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Contact: Clare Ovey
Tel: 03 88 41 36 45

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Communication from Cyprus concerning the case of M.A. against Cyprus (Application No. 41872/10)

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Réunion : 1236 réunion (22-24 septembre 2015) (DH)

Référence du point : Plan d'action révisé

Communication de Chypre concernant l'affaire M.A. contre Chypre (Requête n° 41872/10)
(***anglais uniquement***)

M.A. v Cyprus

Application no. 41872/10

Judgment of 23 July 2013, final on 23 October 2013

Revisited Action Plan

(18 June 2015)

I. Case description

Background

The applicant was one of the 149 Syrian Kurds who had camped near the Representation of the European Commission in Nicosia during May and June 2010 protesting against the restrictive policies of the Cypriot Asylum Service in the grant of international protection and for which a removal operation was carried out in June 2010 (paragraphs 29 and 36). Thirty seven out of the 149 Syrian Kurds have submitted applications before the European Court. The *M.A. v Cyprus* is the first judgment delivered by the Court in relation to the above group. Following *M.A. v Cyprus* the European Court decided to strike 19 applications out of its list of cases[1] and rejected another application as an abuse of the right to individual petition.[2] The examination by the European Court of the remaining applications is still pending.

The case of *M.A. v Cyprus* concerns a decision taken in error in 2010 to deport the applicant to Syria despite the fact that his asylum application was pending, and his subsequent detention.

Violations found by the European Court

(i) The European Court found that there has been a violation of Article 13 of the Convention taken together with Articles 2 and 3 on account of the fact that there was no

[1] *M.H. v Cyprus and 16 other applications against Cyprus*, application no. 41744/10, decision of 14 January 2014; *M.Z. v Cyprus*, application no. 44735/10, decision of 14 January 2014 and *M.Is. v Cyprus*, application no. 41805/10, decision of 10 February 2015.
[2] *F.A. v Cyprus*, application no.41816/10, decision of 25 March 2014.

effective remedy with automatic suspensive effect against the decision taken in error to deport the applicant to Syria. In this respect the Court noted: "the deportation and detention orders were obviously based on a mistake committed by the authorities. Since the applicant's asylum application was being re-examined he continued to have the benefit of suspensive effect. Yet, despite this mistake the orders against the applicant continued to remain in force for more than two months during which the re-examination of his asylum claim was still taking place and the applicant was not removed to Syria during this period solely because of the application of Rule 39. No effective domestic judicial remedy was available to counter this error. Moreover, the Court notes in this respect the lack of any effective safeguards which could have protected the applicant from wrongful deportation at the time." (paragraph 139).

(ii) The European Court found that there has been a violation of Article 5(4) of the Convention as the remedy suggested by the Government and which the applicant had not exhausted would not have provided the applicant with a speedy review of the lawfulness of the decision to detain him as required by Article 5(4) of the Convention. The European Court noted that "according to the Government's submissions the average length of a recourse challenging the lawfulness of the detention orders, [...] is eight months at first instance. This is undoubtedly far too long for the purposes of Article 5(4)." (paragraph 167).

(iii) The European Court found that there has been a violation of Article 5(1) of the Convention as the applicant's deprivation of liberty between 11 June 2010 and 3 May 2011 was contrary to Article 5(1) of the Convention. In particular, the applicant's transfer along with the other protesters to the E.R.U. headquarters on 11 June 2010 was contrary to Article 5(1) of the Convention (paragraph 203). His subsequent detention on 11 June 2010 and until 20 August 2010 was based on a decision taken in error and therefore during this period the applicant was unlawfully deprived of his liberty (paragraphs 209-210). The applicant's final detention in the period between 20 August 2010 and 3 May 2011 was not in accordance with domestic law as he was not given notice of the new

deportation and detention orders (paragraph 215) and as such the Court found that the procedure prescribed by law was not followed (paragraph 216).

II. Individual measures

There is no fear of the applicant being deported to Syria as on 29 April 2011 the Reviewing Authority for Refugees decided to recognise the applicant as a refugee pursuant to the Refugee Law (paragraph 27). The applicant was released from detention on 3 May 2011 following the decision to grant him refugee status (paragraph 49).

The European Court awarded the applicant just satisfaction in respect of non pecuniary damage for the violations found under the Convention. The just satisfaction awarded by the Court was paid by bank transfer on 1 November 2013. The European Court did not make an award under the costs and expenses head as the applicant had failed to provide any supporting documents substantiating his claim.

III. General measures

Violation of Article 13 taken together with Articles 2 and 3

It is reminded that according to previous information the effective remedy with automatic suspensive effect would be found within the administrative law court which was in the process of being established.[3] The process of establishing a new administrative law court has proven to be rather time consuming, owing, *inter alia* to the necessity of amending the Constitution itself.[4] In view of this, the Government has explored alternative ways with which to comply with its obligations arising out of Article 46 paragraph 1 of the Convention.

