ΚΥΠΡΙΑΚΗ ΔΗΜΟΚΡΑΤΙΑ
ΝΟΜΙΚΗ ΥΠΗΡΕΣΙΑ ΤΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

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19 Ιανουαρίου 2022

Τομέας Ατομικών
Δικαιωμάτων/Ελευθεριών
Νομικής Υπηρεσίας
(διεθνής πτυχή)

ΜΕ ΤΟ ΧΕΡΙ

Παγκύπριο Δικηγορικό Σύλλογο
Κοινοβουλευτική Επιτροπή Νομικών
Κοινοβουλευτική Επιτροπή Ανθρωπίνων Δικαιωμάτων

Θέμα: Απόφαση Ευρωπαϊκού Δικαστηρίου Ανθρωπίνων Δικαιωμάτων στην ατομική προσφυγή *Monir Lotfy v. Cyprus* (App no. 37139/13)

Ι. Εισαγωγή

Επισυνάπτω για ενημέρωση απόφαση του Ευρωπαϊκού Δικαστηρίου Ανθρωπίνων Δικαιωμάτων (από τούδε «το Δικαστήριο») σε ατομική προσφυγή που στρεφόταν κατά της Κυπριακής Δημοκρατίας, η οποία κατέστη τελεσίδικη στις 29 Σεπτεμβρίου 2021. Το Δικαστήριο προέβη σε εύρημα παραβίασης του Άρθρου 3 της Ευρωπαϊκής Σύμβασης Ανθρωπίνων Δικαιωμάτων (από τούδε «η Σύμβαση») γιατί οι συνθήκες κράτησης του αιτητή στον Χώρο Κράτησης Απαγορευμένων Μεταναστών (ΧΩ.Κ.Α.Μ) Μενόγειας (λόγω της έλλειψης προσωπικού χώρου), κατά τα χρονικά διαστήματα 18/02/2013 - 06/07/2013 και 30/09/2013 – 08/07/2014, συνιστούσαν ταπεινωτική μεταχείριση. Περαιτέρω, το Δικαστήριο προέβη σε εύρημα παραβίασης του Άρθρου 5 § 1 της

Σύμβασης λόγω του ότι η κράτηση του αιτητή από τις 11 Ιουλίου 2013 μέχρι την απέλασή του στις 8 Ιουλίου 2014 ήταν αυθαίρετη, κατά την έννοια της προαναφερθείσας διάταξης της Σύμβασης.

II. Γεγονότα

Ο αιτητής είναι Αιγύπτιος υπήκοος ο οποίος εισήλθε στην Κύπρο το 1991. Μεταξύ των ετών 1991 και 2012 απελάθηκε από τη χώρα δύο φορές. Παρόλο που του χορηγήθηκε η Κυπριακή υπηκοότητα, αυτή στη συνέχεια ανακλήθηκε και η διαδικασία που άσκησε για να προσβάλει αυτήν την απόφαση ήταν ανεπιτυχής. Μετά την ανάκληση της ιθαγένειάς του και τη δεύτερη απέλασή του τον Ιούνιο του 2012, ο αιτητής επανεισήλθε στη συνέχεια παράνομα στην Κύπρο σε απροσδιόριστη ημερομηνία. Στις 10 Φεβρουαρίου 2013 ο αιτητής συνελήφθη κατά τη διάρκεια τυχαίου ελέγχου στο δρόμο και την επομένη εκδόθηκαν εναντίον του διατάγματα κράτησης και απέλασης στη βάση του άρθρου 14(6) του *περί Αλλοδαπών και Μεταναστεύσεως Νόμου* επειδή κρίθηκε ως απαγορευμένος μετανάστης δυνάμει του άρθρου 6(1) (κ) του ίδιου νόμου. Τέθηκε αρχικά υπό κράτηση στις Κεντρικές Φυλακές Λευκωσίας και στις 18 Φεβρουαρίου 2013 μεταφέρθηκε στον ΧΩ.Κ.Α.Μ Μενόγειας. Ο αιτητής δεν είχε στην κατοχή του διαβατήριο.

Στις 11 Ιουλίου 2013 ο αιτητής καταχώρησε αίτηση φύσεως *habeas corpus* στο Ανώτατο Δικαστήριο αμφισβητώντας τη νομιμότητα της κράτησης του λόγω του παρατεταμένου της κράτησής του. Στις 30 Ιουλίου 2013 το Ανώτατο Δικαστήριο αποφάσισε υπέρ του αιτητή διατάσσοντας την άμεση απόλυσή του.[1] Ο αιτητής επανασυλλήφθηκε την ίδια μέρα της έκδοσης της πιο πάνω απόφασης, στη βάση νέων διαταγμάτων κράτησης και απέλασης που εκδόθηκαν δυνάμει του *περί Αλλοδαπών και Μεταναστεύσεως Νόμου*. Μεταφέρθηκε πίσω στις Κεντρικές Φυλακές Λευκωσίας. Στις 19 Σεπτεμβρίου 2013 ο Υπουργός Εσωτερικών επανεξέτασε την κράτηση του αιτητή και αποφάσισε να την παρατείνει για επιπλέον έξι μήνες στη βάση του άρθρου 18ΠΣΤ του *περί Αλλοδαπών και Μεταναστεύσεως Νόμου*, λόγω του ότι ο αιτητής αρνήθηκε να συνεργαστεί με τις αρχές για την επιστροφή του στην Αίγυπτο. Εν τω μεταξύ, στις 8 Σεπτεμβρίου 2013 ο αιτητής μεταφέρθηκε στο αστυνομικό τμήμα Πόλης Χρυσοχούς. Αργότερα, στις 12 Σεπτεμβρίου 2013, μεταφέρθηκε στο αστυνομικό τμήμα Αγίας Νάπας και, εν τέλει, στις 30 Σεπτεμβρίου 2013 στον ΧΩ.Κ.Α.Μ. Μενόγειας, όπου παρέμεινε μέχρι την απέλασή του στις 8 Ιουλίου 2014.[2]

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[1] Βλ. παράγραφο 13 της απόφασης.
[2] βλ. παράγραφο 45 της απόφασης.

Στις 27 Σεπτεμβρίου 2013 ο αιτητής καταχώρησε δεύτερη αίτηση φύσεως *habeas corpus* στο Ανώτατο Δικαστήριο αμφισβητώντας τη νομιμότητα της κράτησής του για τους ίδιους λόγους όπως και στην πρώτη του αίτηση. Στις 28 Ιανουαρίου 2014 το Ανώτατο Δικαστήριο απέρριψε την αίτηση, θεωρώντας ότι η κράτηση του αιτητή ήταν νόμιμη.

Στις 27 Ιανουαρίου 2014, ενώ βρισκόταν υπό κράτηση, ο αιτητής ζήτησε άσυλο με το σκεπτικό ότι, ως Κόπτης Χριστιανός (Coptic Christian), φοβόταν δίωξη εάν επέστρεφε στην Αίγυπτο. Στις 12 Φεβρουαρίου 2014 η Υπηρεσία Ασύλου απέρριψε την αίτηση με το αιτιολογικό ότι οι ισχυρισμοί του αιτητή δεν ήταν αξιόπιστοι και ότι δεν είχε δείξει βάσιμο φόβο δίωξης, λαμβάνοντας επίσης υπόψη ότι ο αιτητής κατά την παραμονή του στην Κύπρο επισκέφθηκε την Αίγυπτο δεκαπέντε με είκοσι φορές. Στις 14 Φεβρουαρίου 2014 ο αιτητής υπέβαλε προσφυγή κατά της απόφασης της Υπηρεσίας Ασύλου, αλλά απορρίφθηκε στις 9 Ιουνίου 2015. Στις 8 Ιουλίου 2014 ο αιτητής απελάθηκε στην Αίγυπτο αφού οι αιγυπτιακές αρχές συμφώνησαν να εκδώσουν ταξιδιωτικό έγγραφο χωρίς τη συγκατάθεσή του.

III. Συνθήκες κράτησης του αιτητή στον ΧΩ.Κ.Α.Μ. Μενόγειας - Ισχυριζόμενη παραβίαση του Άρθρου 3 της Σύμβασης

Το Δικαστήριο, αφού απέρριψε, ως προδήλως αβάσιμα και άρα μη αποδεκτά, σειρά παραπόνων του αιτητή (σχετικά με τις υλικές συνθήκες κράτησής του στις άλλες εγκαταστάσεις, την απομόνωση και την έλλειψη πρόσβασης σε ιατρική περίθαλψη) στη βάση του άρθρου 35 §§ 3 (α) και 4 της Σύμβασης, αποδέχτηκε να εξετάσει μόνο το παράπονό του αναφορικά με τις συνθήκες κράτησης (λόγω έλλειψης προσωπικού χώρου) στον ΧΩ.Κ.Α.Μ. Μενόγειας.

Αρχικά, το Δικαστήριο αναφέρθηκε στις γενικές αρχές που συνοψίζονται στη νομολογία του σχετικά με τις ανεπαρκείς συνθήκες κράτησης.[3] Εν συνεχεία, αναφορά έγινε σε έκθεση της Ευρωπαϊκής Επιτροπής Πρόληψης Βασανιστηρίων (Committee for the Prevention of Torture; CPT), όπου αναγνωρίζεται το γενικό πρόβλημα ανεπαρκούς προσωπικού χώρου ανά κρατούμενο στον ΧΩ.Κ.Α.Μ. Μενόγειας, σημειώνοντας ότι οι συνθήκες διαβίωσης ήταν περιορισμένες - έως και οκτώ άτομα κρατούνταν σε κελιά περίπου 17 τ.μ. μόνο, δηλαδή λίγο πάνω από 2 τ.μ. ζωτικού χώρου ανά κρατούμενο.[4]

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[3] Βλ. *Muršić v. Croatia* [GC], app no.7334/13, paras 96-141, (20 Οκτωβρίου 2016).

[4] Βλ. παράγραφο 102 της απόφασης. Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 1 October 2013, CPT/Inf (2014) 31, para 37.

