



ECtHR - Al-Nashif v. Bulgaria

A stateless person of Palestinian origin, born in Kuwait resided in Bulgaria with his two children who were born in Bulgaria and hold Bulgarian nationality. His permanent residence permit in Bulgaria was withdrawn on the grounds that he was engaged in alleged religious extremism, and he was detained and subsequently deported to Syria. The Court held that there had been a violation of Articles 5(\$4), 8, and 13 ECHR as a result of the deportation. In this judgment, the Court outlines the procedural safeguards required by the ECHR in decisions to detain a person for the purposes of deportation, including where an allegation of a threat to national security is made. The guarantee of an effective remedy requires some form of adversarial proceedings, and that the competent independent appeals authority must be able to assess whether the conclusion that a person is a threat to national security, which justifies deportation, is arbitrary or unreasonable.

Case name (in original language) : Al-Nashif v. Bulgaria Application No: 50963/99, European Court of Human Rights

Case status: Decided

Case number: [2002] Application no. 50963/99

Citation: Al-Nashif v. Bulgaria Application [2002] Application no.50963/99

Date of decision: 20/06/2002

State: Bulgaria

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: English

Applicant's country of birth: Kuwait

Applicant's country of residence: Bulgaria

Legal instruments: European Convention on Human Rights (ECHR), European Union law

Key aspects: Deportation and removal, Detention, Procedural safeguards, Residence permit

Relevant Legislative Provisions:

Relevant domestic law of Bulgaria includes:

- Article 120 of the Bulgarian Constitution
- Sections 33, 34, 35, and 37 of the Administrative Procedure Act
- Section 40 (1)(2) and Section 10 (1)(1) of the Aliens Act
- Section 42 of the Aliens Act
- Section 47 (1) of the Aliens Act

European Convention on Human Rights:

- Article 5 § 4, 8, and 13

Facts

The appellants are Daruish Al-Nashif, a Kuwait born Stateless person with Palestinian origins, now residing in Syria, following his deportation from Bulgaria; the first applicant's two children, Abrar and Auni Al-Nashif, both Bulgarian nationals born in Bulgaria, who now live with their mother Hetham Saleh, Mr. Al-Nashif's first wife in Jordan.

Mr. Al-Nashif arrived in Bulgaria in 1992 with Ms. Saleh, who he had married in Kuwait. They lived together in Bulgaria, where their two children were born. Besides his job as a butcher, Al-Nashif was involved in religious activities - he taught Islamic classes. In 1995, he obtained a permanent residence permit. The same month he married his second wife, Ms. M, a Bulgarian national in a religious Muslim Ceremony, but remained married and living with his first wife. Under Bulgarian law, the marriage to Ms. M had no legal effect.

In 1999 Mr. Al-Nashif's residence permit was withdrawn and orders for his deportation, his detention and his exclusion from Bulgarian territory were issued arguing that he posed a threat to national security, without providing any explanation. Later, the Ministry of the Interior stated that Mr. Al-Nashif had engaged in unlawful religious activities that had endangered national interests, but no details were provided. He was detained pending deportation and denied contact with others. Two of his judicial appeals were declared inadmissible and his third appeal had not been examined by the time he was deported on 5 July 1999. The relevant law provided that national security measures concerning aliens were not subject to appeal. This was confirmed on 4 April 2000 by the Supreme Administrative Court,

which also held that such measures need not be reasoned.

The application was lodged with the European Court of Human Rights on 15 September 1999 and was declared partly inadmissible on 16 December 1999. A hearing was held on 25 January 2001, where the Court declared the remainder of the application partly admissible.

Legal arguments by the applicant

The appellants argued that Mr. Al-Nashif was denied the right to appeal to a court against his detention, following the removal of his residency because of the alleged national security threat he was posing. In this context, he argued that he was detained incommunicado. Moreover, the applicant stated that his deportation had infringed the right of all three applicants to a family life. The applicants added that they did not have an effective remedy available and that the measures taken against Mr. Al-Nashif were in breach of his right to freedom of religion. They relied, among other things, on Articles 5 § 4, 8, 9, and 13 of the Convention.

Legal arguments by the opposing party

The Government argued that there had been no violation of Article 8, as the relationship between Mr. Al-Nashif and his children with his first wife lacked emotional family links, as Mr. Al-Nashif spend a lot of time away with his second wife. It underlined the fact that Mr. Al-Nashif and Ms. Saleh did not have strong links with Bulgaria where they had arrived as adults and had only spent seven years. Moreover, the children were of a young and adaptable age. Despite their Bulgarian citizenship, it was obvious to the Government, that their legal status would be affected by the status of their parents as they were in their parents' custody. In the Government's submission, there was no evidence of any obstacles against the family living in Syria or Jordan, following the deportation of Mr. Al-Nashif and Ms. Saleh and their children leaving for Jordan in 2000.

