



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

THIRD SECTION

**CASE OF SEAGAL v. CYPRUS**

*(Application no. 50756/13)*

JUDGMENT

STRASBOURG

26 April 2016

**FINAL**

**12/09/2016**

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



**In the case of Seagal v. Cyprus,**

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

Luis López Guerra, *President*,

George Nicolaou,

Helen Keller,

Johannes Silvis,

Dmitry Dedov,

Pere Pastor Vilanova,

Alena Poláčková, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 29 March 2016,

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

**PROCEDURE**

1. The case originated in an application (no. 50756/13) 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 Kone Sehana Seagal (“the applicant”), on 8 August 2013. The applicant maintained that he was a French national of Afro-Caribbean descent.

2. The applicant represented himself before the Court. The Cypriot Government (“the Government”) were represented by their Agent, Mr C. Clerides, Attorney-General of the Republic of Cyprus. The Government of France, having been informed by the Registrar of their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court), indicated that they did not intend to do so.

3. The applicant complained, in particular, about his arrest and detention, that he had been subjected to ill-treatment while in detention and that he had not been provided with proper medical treatment for the injuries sustained therefrom.

4. On 27 August 2014 these complaints were communicated to the Government under Articles 3 and 5 § 1 of the Convention. A number of factual questions were also put to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant submitted that he was born in 1978 in Marseille. He is currently living in Cyprus.

#### **A. The various periods of the applicant's detention**

##### *1. The applicant's version of events*

6. The applicant had carried out some renovation work for the owners of a building in Paphos for which they had not paid him. On 22 January 2010 they called the police to have him arrested. The police came and the applicant told them about the work he had carried out and the money he was owed.

7. On 26 January 2010, after the owners of the building in question reported him to the police with false claims concerning drugs, he was assaulted by the police and arrested without a warrant. He was then taken by force to Paphos Police Station. He was interrogated the next day by the Police Drug Squad in the presence of an interpreter and was then released. He was advised to file a complaint in respect of the money owed to him.

8. On 28 January 2010 he was once again assaulted by police officers who came to his flat. He was then taken to Paphos Police station for about an hour.

9. On 17 June 2010 the applicant was assaulted by persons sent by the people he had carried out the work for and he was taken to hospital by the police.

10. On 15 December 2010 he was informed by a judge of the Paphos District Court that he had to pay 500 euros (EUR). He enclosed a receipt in this respect. He was then released.

11. On 10 April 2013 five police officers came to his home, searched his apartment and possessions, seized his World Service Authority passport (see paragraph 19 below) and other documents, and proceeded to arrest him; all this without a court order.

12. They then forced him to go to the Paphos District Court where he was questioned about his passport and documents. He was arrested and the next day he was taken to the Nicosia Central Prisons.

13. On 17 April 2013 he was taken back to the Paphos District Court.

14. On 12 June 2013 he wrote to the Prison Director requesting contact with a lawyer but he was informed that he was not allowed to do so.

15. On 21 June 2013, when he had finished serving his sentence (see paragraph 42 below), the prison guards asked him to sign the "release

register” but he did not do so as he wanted to leave with copies of his medical reports. They refused to give them to him.

16. The applicant eventually obtained copies of his records and x-rays upon payment of a fee.

17. The applicant was then detained in Menoyia Detention Centre.

18. Following an incident on 27 August 2014 he was charged with assaulting a police officer during the performance of his duties contrary to section 244(b) of the Criminal Code. Criminal proceedings are pending against him before the Larnaca District Court (case no. 15785/14).

19. The applicant complained to the authorities through the World Service Authority which is based in Washington, in the United States of America (“WSA”). On 17 September 2013 the WSA sent letters to the President of the Republic of Cyprus in which a complaint was made about the applicant’s arrest, detention and search carried out in his flat.

20. By a letter dated 14 August 2013 the applicant sent a complaint to the Commissioner for Administration of the Republic of Cyprus (hereafter “the Ombudsman”). A copy of the letter has not been submitted. The Ombudsman replied by a letter dated 4 September 2013 that she would contact him with the outcome of her investigation into his complaint when this was concluded.

21. On 20 September 2013 the Office of the President replied that the conclusion of the investigation of the matter by the competent authority was awaited.

22. On 4 November 2013 the WSA sent another letter to the Office of the President asking for information on developments in the case of the applicant. It appears that no reply was received.

23. On 7 July 2014 the applicant complained to the Ombudsman about not having access to his medical records and x-rays at the Nicosia General Hospital. The Ombudsman replied by a letter dated 15 July 2014 that she would contact him about the outcome of her investigation into his complaint when this was concluded.

## *2. The Government’s version of events*

24. On 26 January 2010 members of the police entered and searched the applicant’s flat in Paphos after obtaining a search warrant. They confiscated the applicant’s WSA passport and arrested him for the flagrant criminal offences of assaulting a police officer, resisting lawful arrest, obstructing a police officer in the execution of his duty and threatening violence (sections 244 (a) and (b) and 91(c) of the Criminal Code, Cap. 154). The arresting police officer cautioned the applicant and informed him of the reasons for his arrest. The applicant then replied in English “So what?”

25. The applicant was then taken to Paphos Police Station where he was detained.

26. At the station the applicant was informed in writing of his rights under the Rights of Persons Arrested and Detained Law 2005 (Law no. 163(I)/of 2005) (see paragraph 99 below) and, in particular, of his right to contact by phone any relative or other person of his choice, a lawyer of his own choosing and the right to communicate with the consular or diplomatic mission of the state of which he was a national. The applicant signed the relevant document.

27. On 27 January 2010, at 3.15 pm, a police officer, with the assistance of an interpreter, charged the applicant with the above criminal offences. He was then released.

28. Following a police investigation, on 1 February 2010, the District Court of Paphos issued an arrest warrant on the ground that there was reasonable suspicion based on evidence that the applicant had been involved in forgery and in circulating a forged document.

29. The applicant was arrested on the next day on the basis of the above arrest warrant. The arresting officer drew the applicant's attention to the law and informed him in English of the reasons for his arrest. The applicant then replied in English: "My passport is not false, it's real." The applicant was then taken to Paphos Police Station where he was informed in writing of his rights pursuant to Law no. 163(I)/2005 (see paragraphs 26 above and 99 below). The applicant signed the relevant form.