Με βάση στοιχεία που κατέθεσε η Κυβέρνηση, το Δικαστήριο σημείωσε ότι, ανάλογα με τον αριθμό των κρατουμένων που κρατούνταν μαζί του, ο αιτητής θα είχε από 2,29 έως 4,59 τ.μ. προσωπικού χώρου. Κατά τη διάρκεια της κράτησής του, ο αιτητής κρατήθηκε με έως και επτά άλλους κρατούμενους. Επομένως, σε τέτοιες περιπτώσεις, ο αιτητής θα είχε μόλις 2,29 τ.μ. προσωπικό χώρο, ο οποίος ήταν σαφώς κάτω από το αποδεκτό ελάχιστο επίπεδο. Λαμβάνοντας λοιπόν υπόψη τις σχετικές αρχές που διατυπώνονται στη νομολογία του, το Δικαστήριο έκρινε ότι στην παρούσα υπόθεση προκύπτει ισχυρό τεκμήριο παραβίασης του άρθρου 3 της Σύμβασης.[5]

Καθώς η Κυβέρνηση δεν παρείχε αναλυτικά στοιχεία σε σχέση με τον αριθμό των κρατουμένων που κρατούνταν με τον αιτητή στο κελί καθ' όλη τη διάρκεια της κράτησής του, απέτυχε να αποδείξει ότι οι μειώσεις στον απαιτούμενο προσωπικό χώρο του αιτητή υπήρξαν μόνο σύντομες, περιστασιακές και μικρές.[6] Κατά συνέπεια, το Δικαστήριο έκρινε ότι υπήρξε παραβίαση του άρθρου 3 της Σύμβασης λόγω των συνθηκών κράτησης του αιτητή στον ΧΩ.Κ.Α.Μ. Μενόγειας καθώς λόγω των συνθηκών κράτησης του, ο αιτητής υποβλήθηκε σε ταλαιπωρία που ξεπερνούσε το αναπόφευκτο επίπεδο οδύνης που είναι εγγενές στην κράτηση, ισοδυναμώντας έτσι με ταπεινωτική μεταχείριση που απαγορεύεται από το άρθρο 3.[7]

IV. Ισχυριζόμενη παραβίαση του Άρθρου 5 § 1 της Σύμβασης αναφορικά με τη νομιμότητα της κράτησης του αιτητή

Ο αιτητής ισχυρίστηκε ότι η κράτησή του από τις 11 Φεβρουαρίου 2013 μέχρι την απέλασή του στις 8 Ιουλίου 2014 ήταν παράνομη και επομένως παραβίαζε το άρθρο 5 § 1 (f) της Σύμβασης.

Αρχικά το Δικαστήριο σημείωσε ότι στις 30 Ιουλίου 2013 το Ανώτατο Δικαστήριο διέταξε την άμεση αποφυλάκιση του αιτητή στη βάση του ότι η Κυβέρνηση απέτυχε να αποδείξει ότι η συνεχιζόμενη κράτησή του για περισσότερο από πέντε μήνες ήταν νόμιμη. Παρ' όλα αυτά, ο αιτητής στην πραγματικότητα δεν κατόρθωσε να ανακτήσει την ελευθερία του καθώς επανασυλλήφθηκε στη βάση νέων διαταγμάτων κράτησης και απέλασης.[8] Το Δικαστήριο σημείωσε επίσης ότι, παρά την απόφαση του Ανωτάτου Δικαστηρίου, και εν αντιθέσει με την ετυμηγορία αυτού, η Διευθύντρια του Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης αποφάσισε ότι η συνεχιζόμενη κράτηση του

[5] βλ. παράγραφο 183 της απόφασης.
[6] βλ. παράγραφο 184 της απόφασης.
[7] βλ. παραγράφους 185-186 της απόφασης.
[8] βλ. παράγραφο 207 της απόφασης.

αιτητή ήταν νόμιμη, παρακάμπτοντας έτσι την προηγούμενη απόφαση του Ανωτάτου Δικαστηρίου.

Το Δικαστήριο θεώρησε αξιοσημείωτο το γεγονός ότι η Διεθνής Αμνηστία στην έκθεσή της το 2012 σχετικά με την κράτηση μεταναστών και αιτητών ασύλου στην Κύπρο είχε εκφράσει ανησυχία για μια σειρά υποθέσεων στις οποίες επιτυχείς αμφισβητήσεις κατά της κράτησης μεταναστών είχαν δημιουργηθεί μέσω αιτήσεων φύσεως *habeas corpus*, αλλά δεν είχαν οδήγησε στην απελευθέρωση των ενδιαφερόμενων συλληφθέντων, όπως είχε διατάξει το Ανώτατο Δικαστήριο.[9] Αντιθέτως, τα ενδιαφερόμενα άτομα είχαν συλληφθεί εκ νέου πριν φύγουν από το κτίριο του Ανωτάτου Δικαστηρίου ή αμέσως μετά, στη βάση νέων διαταγμάτων κράτησης που εκδόθηκαν για τους ίδιους λόγους με αυτά που αναφέρθηκαν σε σχέση με τα προηγούμενα διατάγματα κράτησης.[10] Ως προς αυτό, αναφορά έγινε και στην υπόθεση *Haghilo* v. Cyprus.[11]

Εν συνεχεία, το Δικαστήριο αναγνώρισε το γεγονός ότι όταν μια αίτηση φύσεως *habeas corpus* γίνει αποδεκτή από το Ανώτατο Δικαστήριο, τότε το Υπουργείο Εσωτερικών οφείλει να απελευθερώσει το ενδιαφερόμενο άτομο άμεσα.[12] Στη βάση αυτού, ο αιτητής στην προκειμένη υπόθεση έπρεπε να είχε αποφυλακιστεί χάρη στη σχετική απόφαση του Ανωτάτου Δικαστηρίου, η οποία έθετε τέλος στην κράτησή του. Το γεγονός ότι ο αιτητής παρέμενε παράτυπος μετανάστης σύμφωνα με το εθνικό δίκαιο δεν θα μπορούσε να έχει καμία επίπτωση στην πιο πάνω απόφαση.[13]

Συνεπώς, το Δικαστήριο έκρινε ότι η κράτηση του αιτητή μέχρι και την απέλασή του ήταν αυθαίρετη υπό την έννοια του άρθρου 5 § 1 της Σύμβασης. Ως εκ τούτου, υπήρξε παραβίαση της ανωτέρω διάταξης.

V.Εύλογη Αποζημίωση

Το Δικαστήριο επιδίκασε στον αιτητή αποζημίωση μη χρηματικής φύσεως ύψους 26,000 ευρώ και δικηγορικά έξοδα ύψους 4,867.99.

Θεοδώρα Χριστοδουλίδου

Δρ. Θεοδώρα Χριστοδουλίδου
Δικηγόρος της Δημοκρατίας Α
για Γενικό Εισαγγελέα της Δημοκρατίας

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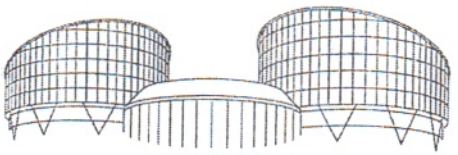
[9] βλ. παράγραφο 209 της απόφασης.
[10] βλ. παράγραφο 105 της απόφασης.
[11] *Haghilo v Cyprus* app no 47920/12, απόφαση ημερ. 26 Μαρτίου 2019, κατέστη τελεσίδικη στις 26 Ιουνίου 2019.
[12] βλ. παράγραφο 210 της απόφασης.
[13] βλ. παράγραφο 210 της απόφασης.



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

THIRD SECTION

CASE OF MONIR LOTFY v. CYPRUS

(Application no. 37139/13)

JUDGMENT

Art 3 • Degrading treatment • Reductions in required minimum personal space at specialised immigration detention centre not short, occasional and minor
Art 5 § 1 (f) • Expulsion • Arbitrariness of applicant's continued detention with a view to his deportation after habeas corpus writ ordering his immediate release

STRASBOURG

29 June 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Monir Lotfy v. Cyprus,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Georges Ravarani,
María Elósegui,
Darian Pavli,
Anja Seibert-Fohr,
Andreas Zünd, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application 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 an Egyptian national, Mr Nashat Monir Lotfy ("the applicant"), on 3 June 2013;

the decision to give notice to the Cypriot Government ("the Government") of the complaints concerning Article 3 and Article 5 §§ 1 and 4, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 8 June 2021,

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

INTRODUCTION

1. The applicant complained that his detention with a view to his deportation had been unlawful and that there had been no available remedies for challenging that detention; he also complained of the conditions of his detention, the lack of access to medical treatment and that he had been ill-treated while in detention. He relied on Article 3 and Article 5 §§ 1 and 4 of the Convention.

THE FACTS

2. The applicant was born in 1963 and is currently living in Egypt. He was represented by Ms N. Charalambidou, a lawyer practising in Nicosia.

3. The Government were represented by their Agent at the time, Mr C. Clerides, Attorney General of the Republic of Cyprus, and then by Mr G. Savvides, his successor in that office.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

THE CIRCUMSTANCES OF THE CASE

A. Background to the case

5. The applicant has a protracted immigration history with the Cypriot authorities after first coming to Cyprus in 1991. Between 1991 and 2012 he was deported twice. Furthermore, although he was also granted Cypriot citizenship this was subsequently revoked and the proceedings he brought to challenge this decision were unsuccessful.

B. The applicant's arrest on 10 February 2013 and immigration detention from 11 February 2013 until 30 July 2013

6. Following the revocation of his citizenship and his second deportation in June 2012, the applicant subsequently re-entered Cyprus unlawfully on an unspecified date.

7. On 10 February 2013 the applicant was arrested by the police during a random identity check in the street and, the following day, detention and deportation orders were issued against him under section 14(6) of the Aliens and Immigration Law (Cap. 105, as amended) on the grounds that he was a prohibited immigrant within the meaning of section 6(1)(i), (k) and (l) of that Law (see *Haghilo v. Cyprus*, no. 47920/12, §§ 97 and 99, 26 March 2019, and *M.A. v. Cyprus*, no. 41872/10, §§ 62-63, ECHR 2013 (extracts)). He was placed in detention in Block 10 of Nicosia Central Prisons.

8. On 18 February 2013 he was transferred to Menoyia detention centre.

9. On 19 June 2013 the Minister of the Interior reviewed the applicant's detention and decided to extend it for an additional six months under section 18ΠΣΤ(8)(a) of the Aliens and Immigration Law (see *Haghilo*, cited above, §§ 100-01). According to the internal notes in the case file, it appears that the applicant did not have a passport and that instructions had been given for the issuance of a travel document so he could be deported. It was also stated that he had not been cooperating with the authorities for the issuance of a passport.

10. On 6 July 2013 the applicant was transferred to Aradippou police station where he remained until 18 July 2013. On 19 July 2013 he was transferred to Block 10 of Nicosia Central Prisons.

C. The applicant's first application for a writ of habeas corpus

11. On 11 July 2013 the applicant lodged a habeas corpus application (application no. 139/2013) with the Supreme Court (as the first-instance court) challenging the lawfulness of his detention owing to the length of its duration. In particular, he argued that his detention had been unlawful, as it had lasted for more than five months, and that during this period the

authorities had taken no action in respect of his deportation to Egypt in breach of, *inter alia*, section 18ΠΣΤ of the Aliens and Immigration Law (ibid.) and Article 5 § 1 (f) of the Convention.

12. The government did not submit an objection to his application. On the day of the hearing, the government's lawyer informed the court that the person who had been meant to give him information on the facts of the case had been on leave and therefore the lawyer had not been able to prepare the objection.

13. On 30 July 2013 the Supreme Court ruled in favour of the applicant and ordered his immediate release. The court found that the government had failed to show that his continuing detention for more than five months had been lawful: they had not informed the court as to the steps they had taken up to that point to execute the deportation order, or the reasons why it had not been carried out. Moreover, the government had failed to inform the court whether the Minister of the Interior had reviewed the detention order (as required by section 18ΠΣΤ of the Aliens and Immigration Law) or, if the Minister had done so, what his decision had been. It thus concluded that the government had not provided any justification for keeping the applicant in detention.

