



ECtHR- H.S. and Others v. Cyprus

Fourteen Syrian nationals of Kurdish origin and two stateless Kurds had their asylum applications rejected in Cyprus, on grounds of the accounts being either unsubstantiated, lacking credibility or, on the respective facts, being insufficient to establish a real risk of persecution. The applicants were arrested, detained, deported, and subjected to imprisonment for protesting the Government's restrictive asylum policies. The grounds for deportation related to illegal entry and illegal stay. The applicants claimed that they had not received these orders but were informed orally of their deportation.

Case status: Decided

Case number: Application no. 41753/10 and 13 other applications

Citation: European Court of Human Rights, Mainov v. Russia [2018] (Application no. 11556/17), 21 October 2015

Date of decision: 21/10/2015

State: Cyprus

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: English

Applicant's country of birth: Syria

Applicant's country of residence: Cyprus

Legal instruments: European Union law, Other international law

Key aspects: Deportation and removal, Statelessness and asylum

Relevant Legislative Provisions:

European Convention on Human Rights, Article 4, 5, and 13.

EU Returns Directive, Directive 2008/115/EC of 16 December 2008.

Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council

Facts

The case is concerned with fourteen asylum applications filed by Syrian nationals of Kurdish origin and two stateless Kurds belonging to the Ajanib Minority Group, respectively M.S. and A.M. M.S, filed his asylum claim on grounds of political involvement of the Yetiti party in Syria and the Qamishli events. His application was closed, and never examined by the Asylum Service, as he did not attend his scheduled interview, because he had failed to inform the authorities about a change of address and correct phone number. His appeal was denied by the Reviewing Authorities as it had been made on the wrong grounds. A.M, who filed his asylum application on grounds of denial of access to education, work, and property based of his ethnic origin, had the substance of his claim examined by both the Asylum Service and the Reviewing Authority but had his asylum claim rejected.

In 2010, the applicants, together with a bigger group of Kurds from Syria, protested the restrictive asylum policies before the Cypriot Government. Consequently, the Cypriot authorities removed all protesters, detained them, and subsequently arrested and served them with deportation orders. The grounds of deportation related to illegal entry and stay. The applicants claimed that they had not received these orders but were orally informed of their deportation. Following the lift of the deportation orders, which was granted following a Rule 39 request, the applicants were deported to Syria and M.S. was sentenced to two months and A.M. was sentenced to six months imprisonment. In both cases the applicants complained of a violation of Article 3, Article 13 read in conjunction with Article 3, as well as Article 5 para 1, 2, 4, and Article 4 of Protocol No. 4.

Legal arguments by the applicant

Violation of Article 3 alone, and in conjugation with Article 13

Relying on Article 3 of the Convention, the applicants complained about their deportation to Syria. The applicants raised the risk of persecution by reason of their Kurdish origin, as Kurds in Syria were members of a generally oppressed minority whose human rights were systematically violated. A.M. and M.S. both pointed out that being stateless Ajanib's they were not allowed passports, could not vote or own property and were forbidden from working in the public sector and in many professions. They further complained, under Article 13 in conjunction with Article 3, that they did not have an effective domestic remedy against their intended deportation.

Violation of Article 5 § 4

The applicants complained that they did not have an effective remedy at their disposal to challenge the lawfulness of their detention. They claimed that recourse proceedings before the Supreme Court against deportation and detention orders were excessively long and did not respect the requirement of speediness.

Violation of Article 5 § 1

The applicants further complained that their detention had been unlawful due to its long nature. They had then been detained based on detention and deportation orders which had been issued on the same day. They argued that the authorities ought to have released them on conditions or granted temporary residence permits on humanitarian grounds pending examination by the Court, instead of detaining them until deportation. Moreover, they claimed they had been arrested and detained as punishment for demonstrating against the Government, because as A.M. and M.S. are stateless, they should not have been deported as the instructions given by the Minister of the Interior did not apply to failed asylum seekers with stateless status.

Violation of Article 4 Protocol 4

The applicants complained of a violation of Article 4 of Protocol No. 4 in that the authorities were going to deport them and others collectively without having carried out an individual assessment and examination of their case.

Legal arguments by the opposing party

Violation of Article 5 § 4

The Government submitted that the applicants had not exhausted domestic remedies as they had failed to lodge a recourse under Article 146 of the Constitution challenging the lawfulness of the decision to detain and deport them.

