not Article 5 § 1(c).

57. Article 5 § 1(c) and Article 5 § 3 thus have no application in this case and the applicant's attempt to invoke these provisions in his second application (no. 75381/11) in order to supplement the complaints made in his first application (no. 3473/11) is misconceived. The Article 5 complaints made in the second application (no. 75381/11) are thus manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(b) and 4 of the Convention.

58. These were the only remaining complaints in the second application: the other complaints made in that application were declared inadmissible by the President, acting as a single judge, on 9 July 2014 (see paragraph 4 above). Accordingly, by declaring inadmissible these remaining complaints, the Court declares inadmissible the remainder of application no. 75381/11.

59. That leaves the first application (no. 3473/11). In this application the only remaining complaints are:

(i) that the applicant's detention was unlawful and thus contrary to Article 5 § 1 Convention; and

(ii) that the applicant had no effective remedy to challenge that detention in violation of Article 5 § 4 of the Convention.

60. The Court will examine the admissibility and merits of each of these complaints in turn.

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

61. The applicant complained that his detention had been unlawful as a matter of domestic law and therefore in breach of Article 5 § 1 of the Convention. He further complained that, since the deportation proceedings had not been conducted with due diligence, the detention ceased to be justified under subparagraph (f) of that Article. As stated at paragraph 53 above, the relevant parts of Article 5 § 1 provide:

> "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."

62. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

64. The applicant maintained that his detention had been unlawful as a matter of domestic law for five reasons.

65. First, the decision to detain him had been taken by the Permanent Secretary in the Ministry of the Interior, whereas the Aliens and Immigration Law required that the decision be taken by the Minister.

66. Second, the applicant submitted that Article 15(1) of the Return Directive only allows detention if there is a risk of absconding or the third-country national avoids or hampers the preparation of return or the removal process (see paragraph 32 above). Neither of these criteria applied in his case.

67. Third, the applicant submitted that, even without Cypriot nationality, he did not become an illegal immigrant: he was married to a Cypriot national and, as such, a member of a European Union national's family, with the right to stay in Cyprus, pursuant to Directive 2004/38/EC (on the right of citizens of the Union and their family members to move and reside freely with the territory of the Member States). In the alternative, he submitted that, when detained, he had the right to remain in Cyprus because removal would breach his right to respect for his private and family life under Article 8 of the Convention.

68. Fourth, the Cypriot authorities had, without lawful authority, refused to let him leave Cyprus until he paid the costs of his deportation and detention.

69. Fifth, Article 15(3) of the Return Directive required regular review of detention (see paragraph 32 above). Upon transposition, which occurred automatically on 24 December 2010 (see paragraph 31 above), Article 15(3) required the Minister to review the applicant's detention every two months. That had not happened.

70. In respect of his complaint that his detention was unlawful under the Convention as it had not fallen within Article 5 § 1(f), the applicant submitted that, for the greater part of his detention, no action had been taken to deport him. No Cypriot official had ever asked him to leave Cyprus. His medical treatment was not such as to prevent his deportation: he only had a cast on his leg. All other medical appointments during his detention were for check-ups and for treatment that he could have obtained in Syria. There were no provisional court orders preventing his deportation. The Cypriot authorities had cancelled his Cypriot travel documents but his Syrian passport had been in the hands of the police and had been handed to the Cypriot immigration authorities as soon as they requested it. Thus, for all of these reasons, he could have been deported at any time after his release from hospital on 21 October 2010.

(b) The Government

71. Responding to the applicants' five submissions as to why his detention had been unlawful as a matter of domestic law, the Government submitted the following.

72. First, legal basis for the applicant's detention were the detention and deportation orders issued on 25 August 2010 (see paragraph 10 above). Those orders, copies of which were provided to the Court, expressly stated that the Minister had delegated his powers to issue such orders to the Permanent Secretary, in accordance with section 4 of the Aliens and Immigration Law (see paragraph 28 above).

73. Second, the authorities reasonably believed that there was a risk the applicant would abscond: he had refused to comply with the Civil Registry and Migration Department's request to leave Cyprus voluntarily; he had

only been traced when hospitalised; he had been suspected of trafficking in illegal migrants through the "TRNC" and there was a risk of his absconding through that area. Moreover, he had refused to give his Syrian passport to the authorities until 16 December 2010 and he had refused to accept service of the deportation and detention orders.

74. Third, neither Directive 2004/38/EC nor Article 8 of the Convention provided the applicant with any automatic right to remain in Cyprus.

75. Fourth, the applicant's allegation that the authorities refused to release him and allow him to leave Cyprus unless he paid the costs of his detention was unsubstantiated. The authorities did not make release or deportation conditional upon any such payment. This was supported by the fact that the applicant was deported without having paid anything other than legal costs of EUR 1,200 on 5 January 2011.