14. The government did not lodge an appeal against this judgment.

D. The applicant's second arrest on 30 July 2013

15. On the same day, 30 July 2013, following the Supreme Court's judgment, the applicant, while still at the court, was rearrested and taken back to Block 10 of Nicosia Central Prisons.

16. In an internal note of the same date, the Director of the Civil Registry and Migration Department ("the Director") stated that she had carefully examined the applicant's file after being informed by the police that a habeas corpus had been ordered for his release. She noted that the application had only been served on the Ministry of the Interior on 15 July 2013 and had been received by her department on 22 July 2013 during her absence on leave. No actions had then been taken to prepare a statement of fact for the lawyer representing the government in the habeas corpus proceedings to inform him of the Minister's decision of 19 June 2013 (see paragraph 9 above) and of the reasons for which the applicant had not yet been deported, namely, the applicant's refusal to surrender his passport and/or to visit his country's embassy in order to secure a temporary travel document. She also observed that the lawyer had only asked for a copy of the orders. Following her re-examination of the case, she concluded that the applicant's detention had been lawful and that it had been unfortunate that the Supreme Court had not received information on the case because, if it had, it would possibly have decided differently. She also noted that, in any event, the applicant was a prohibited immigrant, without the right to stay in

the Republic and that he had been arrested following his unlawful re-entry into Cyprus after already having been deported when his Cypriot citizenship had been revoked on serious grounds. On the basis of the above, the Director gave instructions that the previous deportation and detention orders be annulled and that new ones be issued.

17. Consequently, new deportation and detention orders were issued in respect of the applicant on 30 July 2013 on the same grounds as those cited in the first deportation and detention orders – that is to say, under sections 6(1)(i), (k) and (l) and 14(6) of the Aliens and Immigration Law (see paragraph 7 above). On that date, the applicant was served with a letter from the Director informing him that he was an illegal immigrant within the meaning of the above sections on the grounds of his previous deportation and his illegal entry and stay in the Republic of Cyprus and of her decision to detain and deport him.

18. On 19 September 2013 the Minister of the Interior reviewed the applicant's detention and decided to extend it for an additional six months under section 18ΠΣΤ(8)(a) of the Aliens and Immigration Law (see *Haghilo*, cited above, §§ 100-01) on the ground that the applicant had refused to cooperate with the authorities for his return to Egypt.

19. In the meantime, on 8 September 2013 the applicant was transferred to Polis Chrysochous police station. On 12 September 2013 he was transferred to Ayia Napa police station and then on 30 September 2013 to Menoyia detention centre.

E. The applicant's second application for a writ of habeas corpus

20. On 27 September 2013 the applicant lodged a second habeas corpus application (application no. 183/13) with the Supreme Court (as the first-instance court) challenging the lawfulness of his detention on the same grounds as in his first application (see paragraph 11 above).

21. On 28 January 2014 the Supreme Court rejected the application. The court observed that the applicant's detention had started on 11 February 2013 and had continued ever since. His release effected on 30 July 2013 in application of the habeas corpus writ of that date did not strike out the previous period of detention and did not affect its total duration, given that the applicant remained in detention for the same reasons. In the meantime, the duration of his detention had been reviewed on 19 June 2013 by the Minister of the Interior who had approved its extension for another six months. Following the issuance of the new deportation and detention orders on 30 July 2013, the Minister of the Interior had further extended his detention on 19 September 2013. The court also noted that the government had been trying to acquire a travel document for the applicant from the Egyptian embassy. There had, however, been a delay due both to the unsettled situation in Egypt and also to the applicant's refusal to cooperate.

The applicant's detention had been extended on both the above dates on the basis of the latter ground as specified in the Minister's decisions. His detention was therefore lawful. Costs were awarded against the applicant.

F. Subsequent reviews of the applicant's detention by the Minister of the Interior

22. The Minister of the Interior reviewed the applicant's detention on 5 February, 2 April and 4 June 2014 and decided to extend it on the same grounds as those cited in respect of the previous decisions (see paragraphs 9 and 18 above).

23. On 8 July 2014 the applicant was deported to Egypt after the Egyptian authorities agreed to issue a travel document without his consent.

G. The applicant's recourse challenging the deportation and detention orders of 30 July 2013

24. In the meantime, on 7 August 2013 the applicant brought a recourse (judicial review proceedings; recourse no. 5848/13) before the Supreme Court (in its first-instance revisional jurisdiction) challenging the lawfulness of the new deportation and detention orders issued on 30 July 2013 on the basis of which he had been rearrested and detained. He argued that the orders had been issued in breach of, *inter alia*, the provisions of the Aliens and Immigration Law and of Articles 3, 5, 8 and 13 of the Convention.

25. On 8 August 2013, in the context of this recourse, the applicant applied to the Supreme Court for a provisional order for the suspension of the deportation and detention orders until the determination of the recourse. He claimed that, as a Coptic Christian, he would be at real risk of ill-treatment if deported: Muslim groups in Egypt had systematically attacked Coptic Christians in response to the political events there.

26. On 14 August 2013, at the hearing concerning the provisional order, the government informed the Supreme Court that the deportation order had been suspended by the Director in order to examine the applicant's claim. On the same day, the Supreme Court ruled that, in the light of the suspension of the deportation order, the applicant's detention was no longer justified. It thus also ordered the suspension of the detention order on condition, *inter alia*, that the applicant sign a financial guarantee for the sum of 10,000 euros (EUR) with a guarantor. The applicant submitted that, as he had been unable to find a guarantor, he had remained in detention.

27. On 4 October 2013 the Director lifted the suspension of the deportation order as the applicant had not lodged an asylum application.

28. On 7 November 2013 the Supreme Court rejected the application for the provisional order as the applicant had not shown flagrant illegality or irreparable damage (see *M.A. v. Cyprus*, cited above, § 71). In sum, the

court noted that the applicant had been declared a prohibited immigrant and had thus been deprived of his right to remain in the Republic. Consequently, there was an immediate risk of him absconding. Under section 18Ο∆ of the Aliens and Immigration Law, "a risk of absconding" meant the existence of reasons in an individual case to believe that a third-country national who was subject to a return procedure could abscond, and this included prior deportation/expulsion. Consequently, it held that no flagrant illegality could be ascertained in the Director's action to proceed with the issuance of the orders of 30 July 2013. Flagrant illegality had to be palpably identifiable without the court having to probe into disputed facts. None of the applicant's remaining allegations concerning the orders established flagrant illegality but concerned the merits of the case or allegations that had been contested and would have to be proven in the context of the main recourse.

29. The recourse was subsequently transferred to the new Administrative Court (see *Haghilo*, cited above, §§ 103 and 105), which dismissed it on 31 August 2017. It held that as the deportation and detention orders had, in the meantime, been executed and the applicant deported, the recourse was without object.

H. The applicant's asylum claim

30. On 27 January 2014, while in detention, the applicant applied for asylum on the ground that, as a Coptic Christian, he feared persecution if returned to Egypt.

31. On 12 February 2014 the Asylum Service rejected the application on the grounds that the applicant's claims were not credible and that he had failed to show a well-founded fear of persecution taking into consideration the fact that he had visited Egypt fifteen to twenty times during his stay in Cyprus.

32. On 14 February 2014 the applicant lodged an appeal with the Reviewing Authority for Refugees against the Asylum Service's decision. This was dismissed on 9 June 2015, that is, after the applicant's deportation.

I. Steps taken by the Cypriot authorities with a view to removing the applicant, as submitted by the Government

33. On 7 and 13 March 2013 the applicant had been interviewed by members of the Police Aliens and Immigration Unit but he had refused to leave Cyprus or to visit the Egyptian embassy in order to apply for a travel document.

34. On 19 March 2013 the Police Aliens and Immigration Unit had contacted the Egyptian embassy which had informed them that an Egyptian national had to consent to his or her repatriation and to apply in person for travel documents.

35. On 22 March 2013 the applicant had been interviewed again but had been uncooperative. He had stated that he would not leave Cyprus until the proceedings concerning the revocation of his Cypriot nationality had been concluded. He had claimed that a friend, who he had refused to name, had his passport.

36. On 3 April 2013 a copy of the applicant's Egyptian passport had been found and handed over to the Egyptian embassy for the purpose of facilitating the passport issuance process. The Police Aliens and Immigration Unit had suggested to the embassy that they visit the applicant and inquire with him directly.

37. On 22 April 2013 the applicant had been interviewed again but had remained uncooperative.

38. On 14 August 2013 members of the Police Aliens and Immigration Unit had taken a written statement from the applicant for the purpose of clarifying his intentions with regard to his return to Egypt. The applicant had stated that his Egyptian passport had been confiscated by the Egyptian authorities in June 2012 when he had been deported to Egypt. He had submitted that he had no travel documents at all, he did not want to return to Egypt and that he considered Cyprus to be his home.

39. On 23 August 2013 the Director had met the Egyptian embassy's chargé d'affaires who had informed her that the delays had been due to the unstable political situation in Egypt and had promised to make an effort to speed up the procedure with the hope that a travel document could be issued in the following weeks.

40. Further interviews with the applicant had been held on 8 October and 17 December 2013 and 21 January 2014. The applicant had maintained his position in all the interviews, stating that he did not wish to be given an Egyptian travel document.

41. On 18 December 2013 the Police Aliens and Immigration Unit had contacted the Egyptian embassy but there had been no news at that time concerning the applicant's travel document.

42. On 22 January 2014, when they had contacted the Egyptian embassy again, the Police Aliens and Immigration Unit had again been informed that a travel document could not be issued without the applicant's consent. Members of the Unit had encouraged the embassy officials to visit the applicant at Menoyia detention centre.

43. During the processing of his asylum application of 27 January 2014, further interviews had been held with the applicant, but he had refused to cooperate with the authorities. The Egyptian embassy had also made some requests in order to proceed with the issuance of the documents and had informed the authorities that they would consider the possibility of issuing a travel document without the applicant's consent.

44. On 4 July 2014 the Egyptian embassy had informed the authorities that they would issue a travel document for the applicant on 8 July 2014.

J. The material conditions of the applicant's detention

45. The applicant was held from 11 February 2013 until his deportation on 8 July 2014 in immigration detention in various facilities. In particular:

(a) 11-18 February 2013 in Block 10 of Nicosia Central Prisons;
(b) 18 February-6 July 2013 at Menoyia detention centre;
(c) 6-18 July 2013 at Aradippou police station;
(d) 19 July-8 September 2013 in Block 10 of Nicosia Central Prisons;
(e) 8-12 September 2013 at Polis Chrysochous police station;
(f) 12-30 September 2013 at Ayia Napa police station;
(g) 30 September 2013-8 July 2014 at Menoyia detention centre.

1. The applicant's description of the conditions of detention

46. The applicant did not provide a description of the conditions of his detention.

2. The Government's description of the conditions of detention

(a) Nicosia Central Prisons: Block 10 (11-18 February 2013 and 19 July-8 September 2013)

47. Block 10 had two wings which could hold up to seventy-two inmates. However, fifty-six had been the maximum that had been held there for security reasons and better conditions.