30. On 3 February 2010 a police officer, with the assistance of an interpreter, charged the applicant with the criminal offences of forgery, circulating forged documents, unlawful entry and unlawful residence in the Republic.

31. Criminal proceedings were brought against him before the Paphos District Court (case no. 7512/2010). The applicant was charged with a number of offences: (a) circulating forged documents contrary to sections 331, 332, 333, 335 and 339 of the Criminal Code; (b) unlawful entry into the Republic contrary to section 12 (1, (2) (5) of the Aliens and Immigration Law; (c) unlawful residence in the Republic contrary to sections 6(1)(k) and 19 (l) of the Aliens and Immigration Law; (d) resisting lawful arrest contrary to section 244(a) of the Criminal Code; (e) assaulting a police officer and deliberately obstructing a police officer during the performance of his duties contrary to section 244(b) of the Criminal Code; and lastly, (f) threatening violence (section 91(c) of the Criminal Code).

32. The Government submitted that the applicant was released on 3 February 2010, twenty-four hours after his arrest.

33. They also submitted a bail document dated 26 August 2010.

34. The applicant represented himself in the proceedings.

35. On 10 April 2013 he appeared before the Paphos District Court. Judgment was given in the case on that day. The applicant was found guilty of the offences of circulating forged documents, resisting lawful arrest and assaulting and deliberately obstructing a police officer during the

performance of his duties (see paragraph 31 above). The court held, *inter alia*, that it had not been established that the applicant had entered Cyprus unlawfully and that, on the basis of the evidence before it, the Aliens and Immigration Law did not apply to the applicant who was a European Union citizen.

36. The case was then adjourned until 17 April 2013 for sentencing.

37. When adjourning, the court ordered the applicant's detention and requested that a socio-economic report be prepared by the Department of Social Welfare Services.

38. The applicant was taken to Paphos Police Detention Centre and the next day he was transferred to the Nicosia Central Prisons where he remained until 17 April 2013.

39. In the meantime, on 15 April 2013, the applicant was examined by the prison doctor. The record appears to refer to a facial cranial injury the applicant had two years ago stating it was "now ok" and that he was "suitable". A viral test was recommended.

40. On 17 April 2013 the court imposed concurrent sentences of three months' imprisonment for the first offence and one month's imprisonment for the remaining offences, running from 10 April 2013. The applicant was taken back to the Nicosia Central Prisons to serve his sentence.

41. On 19 April 2013 the applicant was re-examined by the prison doctor. The record indicated that the results of the viral test had not been received (see paragraph 39 above) and that the applicant was suitable for work but not in the kitchen.

42. On 21 June 2013 the applicant was released following suspension of his sentence by virtue of a decree of the President of the Republic concerning a number of prisoners. To the extent that the decree concerned foreign convicts, suspension of their sentence came with a number of conditions, including that measures would be taken to ensure their departure from Cyprus.

43. On the same day, the Director of the Department of Civil Registry and Immigration issued deportation and detention orders against the applicant pursuant to section 14 of the Aliens and Immigration Law on the ground that he was an illegal immigrant under section 6(1)(d) of that Law. The applicant was re-arrested immediately upon his release and placed in the immigration detention facilities in the Nicosia Central Prisons. It appears that the applicant never left the prisons but was arrested by the same officers who released him.

44. A letter was also prepared by the Ministry of Interior informing him of the decision to detain and deport him following his conviction and imprisonment pursuant to section 6(1) of the Aliens and Immigration Law and Article 35 of the Right of Union Citizens and their Family Members to Move and Reside Freely within the Territory of the Republic of Cyprus (see paragraphs 90 and 94 below). In the letter it was stated that the applicant's

personal conduct represented a “genuine, present and sufficiently serious threat” to the public and legal order of the Republic and that following his deportation to France he would be prohibited from entering Cyprus for ten years. The letter, along with a form setting out his communication rights pursuant to Law 163(1)/2005 were served on him on 21 June 2013. On the copies of both documents there was a handwritten signed note by a police officer stating that they were served on the applicant on 21 June 2013 but that he refused to sign for them and give reasons.

45. On 9 July 2013 the applicant was transferred to Menoyia Detention Centre where he was once again informed of his rights under the above Law. The applicant signed a form which stated that he had received the list of rights and obligations of the detainees in a language that he understood and which also informed him of the right to undergo medical tests, treatment and follow-up.

46. The applicant did not have a valid passport or any other valid travel document. His “World Passport” was not recognised.

47. On 28 November 2013 the applicant was interviewed by members of the Aliens and Immigration office. The applicant claimed that he was born in France but refused to present a birth certificate. He also stated that he wished to remain in custody.

48. The Aliens and Immigration Office contacted the French Embassy in Cyprus for the purpose of establishing whether the applicant was a French citizen. The Embassy informed them that they would first talk to him on the phone and then, if he was indeed a French citizen, proceed to issue a travel document. They suspected, however, that he was from the Comoro Islands as their citizens often held “World Passports” which were not recognised by the French Government.

49. On 11 December 2013 the applicant was interviewed again by members of the Aliens and Immigration Office but refused to co-operate. He also refused contact with the French Embassy and stated that he wished to remain in detention.

50. On 20 December 2013 and, subsequently, on 4 February 2014, the applicant was interviewed by a staff member of the French Embassy who concluded that the applicant was not a French citizen. He had no French document and it was understood that the applicant’s father was from the Ivory Coast.

51. On 4 February 2014 the applicant was interviewed by an officer of the Aliens and Immigration Office but refused to give any information or give any documents proving his real identity. He stated that he wished to be released and to be able to travel freely.

52. On 27 February 2014 the applicant filled in a document with his biographical information.

53. On 13 March 2014 the applicant was interviewed by members of the Aliens and Immigration Office but refused to co-operate. He claimed that his detention was unlawful.

54. On 28 March 2014 members of the Aliens and Immigration Office sought instructions from the Director of the Department of Civil Registry and Immigration concerning the applicant's detention.