On 15 June 2015 the Attorney General sent a letter to the Minister of Interior, the Minister of Justice and Public Order and the President of the Supreme Court explaining that due to the Republic's international obligations and in particular, following the *M.A. v Cyprus*

[3] Action Plan, 11 July 2014, DD(2014)925.
[4] *Ibid.* The Constitution may be amended only by a law passed by a majority vote comprising of at least two thirds of the total number of Representatives.

judgment,[5] a legal provision must be adopted whereby the enforcement of a deportation order must be suspended provided the person against whom it is issued alleges that its enforcement would violate Articles 2 and/or 3 of the European Convention. The Attorney General's Office prepared legislation achieving the above suspensive effect. According to the same letter, the legal provision should be better incorporated into the Supreme Court Regulations. However, if the Supreme Court does not consider this to be feasible, the Aliens and Immigration Law should be amended accordingly. To this effect, a period of six months is given to the Supreme Court.

The main provisions of the legislative measure are summarised as follows:

(1) When a person challenges a deportation order, a decision to return or a decision to remove by virtue of article 146 of the Constitution, the enforcement of the administrative act is suspended pending the outcome of the recourse on a first instance level. The suspension of the administrative act is subject to the following two conditions: (a) the person challenging the administrative act alleges that it is contrary to the principle of non refoulement provided for in an international convention or in the law of the European Union or in the Cypriot law and/or the person challenging the administrative act alleges that it violates Article 2 and/or 3 of the European Convention on Human Rights and/or article 7 and/or 8 of the Constitution and/or Article 2 and/or 4 of the Charter of Fundamental Rights of the European Union, and (b) the person challenging the administrative act serves it to the Ministry of Interior, the Migration and Population Department and/or the Attorney General.

(2) The Supreme Court may at any stage and under any conditions it considers fit issue an order whereby the suspension of the enforcement of the administrative act is lifted provided the following three conditions are met: (a) a party to the proceedings submits a (provisional) application which they serve to the affected party in order for the latter to be able to object to the application, (b) the Supreme Court hears the parties concerned and

[5] The Attorney General also cited the recent judgment of the European Court (Grand Chamber) in case C-562/13 *Abdida*, which interpreted Regulation 2008/115/EC and the Charter of Fundamental Rights.

(c) the Supreme Court examines the allegation referred to in paragraph 1 above on its merits and either decides that it is unfounded or that the recourse does not contain such allegation.

(3) The Supreme Court instead of examining the (provisional) application referred to in paragraph 2 above may order the quick examination of the recourse.

(4) Irrespective of the above, the Supreme Court may on its own motion examine the allegation referred to in paragraph 1 above preliminary and issue an order whereby the suspension of the enforcement of the administrative act is lifted provided the following two conditions are met: (a) the Supreme Court hears the parties concerned and (b) examines the allegation on its merits and either decides that it is unfounded or that the recourse does not contain such allegation.

(5) In case the Supreme Court examines the allegation on its merits (either preliminary on its own motion or following a (provisional) application) and decides that the allegation is well founded, it may annul the administrative act in question without the need to examine the rest (if any) judicial review grounds.

Violation of Article 5(4)

A bill amending the Refugee Laws is pending before the Ministry of Interior whose purpose *inter alia* is (a) to comply with the M.A. judgment on the requirement of "speediness" and (b) to comply with Article 9.3 of Directive 2013/33/EU[6] requiring EU Member States to define in national law the period within which the judicial review of the lawfulness of detention shall be conducted. Following advice from the Attorney General, the amendment includes a maximum period within which the Supreme Court exercising its first instance revisional jurisdiction decides on the lawfulness of a detention order which has been issued for effecting a deportation order of a person who has sought international protection. According to the amending bill a recourse by virtue of article 146 of the

[6] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

Constitution challenging the lawfulness of the detention order must be completed as soon as possible and in any event, the Supreme Court must deliver its judgment within four weeks from the date in which the recourse was registered. A shorter period of three weeks is designated for habeas corpus applications challenging the protracted length of the detention with a view to deportation. It is reminded in this regard that the European Court in the *M.A. v Cyprus* judgment concluded that a recourse (and not a habeas corpus application) would not have provided the applicant with a speedy review of the lawfulness of the decision to detain him, as required by Article 5(4) (paragraph 169).

The amending bill will be processed by the Ministry of Interior to the Council of Ministers for approval and then will be tabled at Parliament for adoption.

Violation of Article 5(1)

On 1 December 2014 the Minister of Interior circulated a letter addressed to the Director of Civil Registry and Migration Department and copied to the Director of Police Aliens and Immigration Unit. The circular reaffirmed the authorities´ obligation to serve copies of the detention and deportation orders to the persons against whom they were issued. The Government further maintains that the violation of Article 5(1) was an individual error and can be rectified by publication and dissemination of the judgment to the relevant authorities.

IV. Publication and dissemination

Information about publication and dissemination has been previously supplied.[7]

IV. State of execution of judgment

The Government will keep the Committee of Ministers updated as to whether the Supreme Court will incorporate in its Regulations the legal provision concerning the automatic suspensive effect or whether the Government will proceed with amending the Aliens and

[7] Action Plan, 11 July 2014, DD(2014)925.

Immigration Law. Moreover, the Government will keep the Committee of Ministers updated as to the enactment and coming into force of the law amending the Refugee Laws.

Theodora Christodoulidou

Theodora Christodoulidou
Counsel for the Republic of Cyprus
Law Office of the Republic of Cyprus
for the Attorney General – Government Agent