48. The applicant had been held in a double-occupancy cell which measured 9 square metres (sq. m). He had shared the cell with one other detainee. It had been equipped with a bunk bed and a table with two chairs. The cell had had a window, allowing access to natural light and ventilation. Sanitary facilities had been for common use: there had been four toilets and eight showers. There had been an air-conditioning system which had been on twenty-four hours a day and could be regulated by the detainees themselves.

49. Detainees had been able to use the outdoor exercise yard for two hours in the mornings and two hours in the afternoons each day.

50. All detainees had been provided with hygiene products and meals had been served three times a day.

(b) Menoyia detention centre (18 February-7 July 2013 and 30 September 2013-8 July 2014)

51. This facility had been opened on 28 January 2013. It comprised four wings, three for men and one for women. Each wing had held up to sixty-four inmates at the time. The cells in this facility measured 18.36 sq. m. The applicant had been held in a multi-occupancy cell which, at the time, had been used to hold up to eight inmates. During his detention,

he had shared the cell with four to seven other inmates. The Government did not submit any records in this respect.

52. All the cells had had a window, allowing access to natural light and fresh air. They had been equipped with beds, wardrobes and a table with two benches. Each wing had had common sanitary facilities and showers: seven toilets and eight showers. There had been a central air-conditioning and heating system which had been on twenty-four hours a day.

53. Detainees had been able to use the outdoor exercise yard for two hours in the mornings and two hours in the afternoons each day.

54. Detainees had been provided with the necessary hygiene products and meals had been served three times a day.

55. A doctor had visited the detention centre every day from 8 a.m. until 2 p.m., nursing staff three times a week from 7 a.m. until 1.30 p.m. and a psychologist once a week.

(c) Aradippou police station (6-18 July 2013)

56. In this station the applicant had been held in a double-occupancy cell which had measured 6.9 sq. m. The cell had been equipped with bunk beds and a table with chairs. All cells had had windows looking out onto the internal yard, allowing access to natural light and fresh air. Sanitary facilities had been for common use. The cells had been open with free access to the sanitary facilities, common areas and interior yard. Access to the interior yard had been on a rota basis with the female detainees, if there were any. The facility had had a central air-conditioning and heating system. Detainees had been provided with all the necessary hygiene products and meals had been served three times a day.

57. The applicant had not made any complaints during his detention or upon his transfer to Block 10.

(d) Polis Chrysochous police station (8-12 September 2013)

58. At the time the applicant had been detained in this station there had been two other detainees. The applicant had been held alone in a single-occupancy cell which had measured about 10.8 sq. m. It had had a toilet and shower and had also been equipped with a bed, table and chair. The cell had had a window, allowing access to natural light and ventilation. There had been an air-conditioning system which had been on all day and, if all three detainees held in the station agreed, at night too. The cells in the station had been open all day and detainees had been able to move about freely in the internal yard, giving them access to fresh air and natural light.

59. The applicant had been provided with the necessary hygiene products and meals had been served three times a day.

60. The applicant had gone on hunger strike on 10 September 2013 which had lasted until 12 September 2013. During the hunger strike he had

been checked every half an hour and had insisted that he was well. On the latter date he was taken to Polis Chrysochous hospital. He was then returned to the station and later that day transferred to Ayia Napa police station.

(e) Ayia Napa police station (12-30 September 2013)

61. The applicant had been held alone in a single-occupancy cell which had measured about 9.4 sq. m. The cell had had a toilet and shower and had also been equipped with a bed, table and chair. It had had a window/skylight and an individual air-conditioning and heating system. The station's detention facility had had an outdoor exercise yard which detainees had been allowed to use for at least one hour per day.

62. Detainees had been provided with the necessary hygiene products and meals had been served three times a day.

63. The applicant had continued his hunger strike until 16 September 2013. He had been protesting against not being detained in Block 10 of Nicosia Central Prisons. During this period he only drank tea. From 17 September 2013, he ate all his meals.

3. The applicant's medical treatment while in detention at Menoyia detention centre

(a) The applicant's version of the events

64. In his application form, the applicant attached a letter dated 27 October 2013 to the "Human Right European Committee" [*sic*] in which he complained that, while detained at Menoyia detention centre, he had been denied access to his medication or to a hospital. In the same letter, the applicant complained that, on 19 October 2013, he had asked to be transferred to a hospital but that the authorities had refused and he had only been taken to see a doctor five days later.

65. Further, the applicant submitted in his observations of 16 January 2017 that it emerged from the medical records submitted by the Government that on 19 March 2013 he had not been able to take his medication because he had been handcuffed and the guard had asked him to take it himself.

(b) The Government's version of the events

66. According to the applicant's medical file, on 19 March 2013 the applicant had refused to take his medicine if his handcuffs had not been removed.

67. On 14 October 2013 the applicant had drunk shampoo and been taken to hospital.

68. The applicant had requested to be taken to hospital on 18 October 2013. In his records it is stated that the applicant had wished to go to hospital because he had "damage in my head. It's made me don't sleep at

night" [*sic*]. On the same day an appointment had been scheduled with the doctor at the centre for 21 October 2013. On the latter date, however, the applicant had refused in writing to be examined by a doctor and had stated that he was feeling well.

69. On 19 October 2013 the applicant had not requested to be taken to hospital. He had, however, been taken to Larnaca General Hospital because he had drunk shampoo. He had been examined by a doctor in the Accident and Emergency Department and had claimed that he had been beaten and felt dizzy. According to the doctor's findings, he had had various abrasions. An X-ray had been carried out and no fracture found. He had been prescribed medication and the doctor had suggested that he should be examined by a psychiatrist because he had put his life in danger.

70. On 27 October 2013 the applicant had not requested to be taken to hospital. According to his personal file, on 29 October 2013 he had requested to visit a dentist and an appointment had been made that same day. When he had been informed of this, the applicant had changed his mind and said he did not wish to visit the doctor for personal reasons. There was a note in his file to this effect by the police officer. The applicant had refused to sign the relevant form concerning his refusal. It was also noted that the applicant had continuously caused problems to the on-duty officers.

71. On 7 January 2014 the applicant had been taken to hospital after scratching himself with a blunt object. The doctor had recorded that he had threatened to drink shampoo again and had requested a psychiatric evaluation. He had been taken to a psychiatrist at Larnaca General Hospital the next day who had examined the applicant and noted that he had been "logorrhoeic, with various demands which [were] impossible to meet in Menoyia".

72. According to the applicant's medical file, between 8 March 2013 and 26 June 2014, the applicant had been taken to hospital or examined by a doctor at Menoyia detention centre eighty-two times and he had been provided, *inter alia*, with medication and various supplements.

4. *The applicant's solitary confinement while in detention at Menoyia detention centre*

73. The applicant, while at Menoyia detention centre, had been put in solitary confinement from 24 April to 1 May 2014 and from 14 to 19 May 2014 for misconduct. The applicant had sent a letter of complaint through KISA, a local non-governmental organisation (NGO), to the Commissioner for Administration and the Protection of Human Rights of the Republic of Cyprus ("the Ombudsman") on 14 May 2014 about this.

74. By a letter dated 11 August 2015, the Ombudsman informed KISA that, as the applicant had already been deported, she could not investigate this complaint.

5. Allegations concerning ill-treatment

(a) Incident of 17 July 2013

(i) The applicant's version

75. On 16 July 2013 the applicant had been informed that he had to appear the next day before the Supreme Court with regard to his habeas corpus application, so at 1 a.m. he would be transferred to Block 10 of Nicosia Central Prisons from Aradippou police station. However, on 17 July 2013, at 2.30 a.m., he had been taken from Aradippou police station to the Police Immigration Unit in Nicosia, where he had been handcuffed to a chair for the next six hours. When he had complained, the prison officers had assaulted him. The applicant had sent a letter of complaint dated 17 July 2013 by fax to his lawyers, the NGO Future Worlds Center and various media channels.

(ii) The Government's version

76. According to police records, on 17 July 2013 the applicant had been taken from Aradippou police station at around 2.50 a.m. and transferred to the Police Immigration Unit in Nicosia where he arrived at around 4 a.m. The applicant had remained there until 8 a.m., when he had been transferred to the Supreme Court for a hearing at 8.45 a.m. The applicant had not been left handcuffed to a chair or ill-treated in any way. The applicant had sent a letter of complaint by fax from the centre to six recipients unknown to the authorities.

(b) Incident of 9 October 2013 at Menoyia detention centre

(i) The applicant's version

77. On 9 October 2013 the applicant had been physically ill-treated by first one and later eight police officers. Instead of looking into his complaints, the authorities had brought criminal proceedings against him.

78. The applicant had sent a letter by fax to the Ombudsman on 21 March 2014 complaining that he had been beaten by five police officers and alleging that he had subsequently complained of this to the doctor at the hospital but that she had not made a report of it as the police had spoken to her.

79. The applicant had also informed KISA about, *inter alia*, this incident. KISA had then sent a letter dated 14 May 2014 to the Ombudsman and the Minister of Justice and Public Order. In their letter it had been noted that the applicant had complained about this incident and that he had been ill-treated, and that when he had asked for the footage from the detention's closed-circuit television cameras, the administration had informed him that on that day they had been out of order and had not recorded anything. In the letter it was also stated that the applicant had complained that the officers

had not been wearing any insignia and he had therefore not been able to see their names or numbers.

(ii) The Government's version

80. On 9 October 2013 at around 3.30 p.m. an incident had occurred at the detention centre between the applicant and two officers, A.K. and Y.M., following a routine check of the cells.

81. In statements given that day, A.K. and Y.M. stated that when they had finished the search, the applicant had started to bang on the doors, shouting that the officers had broken his shampoo (bottle) during the search and that he wanted to see the officer in charge. Three of the officers had then taken him to see the officer in charge, who had checked the bottle and seen that it had not been broken. The applicant had been shouting that he was going to file a complaint about these cell checks, but the officer in charge had informed him that they would continue and had instructed the officers to return the applicant to his cell. While going up the stairs, the applicant had insulted the officers and then, once in the corridor leading to his cell, the applicant had punched Y.M. in the neck. The three officers had tried to handcuff the applicant in order to immobilise him but before they had been able to, he had managed to kick A.K.'s foot. Once they had managed to handcuff the applicant, they had taken him back to the officer in charge who had instructed that he be taken to the waiting room in order to calm him down.

82. According to an internal report of that date, it appears that blunt objects (two small, blunt, pieces of metal, a screw and two clips) had been found in the applicant's cell.

83. Both officers had then gone to the Accident and Emergency Department of Larnaca General Hospital. The doctor who had examined Y.M. had found that he had pain and redness on the left side of his neck and neck pain during palpitation. He had noted in his report that no pathological findings had been detected on an X-ray of his neck. Y.M. had been prescribed a soft cervical collar and medication. The doctor who had examined A.K. had found redness and sensitivity on the skin of the left thigh. He had been prescribed medication and two days' sick leave.

84. The applicant had also been taken to the Accident and Emergency Department of the above hospital on the same day to a different doctor but, according to the doctor's report, he had refused to be examined.

85. The next day the applicant had been transferred to the old General Hospital in Larnaca because of a problem with his skin. He had been examined by a dermatologist who had prescribed treatment. The doctor had not noted any injuries and the applicant had not complained to the doctor about any injuries or ill-treatment by the police.