55. On 9 April 2014 a letter was also sent by them to the Ministry of Foreign Affairs setting out the applicant's history, his claims that he was a French citizen and attaching a letter by the WSA (see paragraph 19 above) which issued "World Passports". It was also requested that the French Embassy investigate whether the applicant was a French citizen.

56. The Aliens and Immigration Office also contacted the Consulate of the Ivory Coast in Cyprus.

57. On 8 May 2014 the Ivory Coast Consulate informed the Aliens and Immigration Office that the personal details documented in the applicant's "World Passport" were not real. It was not therefore in a position to issue a travel document. The Consul also informed them that he had met with the applicant in March 2013, before his arrest, and the applicant had refused to co-operate. It was therefore up to the Aliens and Immigration Office to persuade the applicant to disclose his identity. The Consulate would only then be able to issue a travel document.

58. Interviews with the Aliens and Immigration Office took place on 26 June 2014, 8 August 2014, 16 September 2014, 7 October 2014 and 15 October 2014. The applicant, however, refused to co-operate and provide any information as to his real identity.

59. On 22 September 2014 a reminder was sent to the Ministry of Foreign Affairs about steps taken towards the French Embassy and Ivory Coast to determine the applicant's identity.

60. The applicant was released on 24 October 2014. The conditions attached to his release were set out in a letter given to him on his release. In particular, the applicant was requested to take steps to obtain a valid passport and to hand it over, once obtained, to the Aliens and Immigration police. He would be given a certified copy of the passport which would allow the issuance of a residence permit or any other permit. A special residence/employment permit would be issued to the applicant for a period of three months from the date of his release. The applicant was also obliged to inform the Aliens and Immigration Police of a residence address within fifteen days from his release, and also to report to the nearest police station once a month.

## **B. Allegations concerning ill-treatment and lack of medical treatment**

### *1. The applicant's version of events*

61. On 22 April 2013, while detained in the Nicosia Central Prisons, a prison warden told the applicant, along with two other foreign detainees, to go to another wing. When they got there, the Cypriot prisoners told them to clean their (the Cypriot prisoners') cells. The applicant and the other two detainees refused and returned to their wing.

62. The prison warden took them back in order to clean the cells. When they refused, five prisoners attacked them. The applicant stated that he fell down on the floor, his nose bled and he was hit on the chest and backbone. He remained on the floor for five minutes and three of the prison guards stood by while the other prisoners beat him up. The guards then took him back to his wing where they beat him up.

63. The applicant stated that he sustained injuries to his face, ear and back and had broken chest bones.

64. He did not receive any medical treatment for twenty-four hours.

65. On 23 April 2013, the prison guard who was responsible for giving medical treatment to prisoners came to examine him and then sent him to the Nicosia General Hospital because of blood on his face,

66. On 20 May 2013 he was taken to hospital as he could not hear anything because of pain and blood in his ear. He also had pain in the chest and back.

67. On 7 May 2013, 28 May 2013 and 14 June 2013 the applicant applied to the prison authorities for access to his medical records and x-rays.

68. The applicant submitted that the prison guards had informed him that there was no reason to contact a lawyer or his family and to bring him before a court.

### *2. The Government's version of events*

69. On 22 April 2013, at 9.50 a.m, the applicant and two other detainees were taken to the television room in another wing. They were accompanied by the head guard and two other guards. When the prison staff informed them of their duties, the applicant reacted by stating that he did not wish to work or clean and did not co-operate, and incited the other prisoners to refuse. The head guard informed the chief officer of the wing who instructed that the applicant be taken to his office by one of the guards so he could talk to him. The applicant then reacted and attempted to hit the guard who was meant to escort him but was prevented from doing so by two prisoners and one of the other guards.

70. The Government submitted statements given on that day by the two guards and the head guard. The head guard stated that he had been in the

office of the particular wing at the time of the incident and two of the prisoners and one of the guards had intervened and pushed the applicant back. According to the other two statements the applicant was immobilised. The Government also submitted a copy of a letter dated 16 October 2014 sent by the prison administrator to the Ministry of Justice concerning the present case describing the incident, in which it was stated that following the applicant's attempt to hit the escorting guard, two of the prisoners and the other guard on duty pushed him aside and immobilised him.

71. According to the applicant's prison file, the applicant was charged under the Prison Regulations with assaulting a member of staff and failure to comply with a lawful order.

72. On the same day the applicant was examined by the prison doctor. The entry in the applicant's medical file, dated 22 April 2013, indicated as follows: "Involved in a fight. Complains of pain in the right thorax without obvious bruising. Abrasions on the lips. Blood in the ear canal. Without general symptoms. Respiratory murmur without rattle. Soft abdomen. Neurologically without focal points. Blood pressure normal. Pulse normal." The applicant was prescribed medication and directions were given for re-examination.

73. The next day the applicant was re-examined by the prison doctor who noted that the applicant did not want to be examined and refused medication but insisted on having an x-ray of his chest taken as he considered he needed it. The prison doctor, however, noted that there appeared to be no problem. He certified that the applicant had fresh blood in the left ear canal and that his eardrum was ruptured. The doctor then referred the applicant to the Accident and Emergency Department of the Nicosia General Hospital. He was taken there on the same day and was examined by an ear and throat specialist who noted that his ear was bleeding.

74. The Government also submitted a medical record taken by a doctor at the Accident and Emergency Department of the above hospital certifying that the applicant had a perforated eardrum and referring the applicant to an ear and throat specialist. The record is undated.

75. On 26 April 2013 the prison doctor's record noted that the applicant had a ruptured eardrum and that he had not been taking his medication up to that date.

76. On 2 May 2013, the prison doctor's record, in so far as legible, indicated: "during night hours right side; normal respiration, murmur without additional sounds".

77. On 7 May 2013 the prison doctor noted that the applicant had asked to change wing. The applicant also wrote to the prison doctor requesting his medical records and x-rays.

78. On 20 May 2013 the prison doctor noted that the applicant complained about his left ear and earache. He referred him a second time to

an ear and throat specialist at the Nicosia General Hospital. He was examined on 22 May 2013 and the specialist noted that his eardrum was ruptured and recommended medication.