76. Fifth, the Return Directive did not take effect in Cyprus until 24 December 2010: no requirement of regular review of detention could apply before that date.

77. In respect of the applicant's submission that his detention had become unlawful because the deportation had not been prosecuted with due diligence, the Government submitted that it would not have been possible for the deportation to have been carried out sooner. This was for the following reasons. First, on 24 September 2010, the applicant filed an application for a provisional order, which was pending until the applicant withdrew the application on 16 December 2010. Until that date, it would not have been proper to deport him. Second, the applicant had only surrendered his passport to the authorities on that date. Third, deportation could not have been carried out while proceedings before the Ombudsman were pending (they concluded on 27 October 2010: see paragraph 12 above). Fourth, during his detention the applicant had been receiving medical care. He was hospitalised from 22 September 2010 to 21 October 2010, while recovering from his accident. On 3 November 3010 he was transferred to the hospital so his cast could be removed. From 22 November 2010 to 25 November 2010 he was again hospitalised. On 2 December 2010 the applicant was transferred to the hospital for a medical examination. He was also hospitalised from 19 January 2011 to 29 January 2011 having surgery and then staying in hospital until he recovered. The applicant was deported as soon as he was released from the hospital on 29 January 2011.

78. For these reasons, the applicant's detention was in good faith, complied with national law and was not excessive in the circumstances, particularly having regard to the applicant's need for medical care.

2. The Court's assessment

(a) General principles

79. The Court begins by observing that, as summarised at paragraphs 61–70 above), the applicant's complaints under Article 5 § 1 are twofold. First, he alleges that his detention was unlawful as a matter of domestic law (and, for that reason, in breach of Article 5 § 1 of the Convention). Second, he alleges that the deportation proceedings against him had not been conducted with due diligence and thus his detention ceased to be justified under subparagraph (f) of that Article.

80. The general principles which guide the Court's examination of such complaints were set out fully in *Amie and Others v. Bulgaria*, no. 58149/08, §§ 71–73, 12 February 2013 and still substantially govern the Court's examination of such complaints. Where relevant, these provide as follows (internal references omitted):

- 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. Subparagraphs (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 the exceptions, contained in subparagraph (f), permits the State to control the liberty of aliens in the immigration context.

- 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. It is therefore immaterial whether the underlying decision to expel can be justified under national or Convention law. Any deprivation of liberty under the second limb of Article 5 § 1(f) will be justified, however, only for as long as steps towards deportation or extradition are in progress. If such steps are not prosecuted with due diligence, the detention will cease to be permissible under that provision. In other words, the length of the detention should not exceed that which is reasonably required for the purpose pursued.

- Unlike Article 15 of Directive 2008/115/EC, Article 5 § 1(f) of the Convention does not lay down maximum time-limits; the question whether the length of deportation proceedings could affect the lawfulness of detention under this provision thus depends solely on the particular circumstances of each case.

- The deprivation of liberty must also be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down, as a minimum, the obligation to conform to the substantive and procedural rules of that law. It follows that the Court can and should exercise a certain power to review whether this

law has been complied with. However, the logic of the system of safeguards established by the Convention sets limits on the scope of this review. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, even in those fields where the Convention "incorporates" the rules of that law: the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection.

(b) The present case

(i) Whether the applicant's detention was unlawful as a matter of domestic law

81. In applying these principles to the present case, it is convenient to begin with the first limb of the applicant's complaint: that his detention was unlawful as a matter of domestic law. The Court considers that none of the five grounds put forward by the applicant make out even a prima facie case that his detention was unlawful.

82. For the first, the Aliens and Immigration Law is clear that the Minister's powers to deport and detain may be lawfully delegated to his or her officials (see section 4 of the Law at paragraph 28 above).

83. For the second, that there was no risk of the applicant absconding or hindering his deportation, the Court understands the applicant to be saying that such a risk was a condition of detention in domestic law. If so, it was for the domestic authorities to verify whether that risk existed. Alternatively, in so far as the applicant submits that the absence of such a risk meant his detention could not fall within Article 5 § 1(f), the Court has frequently stated that 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 (see, for instance, *Amie and others*, cited above, § 72).

84. Third, as regards the applicant's submission that his detention was unlawful as his deportation was contrary to his rights under Article 8 of the Convention or European Union law, the Court observes that the applicant does not appear to have put either of these arguments to the domestic courts. This failure means that, in the absence of any ruling by the domestic courts, the Court cannot conclude that the applicant enjoyed such rights or that these rights should have prevented his deportation. *A fortiori*, the Court cannot conclude that these rights meant that applicant's detention pending deportation was unlawful as a matter of domestic law.