86. The incident had been investigated by the Kofinou police station after two officers had filed a complaint against the applicant.

87. On 18 October 2013 the applicant had been charged of assaulting two police officers. When the applicant had been cautioned, he had not mentioned that he had been ill-treated and although he had been given the opportunity to make a written statement giving his version of the events, he had not done so.

88. Criminal proceedings had been brought against the applicant before the Larnaca District Court (case no. 2178/14) on 11 February 2014 for assaulting two police officers during the performance of their duties contrary to section 244(b) of the Criminal Code (Cap. 154). The proceedings had been discontinued, however, as the applicant had been deported before his trial had taken place.

(iii) Subsequent statement given by the applicant

89. On 18 February 2014 the applicant gave a written statement to a criminal investigator appointed by the Independent Authority for Investigation of Allegations and Complaints against the Police ("the IAIACAP") in the context of an investigation following complaints about a particular officer in Menoyia by a number of detainees, including the applicant. In his statement the applicant referred to the incident of 9 October 2013, stating that on that day, in the morning, he had intended to go to the hospital because he had not been feeling well. He had gone to have a shower before leaving, but one of the officers had kicked open the door while he had been showering. The applicant had protested and asked to be taken to the officer in charge. He had been taken to an officer after he had got dressed and when he had asked whether there was any law permitting this behaviour, the officer in charge had replied that there was. The applicant had then said he did not want to go to the hospital anymore and that he would complain to the centre's director. They had called another officer who had told the officer in charge to take him to the hospital and that they would talk to him about the problem later. When the applicant had repeated that he no longer wanted to go to the hospital, the officer in charge had sworn at him and told him to go back to his cell. Then another officer, G., had punched him two or three times in the back. After that, five officers had escorted the applicant to his cell. On the way to the cell, the applicant had met Officer G. again who had made a gesture meaning that he would deal with the applicant later. The applicant had then told Officer G. to come upstairs if he wanted to deal with him. When the applicant and the five officers had been on the stairs, which was not covered by cameras, the five officers had started to beat him with their hands and legs on various parts of his body. They had hit him another three times on the way to his cell. They had handcuffed him. His hands had been swollen and he had had some swelling behind the left ear. After some time, the applicant had been taken to Larnaca General Hospital where he had been examined by a doctor. He had told the doctor that he had been beaten by police officers and then an

officer had spoken to the doctor in private. The applicant stated that he did not know what the doctor had said in her report.

(c) Incident of 19 October 2013 at Menoyia detention centre

(i) The applicant's version

90. The applicant claimed that when he had requested to be taken to hospital on 19 October 2013 he had been beaten up by the police officers at the detention centre (see paragraph 64 above).

(ii) The Government's version

91. The Government's version is set out in paragraphs 67 to 69 above.

(d) Incident of 29 October 2013 at Menoyia detention centre

(i) The applicant's version

92. On 29 October 2013 the applicant had had an appointment with a dentist, but when the police had come to take him they had started to "buser" [*sic*] him and had humiliated him by ordering him to remove his clothes and making him shower in the presence of the officers. The applicant had asked to speak with the "boss" but they had told him that he was busy and if he did not want to take a shower he would go back to his section.

93. On that same date the applicant had sent a letter complaining about the above incident. The letter had been addressed to, *inter alia*, Mr P.P. who was the Chair of the Complaints Committee of the Menoyia detention centre.

(ii) The Government's version

94. By virtue of the detention centre's safety regulations in force at the time, each detainee upon his or her arrival or departure from the centre had to have a shower for safety reasons in order to ensure that the detainees were not carrying any dangerous objects which they could use to harm themselves or others or which they could use to escape. The shower took place in the presence of a police officer of the same sex. This provision had subsequently been abolished.

95. The applicant's letter had been addressed to Mr P.P., a media channel, his lawyer, the CPT and the NGOs KISA and Future Worlds Center. According to the applicant's personal file, the letter had been sent by fax and only to the CPT and Future Worlds Center.

96. That morning, the applicant had had an appointment with the dentist at 10 a.m. but he had refused to go (see paragraph 70 above).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Entry, residence and deportation of aliens, and challenging the lawfulness of immigration detention

97. The relevant domestic law and practice concerning the entry, residence and deportation of aliens, and challenging the lawfulness of immigration detention are set out in detail in *Haghilo*, cited above, §§ 96-113 (see also *M.A. v. Cyprus*, cited above, §§ 61-63).

B. The Rights of Persons Arrested and Detained Law of 2005 (Law no. 163 (I)/2005, as amended)

98. The relevant provisions of this Law are set out in *Danilczuk v. Cyprus*, no. 21318/12, §§ 18-20, 3 April 2018.

C. The IAIACAP

99. The relevant domestic law concerning the IAIACAP is set out in detail in *Thuo v. Cyprus*, no. 3869/07, §§ 99-104, 4 April 2017.

II. RELEVANT INTERNATIONAL AND DOMESTIC REPORTS

A. Reports of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

1. The CPT's 2012 report

100. On 6 December 2012 the CPT released a report on its visit to Cyprus from 12 until 19 May 2008. The CPT visited, among other police establishments, Block 10, to which reference is made in the report as "Police Prison Block 10" of Nicosia Central Prisons. The relevant extracts of the report read as follows (footnotes omitted; emphasis in the original):

> **"Police establishments**
>
> **1. Preliminary remarks**
>
> ...
>
> 11. ... In the course of the visit, the CPT's delegation met persons, detained pursuant to aliens legislation, who were held on police premises for wide-ranging periods: from a few hours to, potentially, six days at Larnaca airport holding facility, to over 15 months, e.g. at Police Prison Block 10. Custody records showed that lengthy detention could occur at any police station and many persons detained for very long periods had been moved several times from one station to another. During

the week prior to the visit, a group of 27 aliens had been released, all of whom had been in detention for over six months and some for close to four years.

...

5. Conditions of detention

54. In general, the delegation noted a number of improvements in material conditions at the police establishments visited, compared to the situation observed in 2004. In particular, the newly refurbished police cells at Pafos Police Station provided for access to natural light and ventilation and were equipped with a plinth, a fixed stool and table, an in-cell toilet, sink and shower, and a call-bell. Conditions at Police Prison Block 10 [of Nicosia Central Prisons] had also improved, through the installation of air-conditioning in the detention block's central corridor and the creation of a basket-ball court in the exercise yard. Further, sanitary facilities were entirely renovated at the former Famagusta police station in Larnaca, where conditions were also much improved in view of the lowering of occupancy levels.

...

57. The CPT has reiterated in the report on each visit to Cyprus that all persons detained longer than 24 hours must be offered the opportunity of one hour of outdoor exercise every day. However, in 2008, outdoor exercise was provided only at Police Prison (Block 10) and Larnaca and Paralimni Police Stations. At Aradippou and Limassol Police Stations, detained persons were offered, at best, access for several hours to a courtyard covered by corrugated plastic sheeting. Thus, outdoor exercise was still not provided at most police establishments, including those which held primarily or exclusively long-term immigration detainees, such as the former Famagusta detention facility in Larnaca and Lakatamia Police Stations.

By letter of 8 September 2008, the Cypriot authorities referred to the impossibility of making the outdoor space at these two establishments available to detained persons, due to the fact that the space is open to the public or shared with other police departments. In the CPT's view, such arguments indicate a lack of concern for the basic needs of persons deprived of their liberty for extended periods. **The CPT calls upon the Cypriot authorities to ensure that all persons detained in police stations for longer than 24 hours are offered one hour of daily outdoor exercise.**

58. Subject to remedying the shortcomings identified above, the existing police detention facilities visited in Cyprus were suitable for accommodating detained persons for short periods of time, i.e. for a few days. However, as the CPT has stressed in the past, police detention facilities will generally remain inappropriate for holding persons for prolonged periods. Indeed, none of the police establishments visited offered the material conditions or the opportunities for activities that persons detained for prolonged periods are entitled to expect. ..."

2. The CPT's 2014 report

101. On 9 December 2014 the CPT released its report on its visit to Cyprus from 23 September to 1 October 2013. It should be noted that before this visit, on 28 January 2013, the Menoyia detention centre for holding irregular migrants was opened.

102. The relevant extracts of the report read as follows (footnotes omitted and emphasis in the original):

"II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police

...

4. Conditions of detention

23. At the outset of the visit, the delegation was informed that Police Prison Blocks 9 and 10, which had previously accommodated, respectively, criminal suspects and irregular migrants, had recently been taken out of service and transferred back to Nicosia Central Prisons. It was also reported that certain police stations had now been designated specifically as being suitable for detention periods in excess of 24 hours; namely, Lakatamia, Pera Chorio, Aradippou, Limassol, Ayia Napa, Paphos and Polis Chrysochous Police Stations. The remaining police stations were classified as only being suitable for holding persons for up to 24 hours.

24. The CPT's delegation observed that most of the police establishments for the detention of persons longer than 24 hours it visited had been renovated, and that they generally offered satisfactory material conditions of detention. For example, at Lakatamia and Ayia Napa Police Stations, the single-occupancy cells were of an adequate size (measuring from 9 to 12 m^2 with a partitioned sanitary annex) and were all equipped with a plinth, a fixed stool and a table as well as a call bell. Further, they enjoyed adequate access to natural light and had sufficient artificial lighting and ventilation. However, at Aradippou Police Station, cells measuring $7m^2$ were accommodating two persons in bunk beds and the detention area was malodorous due to the malfunctioning of the air extraction system and poor conditions of hygiene. The artificial lighting was also not functioning in some cells. Further, at Aradippou and Pera Chorio Police Stations access to natural light was unsatisfactory in most of the cells due to the design of the small opaque windows covered with layers of mesh.

The CPT recommends that the Cypriot authorities take steps to ensure that cells at Aradippou Police Station do not accommodate more than one person. Further, the abovementioned deficiencies at this police station as well as at Pera Chorio Police Station should be remedied.

25. All police stations designated to detain persons for longer than 24 hours have now been equipped with recreational areas for out-of-cell exercise. This represents an improvement since the previous visit to Cyprus in 2008. Such areas were equipped with tables and chairs fixed to the floor and in some cases also a television; they had access to natural light. Detainees could spend several hours or more every day in these recreational areas. However, none of these out-of-cell areas provided outdoor exercise. **The CPT recommends that this deficiency be remedied in all these police stations.**

26. In sum, conditions of detention in these police stations could be considered as acceptable for periods of a few days. ...

...

B. Foreign nationals held under aliens legislation

1. Preliminary remarks

...

30. The decision to detain an irregular migrant is not automatically reviewed by a court or an independent review body. An *ex officio* review of the detention order is carried out every two months by the Ministry of the Interior but the files examined by

the CPT's delegation indicated that the review was purely formalistic and did not involve examining whether detention was necessary and proportionate. The deportation and detention order is subject to appeal to the Supreme Court under Article 146 of the Constitution or to a habeas corpus application; however, in the *M.A. v. Cyprus* (application no. 41872/10) judgment of 23 July 2013, the European Court of Human Rights found that this could not be considered as an effective remedy for ensuring that a person would not be sent back to a country where he/she risked treatment in contravention of Articles 2 and 3 of the European Convention on Human Rights. ...