79. On 28 May 2013 the applicant repeated his written request to the prison doctor for his medical records and x-rays.

80. On 3 June 2013 the doctor stated that the applicant complained about pain in the right side of the chest but the clinical examinations did not reveal anything.

81. According to a chart in his prisoner's file, antibiotics were administered to the applicant daily from 22 April 2014 until 4 May 2014.

82. On 16 June 2013 the applicant wrote again to the prison doctor and requested his medical records and x-ray reports.

83. On 18 June 2013 the prison doctor noted that the applicant should apply directly to the Nicosia General Hospital as prison doctors did not have in their possession x-rays and other reports issued by doctors there.

84. On 21 June 2013, the date on which the applicant was released following the suspension of his sentence (see paragraph 42 above), he was informed by the prison guard in charge of his release that if he wished to have his x-rays he should apply directly to Nicosia General Hospital. A copy of the record to this effect from the applicant's prison file was submitted.

85. On or around 16 September 2014, the applicant went on hunger strike seeking his release.

86. On 19 September 2014 the prison doctor referred the applicant to a psychiatrist and the District Court of Larnaca issued an order for temporary hospitalization at the Athalassa Psychiatric Hospital. The applicant was transferred there and a recommendation was made by the administration of the Menoyia Detention Centre for the deportation orders to be annulled.

87. On 30 September 2014 the applicant was discharged from hospital and was transferred back to Menoyia.

88. On 1 October 2014 the applicant went on hunger strike again which he continued until his release on 24 October 2014. He was under constant medical supervision throughout this period.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Entry, residence and deportation of aliens

#### 1. *The Aliens and Immigration Law*

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

90. Under section 6(1) of the Law a person is not permitted to enter the Republic if he is a "prohibited immigrant". This category includes, *inter*

*alia*, any person who, not having received a pardon, has been convicted of murder or an offence for which a sentence of imprisonment has been passed for any term and who, by reason of the circumstances connected therewith, is deemed to be an undesirable immigrant (section 6(1)(d) and any person who enters or resides in the country contrary to any prohibition, condition, restriction or limitation contained in the Law or in any permit granted or issued under the Law (section 6(1)(k)). Furthermore, a person can be considered to be a “prohibited immigrant” on, *inter alia*, grounds of public order, legal order or public morals or if he or she constitutes a threat to peace (section 6(1)(g)).

91. Section 12 of the Law contains special provisions concerning persons entering or leaving the Republic by sea (section 12(1), (2) and (3)) or air (section 12(3) and (4)). Any person who contravenes or fails to observe any of the provisions of this section shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding one thousand pounds or to both (section 12 (5)).

92. Under the Law the deportation and, in the meantime, the detention of any alien who is considered “a prohibited immigrant” can be ordered by the Chief Immigration Officer, who is the Minister of the Interior (section 14). Section 14(6) provides that a person against whom a detention and/or deportation order has been issued shall be informed in writing, in a language which he understands, of the reasons for this decision, unless this is not desirable on public-security grounds, and has the right to be represented before the competent authorities and to request the services of an interpreter. In addition, Regulation 19 of the Aliens and Immigration Regulations of 1972 (as amended) provides that when the Immigration Officer decides that a person is a prohibited immigrant, written notice to that effect must be served on that person in accordance with the second schedule of the Regulations (see *M.A. v. Cyprus*, no. 41872/10, §§ 63-64, ECHR 2013 (extracts)).

93. Unauthorised entry and/or stay (section 19(1)(1) of the Aliens and Immigration Law) in Cyprus are criminal offences. Until November 2011, they were punishable by imprisonment or a fine (section 19(2)) of the Aliens and Immigration Law). Law 153(I)/2011, which entered into force in November 2011, removed the punishment of imprisonment but retained the criminal nature of the contraventions and their punishment with a fine (section 18).

2. *The Law on the Right of European Union Citizens and their Family Members to Move and Reside Freely within the Territory of the Republic of Cyprus, 2007 (Law no. 7(I) of 2007, as amended).*

94. Pursuant to section 35 (1) of Law no. 7(I)/2007, as amended, the Minister of the Interior and any authorised person can order the deportation order of a European Union citizen as an ancillary measure in relation to a

sentence of imprisonment. Before executing the order the Minister has to ensure whether the person in question still remains a real threat to public order or public security and assess whether, there has been a substantial change in the circumstances since the issuance of the order.

### **B. Detention pending deportation**

95. In November 2011, Law no. 153(I)/2011 introduced amendments to the Aliens and Immigration Law with the aim of transposing Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, (the “EU Returns Directive”).

96. In accordance with section 18 ΠΣΤ, unless other sufficient but less coercive measures can be applied effectively in a case, 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 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. In accordance with this section detention shall be maintained for as long a period as the detention may be maintained as long as the conditions set out above are in place, but not longer than six months. Exceptionally, if a deportee refuses to cooperate with the authorities, or there are delays in the obtaining of the necessary travel documents, may be prolonged for a further twelve months by the Minister of the Interior, to a maximum of eighteen months. The Law also expressly provides that habeas corpus applications before the Supreme Court challenging the lawfulness of detention with a view to deportation can be made on length grounds. Lastly, pursuant to the above Law, the Minister of Interior should review detention orders on his or her own initiative every two months and at a reasonable time following an application by the detainee.

### **C. Relevant Constitutional provisions**

97. Part II of the Constitution contains provisions safeguarding fundamental human rights and liberties. Article 11 protects the right to liberty and security. It reads as follows, in so far as relevant:

#### **Article 11**

“1. Every person 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:

(a) the detention of a person after conviction by a competent court;

...

(c) the 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 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.

3. Save when and as provided by law in case of a flagrant offence punishable with death or imprisonment, no person shall be arrested save under the authority of a reasoned judicial warrant issued according to the formalities prescribed by the law.

4. Every person arrested shall be informed at the time of his arrest in a language which he understands of the reasons for his arrest and shall be allowed to have the services of a lawyer of his own choosing.

5. The person arrested shall, as soon as is practicable after his arrest, and in any event not later than twenty-four hours after the arrest, be brought before a judge, if not earlier released.