85. Fourth, the Government have denied that, after 20 December 2010, they made the applicant's deportation conditional on his paying the cost of his detention. From the evidence presented to it, the Court accepts that this was not the case. It is plain from the text of the letter of 20 December 2010 from the Civil Registry and Migration Department to the applicant that the Department was requesting payment of the sums it claimed it was owed.

The Department was also requesting that those sums be paid before deportation. That was not tantamount to a statement that there would be no deportation unless the money was paid.

86. Fifth, while there does not appear to have been a review of the applicant's detention every two months, this was not a requirement of Cypriot law until the changes to the Aliens and Immigration Law introduced in November 2011, well after the applicant's detention ended with his deportation on 29 January 2011. It is true that, for the latter part of his detention, the Return Directive had taken direct effect in Cypriot law when the two-year deadline for its transposition passed on 24 December 2010. However, Article 15 of the Return Directive itself did not specify how regularly reviews of detention should take place: the two-month review was only introduced in November 2011 as the Government's chosen means of transposing the Directive (see section 18ΠΣΤ(4) of the Aliens and Immigration Law at paragraph 35 above).

87. Since none of his five grounds has any merit, the Court is unable to conclude that the applicant's detention was unlawful as a matter of domestic law.

(ii) Whether the applicant's detention was unlawful for failure to comply with Article 5 § 1(f)

88. Turning to the second limb of the applicant's Article 5 § 1 complaint – whether his detention complied with Article 5 § 1(f) and the need for action to have been "taken with a view to deportation" – the Court observes firstly that this was a relatively short period of immigration detention: it lasted four months and eight days (22 September 2010 to 29 January 2011 inclusive). Indeed, this was a short period of time when compared with other periods of detention which the Court has considered and found to be acceptable under Article 5 § 1(f): see for instance, periods of detention of ten months and nine days in *K.F. v. Cyprus*, no. 41858/10, § 137, 21 July 2015 and eleven months and eight days in *A.H. and J.K. v. Cyprus*, § 189, nos. 41903/10 and 41911/10, 21 July 2015.

89. For the greater part of that time, 24 September to 16 December 2010, deportation could not take place because the applicant had sought a provisional order suspending his deportation and it would not have been right to go ahead with the deportation. Moreover, it is clear that, once the applicant had withdrawn his application for a provisional order, deportation was only delayed by the applicant's further hospitalisation from 19 January to 29 January 2011: indeed, he was deported the same day as his hospitalisation ended. This was not, therefore, a case where detention continued for an unreasonable period of detention after all obstacles to deportation had been removed (contrast, for instance, *H.S. and others v. Cyprus*, no. 41753/10 and 13 other applications, § 320, 21 July 2014, where for certain of the applicants, there was a violation of Article 5 § 1(f)

because of an unexplained delay of two months and twenty-three days in effecting deportation once that became possible).

90. The Court is therefore satisfied that, in the present case, the requirement of diligence was complied with and that the period of the applicant's detention does not appear to have been unreasonably long.

(iii) Overall conclusion on the applicant's Article 5 § 1 complaint

91. The Court has found that the applicant's detention was in compliance with domestic law, that the requirement of diligence was complied with, and that the overall length of the applicant's detention does not appear to have been unreasonably long. Moreover, there is no indication that, in detaining him, the authorities acted in bad faith or that the applicant was detained in unsuitable conditions, or that his detention was arbitrary for any other reason (see *K.F.* at § 139, A.H. and J.K. at § 191). Accordingly, the Court finds that there has been no violation of Article 5 1(f) of the Convention.

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

92. The applicant complained that he did not have at his disposal an effective remedy to challenge the lawfulness of his detention. In this regard 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"

93. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

95. The applicant submitted that the recourse proceedings under Article 146 of the Constitution against the detention and deportation orders were excessively long and failed to comply with the speediness requirement in Article 5 § 4 of the Convention.

96. In response to the Government's submission that an application for a writ of habeas corpus would have been an effective remedy (see paragraphs 98 and 99 below), the applicant submitted that the Supreme Court's case-law was clear: habeas corpus was only available to challenge the length not the legality of immigration detention (see the case-law set out at paragraphs 38 and 39 above).

(b) The Government

97. The Government accepted that, in light of the Court's judgment in *M.A. v. Cyprus*, no. 41872/10, §§ 164-170, ECHR 2013 (extracts), recourse proceedings under Article 146 were ineffective for the purposes of Article 5 § 4.

98. Nevertheless, the Government submitted that an application for a writ of habeas corpus was an effective remedy. In the domestic proceedings, the applicant had not complained that the detention and deportation orders were unlawfully issued. Instead, he had complained: (i) that he had been detained on the basis of an administrative rather than a court order; and (ii) that his detention had been unlawfully prolonged after 20 December 2010, allegedly because release had been made conditional on the payment of detention costs. The Government submitted that both of these complaints could have been made in habeas corpus proceedings. It was now well-established in Cypriot law that, while it was not possible to use habeas corpus proceedings to challenge the legality of detention, it was possible to use them to challenge the length of one's detention (see paragraphs 38 and 39 above).