3. Menoyia Detention Centre for Illegal Immigrants

a. introduction

37. The Menoyia Centre, located in a rural area some 20 kilometres east of Larnaca International Airport, was opened on 28 January 2013. The centre consists of a two-storey U-shaped building surrounded by a security fence, with detainees held in four accommodation wings (A to D), each with a capacity of 64 beds; that is, an official capacity of 256. At the time of the visit, there were 102 adult males located in two wings (A and B) and 16 adult females in wing D; wing C was not operational at the time of the visit due to an alleged lack of staff. The CPT's delegation was informed that the centre was designed to hold persons for periods of up to two months.

38. It is regrettable that the design and layout of the premises at the Menoyia centre give the impression of a carceral environment; barred windows, heavy cell doors, secure sterile association rooms. The prison-like atmosphere was accentuated by the strict rules and impoverished regime in place (see Section c. below). The strict regime, carceral environment and prolonged detention periods appeared to be deliberate policies aimed at encouraging detained persons to sign up "voluntarily" to leave the country. Nevertheless, the CPT's delegation detected signs that the management of the Centre recognised the need to reduce the over-controlling approach towards detainees, such as ending the systematic use of handcuffs, and to introduce a more dynamic approach towards security matters.

The CPT recommends that the Cypriot authorities take the necessary steps to put in place a less restrictive environment at the Menoyia centre (see also paragraphs 43 to 45).

b. ill-treatment

39. A number of allegations of physical ill-treatment of detainees by custodial staff was received by the CPT's delegation. Some of these allegations had already been brought to the attention of the Independent Authority for the Investigation of Complaints against the Police. These complaints in the main related to the period prior to August 2013 when the regime in force in the Centre was far more restrictive. Further, several detained persons who alleged ill-treatment referred to one particular custodial officer as being largely responsible for the violence; the management of the centre acknowledged that they were aware of these allegations.

More recently, one detainee stated that late at night on 16 September 2013 a group of custodial staff had entered the cell to carry out a search and that all the occupants of the cell, apart from him, had been taken to an association room to wait. The officers in the cell had then proceeded to deliver punches and kicks to his body and one officer, with whom he had had a verbal altercation earlier in the day, had kicked him in the genitalia. The following day, the detainee had complained to the deputy Director and had been taken to the local medical centre to see a doctor where he had reportedly

explained what had happened. Similar allegations of abuse during late night cell searches were received from other detainees.

A number of detainees also complained about several incidents of racial abuse and insulting language by custodial staff, including by wing managers. The gist of the message as related to the CPT's delegation was that the detainees were "worthless" and "parasites of the State" who should go back to their own countries.

In the light of the information gathered during the 2013 visit, **the CPT recommends that all custodial staff at the Menoyia Centre be reminded that any form of ill-treatment of detainees – whether physical or verbal, including racist behavior – is unacceptable and will be punished accordingly. Further, the Committee would like to be informed of the outcome of the investigations into the allegations of ill-treatment brought to the attention of the Independent Authority for the Investigation of Complaints against the Police.**

...

c. conditions of detention

43. The material conditions were, in most respects, in a satisfactory state of repair given that the Centre had only been operating since the end of January 2013. The four wings were identical; each consisting of eight multi-occupancy cells containing eight beds, two association rooms (one smoking, one non-smoking), a communal sanitary facility and a dining hall. Each cell contained four sets of bunk-beds, a cupboard and a low table fixed to the floor; all in stainless steel. There was good access to natural light and sufficient ventilation. However, living conditions were cramped as up to eight persons were held in a cell measuring only some 17m² (i.e. a little over 2m² of living space per detainee) which is far below the CPT norm of 4m² of living space per detainee in multi-occupancy rooms.

The CPT recommends that the Cypriot authorities reduce the official capacity in the multi-occupancy cells to four persons instead of the current eight.

44. When locked in their cells, detainees had to request access to the sanitary facilities *via* an intercom which was, on the whole, granted without too much of a delay since the cell doors could be electronically unlocked from the staff control office for each wing. However, allegations were received that, on occasion, certain staff members did not open the cell doors which resulted in the detainees having to urinate in a bottle. **Staff should be reminded to open the doors promptly for all persons requiring access to the toilet during periods of lock-up.**

45. The delegation noted favourably that detainees (both male and female) were able to access one of the two outdoor exercise yards, which adjoined the accommodation wing, for some three and a half hours every day. However, detainees were not permitted to access the wings during these periods and were required to stay in the yards. Further, the outdoor exercise yards had limited shelter from rain and sun, and no means of rest. For the rest of the day, they were confined to their cells (12 to 3 p.m.) or to the corridor of their wing; the two association rooms were equipped with four metal tables, each with six stools, fixed to the floor, and a television. Some board games had recently been provided. Between 10.30 p.m. and 7.30 a.m. all detained persons were locked in their rooms with the lights turned off. A similar regime was in place for female detainees. The CPT considers that detainees ought to be able to access the association rooms and the dining room during the periods when they are provided with access to the outdoor exercise yards, and that the artificial lighting in the accommodation rooms should be available after 10.30 p.m.

No organised activities were offered. The CPT's delegation was informed that the Red Cross and other non-governmental organisations had been contacted to assist with providing some activities. However, it is the duty of the Cypriot authorities to ensure that a range of purposeful activities is introduced into the centre, which may be supplemented by contributions from other organisations.

The CPT recommends that the Cypriot authorities introduce a range of purposeful activities for persons held at the Menoyia Centre. The longer the period for which persons are detained, the more developed should be the activities which are offered to them. Steps should also be taken to permit access to the association rooms during periods of outdoor exercise.

Further, the outdoor exercise yards should be equipped with a shelter and a means of rest and the provision of artificial lighting in the cells extended beyond 10.30 p.m.

...

e. health care

48. The CPT has long stressed the importance of an immigration detention centre having healthcare staff present on a daily basis. At the time of the 2013 visit, the Menoyia Centre was visited by a general practitioner once a week on a Monday from 9 a.m. to 2 p.m. and a nurse was present two hours a day for a maximum of three days a week. In the absence of the doctor, detainees requiring medical attention were usually taken to the local clinic of Kofinou, where a doctor would decide whether the person concerned should be taken to hospital for more specialised treatment. In the eight months during which the Centre had been operating, there had been 1,227 movements for health-care reasons. ... In the CPT's view, an establishment with an occupancy level of some 120 persons should be visited by a general practitioner every day for four hours and should have a daily presence of a nurse for around eight hours. Further, provision should be made for detainees to see a gynaecologist and a psychiatrist whenever required.

The CPT recommends that the Cypriot authorities take the necessary steps to provide Menoyia Centre with the appropriate health-care resources, in the light of the above remarks."

103. In their response, also published on 9 December 2014, the Government observed the following:

"*CPT Report, paragraph 43, page 22*

...

The Menoyia Detention centre currently holds 82 detainees. Nevertheless, the maximum number of detainees held in Menoyia was 180, in 2013

...

CPT Report, paragraph 48, page 24

...

The Medical Center of Menoyia Detention Center as from February 2014 is staffed with a General Practitioner on a full-time basis (Monday - Friday, 7:30-15:00). A nurse has been assigned to the Centre on two days per week for 5 hours per day. A clinical psychologist appointed by the department of Mental Health Services visits the Centre on a two days per week basis. Apart from these measures, the detainees are

transferred to the Regional Medical Center or at Larnaca General Hospital, for medical care, if necessary.

..."

104. It appears from a report prepared on 4 August 2016 by the Aliens and Immigration Unit in Menoyia that from 1 January 2016, following the CPT's recommendations, the official capacity of the cells was reduced to four persons, thus halving to 128 persons the capacity of the centre.

B. Amnesty International report concerning the detention of migrants and asylum-seekers in Cyprus

105. In June 2012 Amnesty International published a report on the detention of migrants and asylum-seekers in Cyprus entitled "Punishment without a crime". This covered, *inter alia*, the conditions of detention of irregular migrants and the issue of the immediate rearresting of individuals despite successful challenges against immigration detention before the Supreme Court by way of habeas corpus on the basis of new detention orders issued on the same basis as the initial ones. The relevant extracts of the report are set out in *Haghilo* (cited above, § 118).

C. Report by the Ombudsman on her visit to Menoyia detention centre

106. On 16 May 2013 the Ombudsman, in her capacity as the National Preventive Mechanism (Law no. 2(III)/2009 ratifying the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002), issued a report following three visits to Menoyia detention centre on 14 February and 3 and 19 April 2013.

107. In her report, the Ombudsman, observed, *inter alia*, that on her first visit sixty-one persons were held in the facility which could hold up to 256 persons. On her third visit, the number of detainees had increased to 135 as the authorities were trying to transfer as many detainees in immigration detention as possible from police stations to Menoyia. She observed that the material conditions were sufficiently satisfactory and to a large extent compliant with international standards for the detention of immigrants. The Ombudsman also noted that complaints to her office had been made concerning ill-treatment on the premises.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

108. The applicant raised a number of complaints under Article 3 of the Convention, which provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

109. Firstly, he complained that he had been ill-treated by police officers and the authorities had failed to carry out a proper investigation in this connection. Secondly, the applicant complained about the conditions of his detention at the various police stations and detention centres. Thirdly, he complained that while detained at Menoyia detention centre he had not had access to appropriate healthcare and had been held in solitary confinement on two occasions.

110. The Government contested these complaints.

A. Admissibility

1. Complaints concerning ill-treatment

111. The applicant complained in general of ill-treatment during his detention. He complained, in particular, about four separate alleged incidents: one on 17 July 2013 at the Police Immigration Unit in Nicosia, and three incidents at Menoyia detention centre on 9, 19 and 29 October 2013.

(a) The parties' submissions

(i) The Government

112. The Government submitted that the applicant's complaints were inadmissible for non-exhaustion of domestic remedies. More specifically, the applicant had failed to complain about the alleged ill-treatment to the competent domestic authorities. In particular, he could have complained to the IAIACAP, which was the body responsible for investigating allegations of ill-treatment by members of the police. The IAIACAP provided an effective remedy for the purposes of Article 35 of the Convention. It was easily accessible, capable of providing redress, as it conducted independent and effective criminal investigations capable of leading to the identification and punishment of those responsible, and it offered reasonable prospects of success. The applicant had been represented by a lawyer, and his lawyer should have informed the applicant or transmitted the applicant's complaints to the IAIACAP. The applicant's arguments as to the alleged ineffectiveness of the remedy were unfounded. Relying on records they submitted to the Court, the Government observed that between 2006 and

2016 thirty-six cases concerning allegations of ill-treatment by the police had been investigated by the IAIACAP and had led to criminal prosecutions of the police officers involved. The fact that the conviction rate had been low did not render the IAIACAP ineffective. Further, prosecutions could only take place when there was sufficient evidence available.