6. The judge before whom the person arrested is brought shall promptly proceed to inquire into the grounds of the arrest in a language understandable by the person arrested and shall, as soon as possible and in any event not later than three days from such appearance, either release the person arrested on such terms as he may deem fit or where the investigation into the commission of the offence for which he has been arrested has not been completed remand him in custody and may remand him in custody from time to time for a period not exceeding eight days at any one time:

Provided that the total period of such remand in custody shall not exceed three months of the date of the arrest on the expiration of which every person or authority having the custody of the person arrested shall forthwith set him free.

Any decision of the judge under this paragraph shall be subject to appeal.

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.

8. Every person who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation”.

#### **D. Other relevant domestic law**

98. The following provisions of domestic law as applicable at the material time are relevant for the purposes of the present application.

*1. The Law on the Rights of Persons who are Arrested and Detained*

99. The Law on the Rights of Persons who are Arrested and Detained (Law 163(I)/2005) introduced a number of provisions regulating the rights and treatment of arrestees held in custody. It provides, *inter alia*, for the right of a person who is arrested by the police to a private telephone call to a lawyer of his or her choice immediately after his or her arrest (section 3 (1) (a), to a relative or other person (section 3(1)(b) and, for foreign nationals to a consular or diplomatic representative in Cyprus of his country (section 4).

*2. The Criminal Code (Cap. 154)*

100. Section 91 of the Criminal Code provides for the offence of threatening violence and makes it punishable with a prison term of three years. Section 244 provides for assaults that are punishable with two year imprisonment. Sections 331-333 and 339 provide for the offences of forgery and circulation of forged documents. Pursuant to section 335 these offences are punishable with imprisonment for three years. If, however, the documents forged are of a judicial or official nature, the prison sentence is ten years.

*3. The Criminal Procedure Law (Cap. 155)*

101. Section 48 of the Criminal Procedure Law on adjournment of cases and remand in custody provides as follows:

“Every Court may, if it thinks fit, adjourn any case before it and upon such adjournment may, ... either release the accused on such terms as it may consider reasonable or remand him in custody.”

## THE LAW

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

102. The applicant complained that he had been seriously injured as a result of ill-treatment during his detention by police officers and other prisoners and that he had not been provided with medical treatment following this incident. The applicant’s complaints fall to be examined under Article 3 of the Convention, which reads as follows:

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

103. The Government contested the applicant’s arguments.

## A. The applicant's complaints about ill-treatment

### 1. *The parties' submissions*

#### (a) The applicant

104. The applicant submitted that on 22 April 2013, in the Nicosia Central Prisons, he had been attacked by five Cypriot prisoners after refusing to clean their cells. He had fallen down on the floor, his nose bled and had been hit on the backbone and chest. He remained on the floor for five minutes. During this period the prisoners continued to beat him up whilst the prison guards just stood by. The guards then took him back to his wing where they beat him up.

105. The applicant maintained that he had sustained injuries to his face, ear and back and had suffered broken chest bones. He, had not, however, received any medical treatment for twenty-four hours. He was examined the next day by the prison doctor and was referred by him to the Nicosia General Hospital. He was taken back to the hospital on 20 May 2013 for examination as he had pain and blood in his ear and as a result could not hear. He also had pain in the chest and back.

#### (b) The Government

106. The Government argued that the applicant's complaint was inadmissible for non-exhaustion of domestic remedies. The applicant had not complained to the authorities about the alleged ill-treatment by prisoners and/or prison guards. There was no record of a complaint neither in the applicant's prisoner file nor his medical file. The only reference which could be pertinent to his allegations was the prison doctor's entry on 22 April 2013 that the applicant had been involved in a fight. The applicant had raised his allegations for the first time before the Court.

107. In any event, the Government submitted there was no evidence that the applicant had been subjected to any ill-treatment. On 22 April 2013 the applicant had refused to comply with the guards' orders and had assaulted a guard. As a result, he had been charged under the Prison Regulations with assault against a member of staff and failure to comply with a lawful order. According to the statements given by the guards on duty the applicant had been prevented from hitting the guard in question by another guard and two prisoners. Furthermore, there was no record in the applicant's medical file of any injuries allegedly sustained as a result of the ill-treatment. The clinical picture as described by the prison doctor on the same day, following an examination of the applicant, indicated, *inter alia*, that the applicant had complained of pain in the right thorax but that there was no obvious bruising and the applicant had blood in the ear canal and abrasions on the lips. Otherwise all was normal. The doctor's report did not support the applicant's allegations that he had suffered injuries to the face, ear, back and

had broken chest bones. Nor did any of the entries in the medical file concerning the subsequent examinations by the prison doctor or the doctors at the Nicosia General Hospital support his allegations of ill-treatment.

## 2. *The Court's assessment*

### (a) **Admissibility**

108. The Court reiterates that the aim of the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention is to afford Contracting States an opportunity to put matters right through their own legal system before having to answer before an international body for their acts. However, although Article 35 § 1 requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that recourse should be had to remedies that are inadequate or ineffective (see principles set out in *Vučković and Others v. Serbia* [GC], no. 17153/11, § 69-74, 25 March 2014, with further references).

109. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from this requirement (see *Vučković*, cited above).

110. Turning to the present case, although the Government submitted that the applicant did not make a complaint before the domestic authorities concerning his alleged ill-treatment, they have not made any submissions as to what exactly the applicant should have done and did not point to a particular remedy. To the extent that the Government may be understood as claiming that the applicant did not complain to the prison authorities, the Court notes in this respect that the prison administration was already aware of the incident of 22 April 2013 and statements were taken by the staff involved. It is clear from these that some force was used by two prisoners and one of the guards on duty in order to restrain the applicant and that the applicant was in need of medical treatment on the same day as he had blood in the ear canal and a perforated eardrum.

111. Given the above, the Court does not consider that the Government have discharged their burden of proving the availability to the applicant of a remedy capable of providing redress in respect of his Convention complaints. This complaint cannot therefore be rejected for failure to exhaust domestic remedies.

112. 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**

113. Article 3, as the Court has observed on many occasions, enshrines one of the most fundamental values of democratic societies, making no provision for exceptions and with no derogation from it being permissible, as provided by Article 15 § 2 (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII).

114. The Court further reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Assenov and Others*, cited above, §§ 93-94).