99. The habeas corpus proceedings had been speedy. The habeas corpus application was filed on 31 December 2010. On the same day the Supreme Court instructed the applicant to serve the application on the Government by 5 January 2011. On 7 January 2011, the Government appeared before the court to request time to examine the case. On 17 January 2011, the Government filed their defence, and the applicant filed written pleadings. The Supreme Court set down the application for hearing on 4 February 2011. On 4 February 2011, counsel for the applicant withdrew the application because the applicant had been deported.

2. The Court's assessment

100. The Court notes that, in the light of its judgment in *M.A. v. Cyprus*, cited above, §§ 160-170, the Government have accepted that recourse proceedings were incompatible with the provisions of Article 5 § 4 of the Convention. Thus, in evaluating whether there has been a violation of Article 5 § 4, it is necessary only to consider whether the habeas corpus proceedings complied with the requirements of that Article.

101. In the Court's view, the Supreme Court's case-law is clear that an application for a writ of habeas corpus can only be brought in order to

challenge the length rather than the legality of detention per se (see paragraphs 38 and 39 above). Therefore, to the extent that the applicant's challenge to his detention was on the basis that it was unlawful rather than unreasonably long, the Court is not persuaded that the Supreme Court would have entertained any application for a writ of habeas corpus cast in the terms suggested by the Government. In other words, the Court is not persuaded by the Government's submission that the applicant's complaints were – or could have been presented as – complaints regarding the length of his detention.

102. Moreover, the Court observes that, in any event, the applicant made an application for habeas corpus and that it was not determined with sufficient speed for the purposes of Article 5 § 4: the application was filed on 31 December 2010 and, by 4 February 2011, no substantive hearing had taken place.

103. Accordingly, given that neither the recourse nor the habeas corpus proceedings were effective remedies, the Court finds that there has been a violation of Article 5 § 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

104. 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. Pecuniary damage

105. The applicant claimed that, prior to his arrest, he had loans totalling some EUR 125,000 in 2010 (now over EUR 500,000) which he had been servicing from a thriving business. Following his arrest, his business went downhill and he now faces bankruptcy. Furthermore, despite telling the authorities that he wished to return voluntarily to Syria on 16 December 2010, he remained in detention until 29 January 2011 and, in that intervening period, he had incurred further medical expenses of EUR 2,555. He would not have incurred those expenses if he had been deported and received the same treatment in Syria. Finally, his wife flew from Syria every weekend to visit him, although he was unable to produce the receipts for her tickets.

106. The Government submitted that the loans and other financial losses to the applicant's business were not causally related to the violation found. The medical expenses were only incurred because the applicant had asked to be taken to a private hospital: if he had remained at Nicosia General

Hospital he would not have been charged any medical expenses. His wife's flights were not only unsubstantiated but had not been necessarily incurred.

107. The Court agrees with the Government's submissions. There is no causal relation between the absence of a speedy review of the applicant's detention and any of the pecuniary losses he claims to have incurred. Accordingly, the applicant's claim for pecuniary damages falls to be dismissed in its entirety.

B. Non-pecuniary damage

108. The applicant submitted claims in respect of non-pecuniary damage. He stated that he suffered non-pecuniary damage as a result of his detention, principally because of his separation from his wife. He also stated that, after his deportation, he was arrested and imprisoned for three months in Syria for having served in the Cypriot National Guard, and he sought non-pecuniary damage for this three months' imprisonment.

109. The Government submitted that, since the applicant did not specify an amount, he should not be awarded any compensation under this head.

110. The Court considers that the applicant's claim based on his three months' imprisonment is not causally linked to the violation of Article 5 § 4 it has found and must be dismissed. It does however accept that the applicant has suffered non-pecuniary damage as a result of the lack of a speedy review of his detention in Cyprus and, ruling on an equitable basis, awards him EUR 6,500.

C. Costs and expenses

111. The applicant did not submit a claim under this head.

D. Default interest

112. 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. *Decides* to join the applications;

2. *Dismisses* the Government's objection as to authority to act;

3. *Declares* the remainder of application no. 75381/11 inadmissible;

4. *Declares* the Article 5 § 1 and Article 5 § 4 complaints made in application no. 3473/11 admissible;

5. *Holds* that there has been no violation of Article 5 § 1 of the Convention;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

7. *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, EUR 6,500 (six thousand five hundred euros) in respect of non-pecuniary damage at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 23 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Luis López Guerra President