113. Furthermore, in so far as his complaints concerned the Menoyia detention centre, the applicant could also have filed a complaint with the Director or the Complaints Committee of the centre which had been established on 5 May 2013. The Committee had the competence to examine detainees' complaints concerning conditions of detention and ill-treatment. There was a complaint box in each wing of the centre to which detainees had free access.

114. It was common ground that the applicant's letter concerning the alleged incident of 17 July 2013 had not been addressed to any State authority but to his lawyers, an NGO and to various media channels (see paragraphs 75-76 above). The applicant had not complained to the prison authorities, the Ombudsman or any other authority about the alleged incident. Nor had he raised the issue that same morning before the Supreme Court. In the absence of a complaint, no investigation had been carried out. Similarly, his letters of 27 and 29 October 2013 concerning his allegations of ill-treatment on 19 and 29 October 2013 respectively had also not been sent to any State authority (see paragraphs 64, 93 and 95 above).

115. In any event, the Government argued that the applicant's complaints under this head were manifestly ill-founded. Firstly, the applicant had not produced any evidence, medical or otherwise, in support of his allegations of ill-treatment. Secondly, the applicant had not been ill-treated when at the Police Immigration Unit in Nicosia. Thirdly, at the time, detainees had had to take showers upon arrival or departure from the centre for safety reasons; in particular, in order to ensure that the detainees had not been carrying any dangerous objects which they could use to harm themselves or others or which they could use to escape. The shower had taken place in the presence of a police officer of the same sex. There had been no intention on the part of the authorities to punish, humiliate or degrade the applicant. Nor had it been a form of punishment. In the Government's view this incident on its own did not attain the sufficient level of severity to fall within the scope of Article 3 of the Convention.

116. With regard to the incident of 9 October 2013, they noted that this had been investigated by the Kofinou police. The applicant had been taken to hospital but had refused to be examined by a doctor without giving an explanation. The doctor had been independent and had had no reason to make a false statement in her report. The next day the applicant had been taken to another hospital for a dermatological problem and had not complained to that doctor about any injuries or ill-treatment by the police. Neither had he complained when he had been cautioned or when giving a

written statement with his version of the events despite having been given the opportunity to do so. If he had complained of ill-treatment, the police would have been obliged to transmit the complaint to the IAIACAP.

117. His subsequent statement to an IAIACAP investigator in the context of another investigation did not correspond to reality; he had not had a medical appointment on that day and it did not tally with the allegations made on his behalf by KISA in the letter of 14 May 2014. Further, it was noteworthy that in this statement he had not made any other complaints of ill-treatment at Menoyia despite being asked by the investigator.

118. Lastly, they submitted that the applicant had been promptly informed of all his rights and obligations as a detainee.

(ii) The applicant

119. The applicant submitted that he had not been informed properly of his rights and obligations in any of the detention facilities, let alone of his right to file a complaint to the IAIACAP and how he could have exercised that right. The fact that he had been represented by a lawyer in the judicial proceedings had not necessarily meant that he had retained a lawyer for all matters related to his cases or complaints; he had not had the financial means to do so. The applicant had sent his complaints to the Ombudsman who, in her capacity as the National Preventive Mechanism, had had an obligation to communicate any ill-treatment complaint against the police to the Attorney General and the IAIACAP. The applicant had also sent his complaints to the Minister of Justice and Public Order, who also had the power to transmit a complaint to the IAIACAP but had failed to do so. His letter of 29 October 2013 had been addressed to the Chair of the Complaints Committee of Menoyia detention centre.

120. In any event, filing a complaint with the IAIACAP or the Complaints Committee was not a remedy within the meaning of Article 35 of the Convention, as they were not judicial bodies and were in any event ineffective. The UN Committee against Torture in its Concluding Observations on the Fourth Periodic Report on Cyprus (18 June 2014) had noted that between 2006 and 2010 only one case out of 108 complaints of torture and ill-treatment had ended in a criminal conviction for common assault. It was also not clear when the Complaints Committee had actually become operational.

121. With regard to the merits of his complaint, the applicant averred that he had been subjected to ill-treatment on a number of occasions and that the Government had failed to investigate his complaints in breach of Article 3.

122. As to the incident of 17 July 2013, the applicant considered that he had made a credible claim. He pointed out that the records submitted by the Government concerning the early hours of the morning of 17 July 2013

indicated that the applicant had been taken from Aradippou police station at 2.50 a.m. and returned at 12 noon. In the relevant records, "Police Immigration Unit, Nicosia" had been noted with no further details as to where the applicant had actually been held during that period.

123. Further, with regard to the incidents at Menoyia detention centre, the applicant stressed that both the CPT and the Ombudsman in their reports had noted that there had been ill-treatment and violence at the Menoyia detention centre (see paragraphs 102 and 107 above). This lent credence to the applicant's complaints. It had been evident from the medical records submitted by the Government that the applicant had complained to various doctors at the hospital on numerous occasions about his ill-treatment, but no action had been taken by them. The doctors at Menoyia had also been aware of his complaints. The authorities had therefore known about his allegations. It would have been strange therefore if on 9 October 2013 he had refused to be examined without explanation. Further, his complaint about this incident had not been investigated but instead the authorities had brought criminal proceedings against him.

124. Lastly, with regard to the incident of 29 October 2013 at the above-mentioned detention centre, the applicant submitted that the policy of the centre to make detainees shower in front of officers had been abolished and this was thus an acknowledgment of the humiliation detainees had been subjected to. Further, the applicant had already been at the centre for over a month and thus being made to have a shower on that day had been a form of punishment and not routine practice.

(b) The Court's assessment

125. The Court does not deem it necessary to determine whether the applicant has exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention, since it considers that his complaints are in any event manifestly ill-founded for the following reasons.

(i) Substantive limb

(1) Complaints concerning alleged ill-treatment on 17 July and 9 and 19 October 2013

126. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt", but has added that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *El-Masri v the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 151, ECHR 2012). The level of persuasion necessary for reaching a particular conclusion and the distribution of the burden of proof are intrinsically

linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (ibid.).

127. Firstly, with regard to the applicant's complaint concerning the alleged handcuffing to a chair and assault by police officers on 17 July 2013 at the Police Immigration Unit in Nicosia (see paragraph 75 above), the Court notes that the applicant did not complain about the alleged ill-treatment to any State authority. His letter of complaint of that date was not addressed or sent to any State authority (see paragraphs 75-76 above). His lawyer, to whom the letter was sent, did not transmit this complaint to the competent authorities. More importantly, however, it appears that neither the applicant, who was taken to the Supreme Court just afterwards for the first habeas corpus proceedings, nor his lawyer representing him in those proceedings, complained of this alleged treatment before that court. This omission remains unexplained. In addition, the Court cannot ignore that the applicant's claim of assault is vague and devoid of any factual details. It thus finds that the applicant has not made out an arguable claim that he was ill-treated.

128. Secondly, as to the applicant's complaint concerning the alleged ill-treatment on 9 October 2013 by police officers at Menoyia detention centre, it is common ground that an incident did occur between the officers and the applicant on that day. The Government submitted that officers had used force against the applicant in order to handcuff him and take him to his cell after he had attacked two of the officers.

129. It appears from the case file that the two officers concerned and the applicant were all taken to the Accident and Emergency Department of Larnaca General Hospital to be examined by three different doctors. The medical findings of the officers' examinations tally with their version of events (see paragraphs 81 and 83 above). According to the medical records, the applicant refused to be examined and did not complain of ill-treatment (see paragraph 84 above). Bearing in mind that the applicant had regularly been taken to hospital and his medical file shows that doctors had recorded his complaints on other occasions, including those of alleged beatings, the Court has no ground to doubt the veracity of the doctor's record on that day. In this connection, the Court also gives weight to the fact that when the next day the applicant was taken to another hospital with a dermatological problem, no injuries were noted by the doctor and nor did the applicant complain of any and/or that he had suffered ill-treatment the day before (see paragraph 85 above). Furthermore, it emerges from the case file that the applicant did not raise his allegations of ill-treatment with the authorities, although he had the opportunity to do so (see paragraph 87 above), until more than four months after the alleged incident in his statement in the context of another investigation and then in subsequent correspondence (see paragraphs 78-79 above). No explanation has been given by the applicant for this delay.

130. Moreover, the Court observes that in his application form the applicant complained that he had been ill-treated by one and then eight officers without giving further details of the incident, but then in his statement of 18 February 2014 and subsequent correspondence, he referred to five policemen (see paragraphs 77-78 and 89 above). In the above-mentioned statement, the applicant stated that the officers had beaten him with their hands and legs on various parts of his body on the stairs and then again on the way to the cell. Such force, however, would have resulted in the applicant having more serious injuries than those set out in his statement, namely swelling on the hands and behind the left ear which could have been caused by handcuffing and trying to immobilise him. The Court notes that the applicant – who was legally represented in the present proceedings – has not provided any explanation for these discrepancies and finds that they detract from the credibility of his account.

131. In these circumstances, the Court cannot but conclude that he has failed to make out his claim that he was ill-treated by officers on the above date.

132. Lastly, to the extent that the applicant complained that he was beaten by police officers at Menoyia detention centre on 19 October 2013 after requesting to be transferred to hospital (see paragraphs 64 and 90 above), the Court notes that the applicant has not given any details at all as to what allegedly happened and the exact treatment to which he was allegedly subjected. His letter of complaint of 27 October 2013 was not sent to any domestic authority. Further, his version of events does not tally with the medical records, from which it appears that he had not requested to go to hospital that day but was in any event taken there because he had drunk shampoo. The doctor who examined him noted that the applicant had complained of dizziness and that he had been beaten. The doctor also noted that the applicant had various abrasions (see paragraph 69 above). These, however, in the absence of any details provided by the applicant as regards the manner in which the alleged beating was inflicted on him, are not in and of themselves enough to lay the basis of an arguable ill-treatment complaint.

133. In conclusion, having regard to all the above considerations, the Court finds that the applicant has not put forward an arguable complaint that he was ill-treated on any of the above dates. It follows that his complaints are manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(2) Complaint concerning alleged ill-treatment on 29 October 2013

134. As the Court has stated on many occasions, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of that minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the

victim. Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a time and caused either actual bodily injury or intense physical and mental suffering. It has been found to be "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. The question of whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see *Labita*, cited above, § 120).

135. Turning to the instant case, the Court notes that the applicant's complaint concerns a shower he was obliged to take in the presence of officers – he does not indicate how many – before a dental appointment. The Government submitted that by virtue of the centre's regulations, showers in the presence of officers took place as a security measure. The applicant, however, claimed that it had been a punitive measure and not a security check. Before this Court, he complained of only one such incident.

136. The Court observes, firstly, that the officers present were of the same sex as the applicant. Secondly, although the applicant complained that they humiliated him by ordering him to take the shower in their presence, he has not alleged that the officers derided or verbally or physically abused him in any way during the shower (see, *mutatis mutandis*, *Dejnek v. Poland*, no. 9635/13, §§ 59-66, 1 June 2017; *Jaeger v. Estonia*, no. 1574/13, §§ 42-44, 31 July 2014; and *Czechowski v. Poland* (dec.), no. 22605/03, 22 June 2010; see also, *mutatis mutandis*, *Rakuzovs v. Latvia*, no. 47183/13, §§ 26-32, 15 December 2015). Nor was a full body search conducted.