115. Further, the Court recalls that Article 3 of the Convention also requires the authorities to investigate allegations of ill-treatment when they are “arguable” and “raise a reasonable suspicion” (see *Assenov and Others*, cited above, §§ 101-102). As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others*, cited above, § 102).

116. Turning to the facts of the present case, the Court observes that it is common ground that on 22 April 2013 force was used against the applicant after his refusal to comply with instructions of the guards. The Government submitted that one of the guards and two of the prisoners had prevented the applicant from hitting one of the prison guards. According to the head guard’s statement, he had been in the office of the particular wing at the time of the incident and two of the prisoners and one of the guards had intervened and pushed the applicant aside. According to the other two statements the applicant had been immobilised. The applicant on the other hand submitted that he had been attacked by five prisoners, had fallen down on the floor, suffered a nose bleed and injuries to the chest and backbone. He submitted that he had remained on the floor for five minutes during

which the prisoners continued to beat him. The guards had also hit him when they took him back to his wing.

117. It transpires from the medical reports following this incident that the applicant had a perforated eardrum and blood in the ear canal. The applicant's previous prison medical records do not indicate that the applicant suffered from such a condition before the incident. The Court therefore cannot exclude, in the absence of any other explanation on the part of the Government, that this injury was sustained by the applicant during this incident. It notes, however, that none of the medical records support the applicant's claims as to the other injuries he alleges he suffered or the nature of the force used against him.

118. The Court recalls that where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (see *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). The Court also points out that where an individual when taken into police custody is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni*, cited above, § 87).

119. It follows that the respondent Government have the burden of providing a plausible explanation for the applicant's injury to his eardrum which he sustained while in detention.

120. In order to establish whether the respondent Government have provided a plausible explanation for the applicant's injury, the Court will examine whether the national authorities carried out an investigation with a view to finding out how exactly that injury was caused and by whom. The Court will also examine whether the national authorities established if recourse to physical force had been made strictly necessary by the applicant's own conduct (see *Bouyid v. Belgium* [GC], no. 23380/09, § 100, ECHR 2015). In this connection, the Court notes that following the incident three guards involved gave written statements to the Prison Director. Yet none of them gave a detailed picture of exactly what had happened and, in particular, they failed to explain precisely how the applicant was immobilised or whether he fell when he was pushed back. The prison administration left the matter there and no attempt was made to obtain more details from the guards. Furthermore, no statements were taken from the two prisoners the authorities claimed were involved in the incident, and the applicant himself was not heard. Finally, there is no indication in the medical records of what could have caused the perforated eardrum and the authorities did not seek medical opinion as to the possible cause of the injury. In the medical records, the prison doctor merely noted that the applicant had participated in a fight.

121. In the light of the above, the Court considers that no meaningful investigation was conducted by the authorities capable of establishing the true facts of the incident. Consequently, it concludes that the Government have failed to account for the applicant's injury giving rise to responsibility under the substantive limb of Article 3. The Court also considers that its finding above, namely that no meaningful investigation was conducted, also amounts to a failure to comply with the procedural obligation to carry out an effective investigation.

122. It follows that there has been a violation of Article 3 of the Convention both in its substantive and procedural aspects.

## **B. The applicant's complaints about lack of medical treatment**

### *1. The parties' submissions*

#### **(a) The applicant**

123. The applicant submitted that he was not given adequate medical care for his injuries and that the level of medical treatment in the prison was not good. This is why they had taken him to the Nicosia General Hospital on a few occasions. He alleged that the medical records were false. He had also been faced with the constant refusal of the prison authorities to provide him with his x-rays and medical reports.

#### **(b) The Government**

124. The Government submitted that the applicant's allegations were unfounded and that throughout his detention the applicant had received adequate medical treatment and care. In particular, it was clear from the applicant's prison file that he had been examined by the prison doctor of the Nicosia Central Prisons nine times, by an ear and throat specialist at the Nicosia General Hospital two times and by a doctor at the Accident and Emergency Department of the Nicosia General Hospital once. He was also prescribed medication for his perforated eardrum. They submitted a chart from his file indicating that the applicant had received this medication (see paragraph 81 above). Furthermore, the applicant had been informed, following three requests on his behalf on 7 May 2013, 28 May 2013 and 16 June 2013, that the prison doctor did not have access to the medical records and x-rays at the Nicosia General Hospital and that he had to apply directly to the hospital.

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

125. The Court reiterates that Article 3, while it cannot be construed as laying down a general obligation to release detainees on health grounds, imposes an obligation on the State to protect the physical well-being of

persons deprived of their liberty. The Court accepts that the medical assistance available in prison may not always be of the same level as in medical institutions for the general public. Nevertheless, the State must ensure that the health of detainees is adequately secured by, *inter alia*, providing them with the appropriate medical assistance (see the recent judgment in *Blokhin v. Russia* [GC], no. 47152/06, § 137, 23 March 2016 and the decision in *Ali Asan v. Romania* (dec.), no. 15840/13, 15 September 2015, with further references).

126. The Court notes that, according to the available medical evidence in the case-file, the applicant was immediately seen by a doctor on 22 April 2013 after the incident and was prescribed medication. The next day he was examined again by the prison doctor who referred him to the Accident and Emergency Department of the Nicosia General Hospital. He was taken there on the same day and was examined by an ear and throat specialist. From then on he was regularly examined by the prison doctor and was also re-examined by the specialist at the above hospital. The applicant therefore received regular medical supervision and treatment. It also appears that after the applicant made a request to the Nicosia General Hospital, he received copies of his x-rays.

127. Lastly, the Court considers that it is worth noting that, subsequently, when the applicant was on hunger strike, his health was constantly monitored by the authorities and at one point he was hospitalised on the basis of a court order.

128. Given the above, the Court considers that this complaint does not disclose any indication of a violation of Article 3 of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

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

129. The applicant complained that his detention had been unlawful. His complaint falls to be examined under Article 5 § 1 of the Convention, which, in so far as relevant, reads as follows:

### Article 5 § 1

“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:

(a) the lawful detention of a person after conviction by a competent court;

...

(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.”