Violation of Article 5 § 1

The Government maintained that the applicants had been detained lawfully during the relevant period with a view to their deportation, as established by domestic law. The applicants had been “prohibited immigrants” as they had stayed in the Republic unlawfully after the rejection of their asylum applications.

Decision & Reasoning

Article 3 and Article 13 in conjugation with Article 3

The Court held that at the time there was no indication that the general situation in Syria for Kurds was so serious that the return of the applicants thereto would constitute, in itself, a violation of Article 3. It also underlined that applying for asylum abroad would lead to prosecution or other forms of persecution in Syria if returned. In terms of Article 13 in conjugation with Article 3, the Court split the M.S. and A.M into two groups, arguing that the first group, to which M.S. belonged, did not exhaust all domestic remedies. Noting that the asylum procedures in Cyprus allow for an appeal to the Reviewing Authority, the Court pointed out that the applicants had either not attended scheduled interviews or had not filed an appeal against the rejected asylum decision. The second group, to which A.M belonged, the Court argued related to the alleged violation of Article 3 in the event of expulsion, that there was no need to examine the exhaustion of domestic remedies as the threshold of Article 3 had not been met. Consequently, applicants had failed to establish that there were substantial grounds for believing that they would be exposed to a real risk of treatment contrary to Article 3, and therefore the claims under Article 3 and 13 were ill-founded.

Article 5 para 4

The Court found that there has been a violation of Article 5 § 4, as the deportation did not comply with the requirement of “speediness”.

Article 5 para 1

The Court was satisfied that the deprivation of liberty of the five applicants during the relevant period fell within the ambit of Article 5 § 1 (f) of the Convention as they were detained for the purpose of being deported from Cyprus. The Court found that M.S. and A.M. had been subject to detention for an unjustified prolonged period in which the authorities had not demonstrated the requisite due diligence to end the detention as reasonably as possible.

Article 5 para 2 and 4 and Article 4 Protocol 4

With regards to Article 5 para 2 and Article 4 Protocol 4 the Court, as in *MA v Cyprus*, declined to accede to the applicants’ arguments, rejecting that a violation had occurred on these grounds.

Article 4 Protocol 4

The Court recalls that there had not been a violation of Article 4 of Protocol No. 4 as it was not persuaded that the measure taken by the authorities revealed the appearance of a collective expulsion within the meaning of this provision.

Decision documents

[Case of H.S. and Others v. Cyprus](#)

Outcome

The Court held that there had been a violation of Article 5 para 4 of the Convention in so far as the applicants' arrest and detention in June 2010 following their transfer to and stay at the ERU headquarters is concerned. The Court held that there had been a violation of Article 5 para 1 as the applicants were not deported to Syria until December. No violation of Article 5 para 2, and Article 4 of Protocol No. 4 was found.

Caselaw cited

Mannai v. Italy, Application no. 9961/10

[Sufi and Elmi v. the United Kingdom, Application Nos. 8319/07 and 11449/07](#)

[Chahal v the United Kingdom \(Application no. 22414/93\)](#)

Mamatkulov Askarov v Turkey, Applications nos. 46827/99 and 46951/99

Hilal v United Kingdom, Application no. 45276/99

Conka v Belgium (Application no. 51564/99)

Collins and Akaziebe v Sweden (Application no. 23944/05)

Raza v. Bulgaria, Application No. 31465/08

[NA v UK, Application No. 25904/07](#)

[Hirsi Jamaa and Others v Italy \[GC\], Application No. 27765/09](#)

Boyle and Rice v. the United Kingdom, Application Nos. 9659/82 and 9658/82

N. v. Finland, Application No. 38885/02

[M.A. v Cyprus, Application No. 41872/10](#)

M.E. v. Denmark, Application no. 58363/10

Matsiukhina and Matsiukhin v. Sweden, Application No. 31260/04

[Gebremedhin \(Gaberamadhien\) v France, Application No. 25389/05](#)

[A. A. M. v. Sweden, Application No. 68519/10](#)

Keshmiri v. Turkey (no. 2), Application No. 22426/10 (UP)

Vučković and others v. Serbia (no. 17153/11)

IS.P. v. Belgium, Application No 12572/08

Vilvarajah and Others v. the United Kingdom, Application Nos. 3163/87 13164/87
13165/87 13447/87 13448/87

[R.C. v. Sweden, Application no. 41827/07, 9 June 2010](#)

Vallianatos and Others v. Greece [GC], nos. 29381/09 and 32684/09

A and M. v. the Netherlands, Application no. 50386/12

[Saadi v Italy, Application no. 37201/06](#)