The deportation order had been issued following the relevant law and had pursued the aim of protecting national security. In the Government's submission, the interference was furthermore proportionate to the legitimate aim pursued.

Decision & Reasoning

The Court decided that there had been a violation of Article 5 § 4, 8, and 13 of the Convention.

Article 5 § 4

The Court noted that under Bulgarian law no judicial appeal was possible against detention pending deportation, where the deportation order had been issued on grounds of national security. Consequently, no court had the power to enquire into the lawfulness of the detention and the detention order stated no reasons. Mr. Al-Nashif was thus detained incommunicado and was not allowed to meet a lawyer to discuss any possible legal challenge to the measures taken against him. The Court judged that there was a breach of Article 5 § 4, on the protection of individuals against arbitrariness, as Mr. Al-Nashif was not provided with elementary safeguards in relation to his detention. The Court reiterates that everyone who is deprived of his liberty is entitled to a review of the lawfulness of his detention by a court, regardless of the length of confinement. The Court focused on the fact that other countries had found ways of accommodating legitimate national security concerns while according to the individual with substantial measure of procedural justice.

Article 8

Because Mr. Al-Nashif and Ms. Saleh came to Bulgaria together from Kuwait as a married couple, had kids together and lived together until the day of his arrest, and did not separate following his Islamic marriage to his second wife, the Court consequently considered that there have been no circumstances destroying the family link between Mr. Al-Nashif and his children.

The Court was undisputed in determining Mr. Al-Nashif as a Stateless person, and as he had acquired a permanent residence permit in Bulgaria, he was considered a lawful resident in Bulgaria at the material time. As Mr. Al-Nashif and Ms. Saleh's children were born in Bulgaria, acquired Bulgarian nationality, and started going to school here, the Court held that the deportation of Mr. Al-Nashif interfered with the applicant's family life.

The Court noted that Mr. Al-Nashif's deportation was ordered under a legal regime that did not provide the necessary safeguards against arbitrariness. The interference with the applicants' family life was not, therefore, based on legal provisions meeting the Convention requirements of lawfulness. It followed that there had been a

violation of Article 8.

Article 13

The Court stated that, while procedural restrictions can be necessary to protect national security, this can never justify denying remedies altogether whenever the executive had chosen to invoke the term "national security".

Even where an allegation of a threat to national security is made, the guarantee of an effective remedy is required as a minimum, and the appeals authority must be informed of the reasons for the decision, even if such reasons are not available to the public. The appeals authority must be allowed to reject the executive's assertion that there is a threat to national security where it finds it arbitrary or unreasonable. Furthermore, the question whether the impugned measure would interfere with the individual's right to respect for family life and, if so, whether a fair balance is struck between the public interest involved and the individual's rights must be examined.

As no remedy affording such guarantees of effectiveness was available to the applicants, the Court found that there had been a violation of Article 13.

Article 9

The Court held that it was not necessary to determine whether there had been a violation of Article 9.

Decision documents

[Case of Al-Nashif v. Bulgaria](#)

Outcome

The Court dismissed the objections of the Government and held that there had been a breach of Articles 5 § 4, 8 and 13.

Caselaw cited

Varbanov v. Bulgaria [2000], 31365/96

Jasper v. the United Kingdom [2000], 27052/95

K. and T. v. Finland [GC] [2001], 25702/94

Berrehab v. the Netherlands [1998], 10730/84

Hokkanen v. Finland [1994], 19823/92

Gül v. Switzerland [1996], 23218/94

Cialis v. the Netherlands [2000], 29192/95

Kroon and Others v. the Netherlands [1994], 18535/91

X, Y, and Z v. the United Kingdom [1997], 75/1995/581/667

Boultif v. Switzerland [2000], 54273/00

Amann v. Switzerland [GC] [2000], 27798/95

Rotaru v. Romania [GC] [2000], 28341/95

Hasan and Chaush v. Bulgaria [GC] [2000], 30985/96

Klass and Others v. Germany [1998], 5029/71

P.G. and J.H. v. the United Kingdom [2001], 44787/98

Čonka v. Belgium [2002], 51564/99

Kudła v. Poland [GC] [2000], 30210/96

T.P. and K.M. v. the United Kingdom [GC] [2001], 28945/95

Nikolova v. Bulgaria [GC] [1999], 31195/96

De Wilde, Ooms and Versyp v. Belgium, Application Nos. 2832/66, 2835/66 and 2899/66

Winterwerp v. the Netherlands, Application No. 6301/73

Hewitt and Harman v. the United Kingdom, Application no. 20317/92

Kurt v Turkey, Application no. 24276/94

Chapman v The United Kingdom, Application no. 27238/95

Chahal v. The United Kingdom, Application no. 22414/93, 15 November 1996

Tinnelly v. the United Kingdom 10 July 1998

Shebashov v. Latvia, 9 November 2000, no. 50065/99