130. The Government contested the applicant’s arguments.

## **A. The parties’ submissions**

### *1. The applicant*

131. The applicant submitted that he had been unlawfully arrested without an arrest warrant. Furthermore, on 21 June 2013 he had finished serving his sentence. He had not been granted a pardon. The documents submitted by the Government were false. He had never been shown and he had never signed the documents concerning his rights as a prisoner and his detention and deportation.

### *2. The Government*

132. The Government submitted that the applicant’s detention from 10 April 2013 until 24 October 2014 had been lawful.

133. First of all, between 10 April 2013 and 17 April 2013, the applicant had been detained pursuant to an order issued on the former date by a judge of the Paphos District Court, pursuant to section 48 of the Criminal Procedure Law (Cap. 155; see paragraph 101 above). In accordance with this provision, a court could order the detention of an accused pending trial, if it considered this measure to be appropriate. The Paphos District Court had convicted him on 10 April 2013 but had not passed sentence. It had adjourned the hearing of the case for sentencing purposes on 17 April 2013 and had ordered the applicant’s detention during this period. During this period, the applicant’s deprivation of liberty had been in conformity with Article 11 (2) (c) of the Constitution and within the ambit of Article 5 § (1) (c) as he had been arrested and detained for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence.

134. Secondly, from 17 April 2013 until 21 June 2013 the applicant’s detention was lawful pursuant to Article 11 (2) (a) of the Constitution and fell within Article 5 § (1) (a) as he was detained on the basis of the sentences of imprisonment imposed by the Paphos District Court.

135. Thirdly, from 21 June 2013 until his release on 24 October 2014 the applicant had been detained lawfully during the relevant period with a view to his deportation under Article 5 § 1 (f) of the Convention. He had been deprived of his liberty on the basis of deportation and detention orders issued on 21 June 2013 pursuant to (a) section 14 of the Aliens and Immigration Law on the ground that he had been a “prohibited immigrant”

within the meaning of section 6(1)(d) of that Law; and (b) section 35 of the Law the Right of European Union Citizens and their Family Members to Move and Reside Freely within the Territory of the Republic of Cyprus (see paragraph 94 above) as an ancillary measure in relation to imprisonment. The applicant had been considered, following his conviction and imprisonment, a threat to public order. His detention had been lawful as it had been in conformity with domestic law and procedure. Nor had the applicant been deprived of his liberty in an arbitrary fashion.

136. Last, the Government pointed out that during this period the authorities had made continuous efforts and taken a number of steps to ascertain the applicant's identity and nationality in order to deport him. He did not have a valid passport or any other travel document and did not cooperate at all with the authorities. Several interviews had been held with officials from the Aliens and Immigration Office and efforts had been made through the French Embassy in Cyprus and the Consulate of the Ivory Coast but to no avail as the applicant refused to provide any information about his identity and country of origin.

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

137. The Court notes that the applicant's complaint under Article 5 § 1 of the Convention can be divided into three parts that require separate examination and concern four different periods of detention:

- the first period concerns the applicant's arrest on 26 January 2010 and detention until 27 January 2010;
- the second period concerns his arrest on 2 February 2010 and his detention until 3 February 2010;
- the third period concerns his detention on remand from 10 April 2013 until 21 June 2013; and, lastly,
- the fourth period concerns his detention from 21 June 2013 until his release on 24 October 2014.

### *1. The first and second periods of detention*

138. To the extent that the applicant's complaints may be taken to relate to these two periods of detention, the Court observes that they ended with the applicant's release on 27 January 2010 and 3 February 2010 respectively.

139. As the present application was lodged with the Court on 8 August 2013, these complaints were introduced out of time under the six-month rule laid down in Article 35 § 1 of the Convention and should therefore be declared inadmissible pursuant to Article 35 § 4 of the Convention.

2. *The third period of detention: 10 April 2013-21 June 2013*

140. The Court notes that on 10 April 2013 the applicant, who had been on bail, appeared before the Paphos District Court and was found guilty of the offences of circulating forged documents, resisting lawful arrest and assaulting and deliberately obstructing a police officer during performance of his duties (see paragraph 35 above). These offences are all punishable by imprisonment on the basis of domestic law (see paragraph 100 above). The court then adjourned the case until 17 April 2013 for sentencing and ordered the applicant's detention pursuant to section 48 of the Criminal Procedure Law. On 17 April 2013 the court imposed concurrent sentences amounting to three months' imprisonment running from 10 April 2013. The applicant was detained in order to serve his sentence until 21 June 2013.

141. The Court reiterates that 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. No deprivation of liberty will be lawful unless it is carried out with one of the purposes listed in those paragraphs.

142. In the circumstances of the present case, the Court finds that the applicant's detention throughout this period falls to be examined under Article 5 § 1 (a). Although the Government argue that the applicant's detention from 10 to 17 April 2013 came within the scope of Article 5 § 1 (c), the Court notes in this respect that a person convicted at first instance cannot be regarded as being detained "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence", as specified in the latter provision, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty "after conviction by a competent court" (see, among other authorities, *Yaroshovets and Others v. Ukraine*, nos. 74820/10, 71/11, 76/11, 83/11, and 332/11, § 110, 3 December 2015 and *Chuprikov v. Russia*, no. 17504/07, § 59, 12 June 2014).

143. The Court first notes that no question arises as to the competence of the Paphos District Court which convicted the applicant and ordered his detention.

144. Further, it observes for the purposes of sub-paragraph (a) of Article 5 § 1, the word "conviction", ("condamnation" in the French text), has to be understood as signifying both a finding of guilt after it has been established in accordance with the law that there has been an offence and the imposition of a penalty or other measure involving deprivation of liberty (see *Del Río Prada v. Spain* [GC], no. 42750/09, § 123, ECHR 2013 with further references). Furthermore, the word "after" in sub-paragraph (a) does not simply mean that the detention must follow the "conviction" in point of time: in addition, the "detention" must result from, "follow and depend upon" or occur "by virtue of" the "conviction". In short, there must be a sufficient causal connection between the two (see *Del Río Prada*, cited above, § 124, with further references). The purpose of detention must be the

execution of a prison sentence imposed by a court (see *Barborski v. Bulgaria*, no. 12811/07, § 39, 26 March 2013). These conditions are all satisfied in the instant case (see paragraph 140 above).

145. Furthermore, deprivation of liberty must not only be based on one of the exceptions listed in sub-paragraphs (a) to (f) but must also be “lawful”. The Court recalls that the Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof; but it requires in addition that any deprivation of liberty should be in conformity with the purpose of Article 5 which is to prevent persons from being deprived of their liberty in an arbitrary fashion *Medvedyev and Others v. France* [GC], no. 3394/03, § 79, ECHR 2010).

146. In the present case it is clear that the applicant’s detention had a basis in domestic law and was not arbitrary in any way.

147. In the light of all the above, the Court is satisfied that the applicant’s deprivation of liberty throughout this period met all the conditions for detention under Article 5 § 1 (a) of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

### 3. *The fourth period of detention: 21 June 2013-24 October 2014*

#### (a) **Admissibility**

148. The Court notes that it is not disputed that the applicant was deprived of his liberty from 21 June 2013 until 24 October 2014 on the basis of deportation and detention orders.

149. The Court further notes that the applicant’s complaints under this head are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

#### (b) **Merits**

150. The Court notes that during this period the applicant was detained on the basis of deportation and detention orders which were issued against him on the ground that he was a “prohibited immigrant” following his conviction and sentence by the Paphos District Court. The Court has no reason to doubt that the applicant was detained in order to effect his deportation. His detention therefore came within the ambit of Article 5 § 1 (f) of the Convention.

151. The Court recalls that this provision does not require that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary, for example to prevent his committing an offence or fleeing; in this respect Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c) (see *Chahal v. the United Kingdom*, 15 November 1996, Reports 1996-V, §§ 112-113 and *Čonka*

*v. Belgium*, no. 51564/99, § 38, ECHR 2002-I). All that is required under this provision is that “action is being taken with a view to deportation”. It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see *Chahal*, cited above, § 112).

152. The Court further reiterates that any deprivation of liberty should be “lawful” and not arbitrary (see general principles set out in paragraph 145 above). In addition and in connection with Article 5 § 1 (f), the Court observes that in order to avoid being branded as arbitrary, detention under this sub-paragraph 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 *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009, and, *mutatis mutandis*, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 74, ECHR 2008).

153. The Court observes that Cypriot law allows for the possibility of detention with a view to deportation. The Court notes in this respect that the decision of 21 June 2013 ordering the applicant’s detention and deportation was based on section 14 of the Aliens and Immigration Law, which permits the Chief Immigration Officer to order the deportation of any alien who is a prohibited immigrant and his or her detention in the meantime. The deportation and detention orders were issued pursuant to section 6(1)(d) of the Aliens and Immigration Law and section 35 of Law 7(I)/2007 which permits the deportation of a European Union citizen as an ancillary measure in relation to imprisonment. According to these orders the applicant was liable to deportation after committing and being convicted of a number of offences. The applicant was also notified of the orders in accordance with domestic law (see paragraphs 44 and 92 above). The applicant has not suggested that the procedural guarantees set out in the Aliens and Immigration Law have not been complied with (see paragraph 96 above).

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

155. This having been said, the Court reiterates that any deprivation of liberty under Article 5 § 1 (f) of the Convention will be justified only with a view to pending deportation proceedings. If such proceedings are not conducted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (see *Amie and Others v. Bulgaria*, no. 58149/08, §§ 71-73, 12 February 2013).

156. In the present case, the applicant remained in detention from 21 June 2013 until 24 October 2014, that is, for just over sixteen months. It transpires from the documents in the case-file that during this period the

only impediment to his deportation was the need to obtain a travel document.

157. Although, admittedly, from 28 November 2013 onwards the authorities made continuous efforts to ascertain the applicant's identity and obtain a travel document, it has not been shown by the Government that anything was done the first five months of his detention. The Government have not given any information as to any action taken with a view to obtaining a travel document for the applicant during this period or why such action was not taken for so long.

158. The Court finds an unexplained and unjustified delay which unnecessarily prolonged the applicant's detention.

159. It is true that the applicant, by failing to disclose sufficient information to make possible the issuance of a travel document, himself contributed to a large extent to the overall length of his detention (see, *Tabassum v. the United Kingdom* (dec.), no. 2134, 24 January 2012). At the same time, this cannot in any way detract from the Government's responsibility to act with the required diligence when detaining someone under this provision, so as to put an end to the detention as soon as reasonably possible.

160. In view of the Government's failure to account for any action during those first five months, the Court finds that they have not shown that they acted with the required diligence.

161. The Court accordingly finds that there has been a violation of Article 5 § 1 of the Convention in the present case.

### III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

162. Without invoking a specific Convention provision, the applicant complained that in the Nicosia Central Prisons he had no contact with a lawyer or with his family.

163. Having regard to all the material in its possession, and in so far as they fall within its competence, the Court finds that the above complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

164. 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**

165. The applicant, without invoking a specific sum, claimed both pecuniary and non-pecuniary damage. He submitted in this respect that the police had seized his passport and that during his detention his belongings and money were taken from his apartments and that he lost contracts he had entered into for the renovation of various properties. He also emphasised that he had been arbitrarily arrested and detained for a very long period of time and had suffered injuries while in detention.

166. The Government did not comment on the applicant’s claims.

167. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, having regard to the violations found under Article 3 and 5 § 1 of the Convention (see paragraphs 122 and 161 above), it awards the applicant EUR 12,700 in respect of non-pecuniary damage.

### **B. Costs and expenses**

168. The applicant also made a claim for costs and expenses but without further explanation.

169. The Government considered that, bearing in mind Court’s criteria governing awards under this head, the applicant was not entitled to an award under this head. They noted, in particular, that the applicant had not been represented by a lawyer before the Court.

170. The Court notes that the applicant did not claim a specific amount for costs and expenses. Accordingly, and in view of the fact that he represented himself before the Court, it considers that it is not appropriate to make him an award under this head.

### **C. Default interest**

171. 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 ill-treatment and Article 5 § 1 concerning the applicant's detention from 21 June 2013 until 24 October 2014 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in its substantive and procedural aspects;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
4. *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 12,700 (twelve thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips  
Registrar

Luis López Guerra  
President