137. Taking into consideration the length of time spent by the applicant at Menoyia detention centre, his frequent transfers from the centre to the hospital mainly for medical appointments, and the fact that this seems to have been a one-off incident, the Court admittedly has reservations as to the general security justification put forward by the Government. Notwithstanding this, bearing in mind the circumstances of the incident and, in particular, the absence of any debasing and/or punitive elements, the Court finds that although showering in front of the officers must have caused the applicant distress, this distress in itself did not reach the minimum level of severity required to fall within the scope of Article 3 of the Convention.

138. Accordingly, the Court finds that this complaint is also manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(ii) Procedural limb

139. The Court has concluded that the applicant's substantive claims under Article 3 of the Convention are manifestly ill-founded on account of his failure to make a prima facie case and therefore to lay the basis of an arguable claim (see, *mutatis mutandis*, *Airey v. Ireland*, 9 October 1979, § 18, Series A no. 32, and *Walter v. Italy* (dec.), no. 18059/06, 11 July 2006). In this connection, it reiterates, having regard to the general duty on the State under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", the provisions of Article 3 require by implication that there should be some form of effective official investigation where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands, *inter alia*, of the police or other similar authorities (see *Bouyid v. Belgium* [GC], no. 23380/09, § 116, ECHR 2015). As, however, in the present case, the Court has found that the applicant did not have a credible grievance under the substantive part of Article 3, his procedural complaint under that provision must also be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 (a) and 4 of the Convention.

2. *Complaints concerning solitary confinement at Menoyia detention centre*

(a) The parties' submissions

140. The Government submitted that the applicant's complaints had not been lodged with the Court within the six-month time-limit and were thus inadmissible.

141. The applicant, in his observations of 16 January 2017, complained about the disciplinary decisions taken against him and the solitary confinement imposed on him between 24 April and 1 May 2014 and between 14 and 19 May 2014 at Menoyia detention centre (see paragraph 73 above).

(b) The Court's assessment

142. Pursuant to Article 35 § 1 of the Convention, the Court may only deal with a matter "within a period of six months from the date on which the final decision was taken". Furthermore, where a complaint is not included in the initial application, the running of the six-month time-limit is not interrupted until the date when the complaint is first introduced to the Court (see, for example, *Eylem Baş v. Turkey*, no. 11435/07, § 42, 16 October 2012; *Bayam v. Turkey*, no. 26896/02, § 31, 31 July 2007; and *Allan v. the United Kingdom* (dec.), no. 48539/99, 28 August 2001).

143. In the present case, the six-month period in respect of the applicant's complaints concerning solitary confinement started to run on 1 May 2014 and 19 May 2014 respectively. They were, however, first

submitted by the applicant in his observations of 16 January 2017 and were not mentioned in any communication prior to that date.

144. Accordingly, the Court finds that these complaints were submitted out of time and must therefore be rejected as inadmissible pursuant to Article 35 §§ 1 and 4.

3. Complaints concerning access to medical treatment at Menoyia detention centre

(a) The parties' submissions

145. The Government submitted that the applicant's complaints were unfounded. Relying on the applicant's medical records (see paragraphs 67-70 above), they pointed out that the applicant's version of events did not correspond to reality. In so far as the records of 8 January 2014 were concerned, the psychiatrist who had examined the applicant on that date had not stated, as the applicant had submitted, that he had psychological problems that could not be treated in Menoyia; she had stated in her report that the applicant had demands that could not be satisfied (see paragraph 71 above). Lastly, the Government pointed out that according to the applicant's medical file, between 8 March 2013 and 26 June 2014 the applicant had been transferred to the hospital or examined by the doctor at Menoyia detention centre eighty-two times (see paragraph 72 above).

146. The applicant submitted that he had not had access to appropriate healthcare while being detained in Menoyia. He referred, in particular, to the incident of 19 October 2013 (see paragraph 64 above). In addition, in his observations of 16 January 2017 he complained of another incident that had taken place on 19 March 2013 (see paragraph 65 above). In his observations he also argued, referring to a record dated 8 January 2014 in his medical file, that the psychiatrist who had examined him on that date at the hospital had found that his psychological problems could not be treated in Menoyia (see paragraph 71 above).

(b) The Court's assessment

147. 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, among other authorities, *Seagal v. Cyprus*, no. 50756/13, § 125, 26 April 2016).

148. The Court notes, firstly, with regard to the incident on 19 March 2013, that this complaint was first submitted by the applicant in his observations of 16 January 2017. Further, it was not mentioned in any communication prior to this date. It follows that the complaint was submitted out of time and must therefore be rejected as inadmissible pursuant to Article 35 §§ 1 and 4.

149. Secondly, according to the medical records submitted by the Government and the case file as a whole, the applicant in the present case was not suffering from any particular health condition likely to make his detention more burdensome. Having perused the extensive medical records, the Court finds that there is no indication that the applicant did not receive adequate medical care and/or treatment while detained at Menoyia detention centre. On the contrary, it would appear that during his detention he regularly sought and obtained medical attention and treatment, including medication and supplements, not only in the on-site clinic but also in hospital. Further, the Court has already found that his version of the events of 19 October 2013 does not tally with the medical records (see paragraph 132 above). It is true that there was a deterioration in the applicant's psychological health while in detention and that he drank shampoo twice while detained in Menoyia and scratched himself, but he was taken to hospital on those occasions and also seen by a psychiatrist. Admittedly, in the circumstances, a more thorough psychiatric follow-up might have been of benefit to the applicant, but in view of the fact that he continued to receive medical attention throughout his detention in Menoyia, the Court finds that this is not enough to raise an issue under Article 3.

150. The Court therefore finds, on the basis of the evidence before it, that his allegation concerning the lack of requisite medical assistance while he was detained at Menoyia detention centre has not been made out. 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.

4. *Complaints concerning the material conditions of the applicant's detention*

(a) The parties' submissions

(i) The Government

151. The Government submitted at the outset that the applicant had failed to exhaust domestic remedies in respect of his complaints under this head, as he had not lodged a complaint with any State authority concerning the conditions of his detention. Section 36(1) of Law no. 163(I)/2005 (see paragraph 98 above) provided for an actionable right to compensation for those whose rights had been violated under that Law. Although the Government acknowledged that this was a remedy which was compensatory

in nature and could not lead to an improvement of the conditions of detention when a person was still in custody, they submitted that various preventive remedies existed on the domestic level. These differed depending on the specific nature of the complaint concerning the conditions of detention. For example, if a complaint concerned the cleanliness of the detention area, the sufficiency of the sanitary facilities or the quality of food, it should be addressed to the administration of the detention facility in question. The applicant, however, had never complained about the conditions of his detention to the competent authorities.

152. In any event, the Government argued that the applicant's complaints under this head were manifestly ill-founded. In particular, the Government submitted that the applicant's complaints had been vague and unspecified. He had not given any details concerning the conditions of detention in each facility in which he had been detained. His complaints had been limited to a general statement that the detention facilities did not comply with CPT standards or the standards foreseen in the Twenty Guidelines on Forced Return of the Council of Europe. However, the various reports he had relied on in his application form did not corroborate his allegations as they did not concern the period during which he had been detained.

153. The fact that the applicant had been held for short periods of time in police detention facilities which had not been declared to be specialised detention facilities for irregular migrants did not, in itself, establish that the conditions of detention in those facilities had been incompatible with Article 3. The applicant had not made any specific complaints about these facilities, for instance about the size of the cell he had been held in, the sanitary facilities or the meals.

154. In so far as Menoyia detention centre was concerned, the Government submitted that the applicant's allegations that it did not comply with international standards were unfounded. They relied on the CPT's 2014 report, their response to that report and the Ombudsman's report of 2013. They also pointed out that the CPT had recognised that the centre had been specially designed to meet the specific needs of irregular migrants and recommended in its 2014 report that all irregular migrants be held there.

155. With regard to the applicant's transfers, they stressed that he had not been transferred to the various detention centres by way of punishment, as he appeared to be suggesting, but for safety reasons and because of his problematic and disruptive behaviour. In any event, the applicant had not complained at any time about any of his transfers to police station detention facilities.

156. The Government concluded that the authorities had not failed to comply with their obligation to ensure that the applicant was not subjected to distress or hardship exceeding the unavoidable level of suffering inherent in detention. Nor was there any evidence supporting the applicant's

assertions in this respect. In any event, they argued that the conditions of the applicant's detention in any of the detention facilities had not met the threshold required in respect of a violation of Article 3.

(ii) The applicant

157. The applicant submitted that neither bringing an action under Law no. 163(I)/2005, which was only of a compensatory nature, nor a complaint to the authorities, as suggested by the Government, could be considered an effective remedy for the purpose of Article 35 of the Convention in relation to a conditions-of-detention complaint. In any event, contrary to what the Government had submitted, he had complained to the various authorities but no one had looked into his grievances.

158. With regard to the well-foundedness of his complaint, the applicant submitted that none of the facilities in which he had been detained complied with CPT standards or the standards regarding detention set out in the Council of Europe's Twenty Guidelines on Forced Return. First of all, he had been detained for almost three months in police stations, which had not been designed for long-term detention and had not been equipped for immigration detainees. The police stations had not been specialised detention facilities designed for third-country nationals pending their deportation in accordance with the domestic law – specifically, the Law and the Regulations for the Establishment and Regulation of Premises of Illegal Immigrants (Law no. 83(I)/2011). More specifically, the Minister of Justice and Public Order had never declared them to be facilities in which third-country nationals found to be illegally staying in the country could be detained.

159. The Council of Europe's European Commission against Racism and Intolerance, the CPT and the Cypriot Ombudsman, *inter alia*, had repeatedly reported that the conditions in police station detention facilities in Cyprus were totally unacceptable and amounted to inhuman and degrading treatment. He stated that nothing had substantially changed following the issuance of the above-mentioned reports.

160. Secondly, although the Menoyia detention centre was a specialised detention facility, it also did not comply with international standards. In this connection, the applicant observed that he had been detained there when the CPT had carried out its visit from 23 September to 1 October 2013 and that the CPT had in its subsequent report identified serious problems at the centre. He referred to paragraphs 37 to 53 of that report (see paragraph 102 above).

161. Furthermore, the applicant stressed that he had been detained in five different facilities and although the Menoyia detention centre had been open at the time, he had still been detained in different police stations, subjecting him to numerous transfers. The only assumption that could be

made, in view of the Government's submissions that he had caused problems, was that these transfers had been a punitive measure.

162. Lastly, the applicant submitted that the conditions of his detention had seriously affected him physically, mentally and psychologically and, taking into account also the prolonged duration of his detention, had amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

(b) The Court's assessment

(i) The complaint concerning Block 10 of Nicosia Central Prisons, Aradippou police station, Polis Chrysochous police station and Ayia Napa police station

163. The Court considers it unnecessary to examine the question of exhaustion of domestic remedies under this head or whether the first period of the applicant's detention in Nicosia Central Prisons comes within the six-month time-limit, as it finds that the applicant's complaint concerning his detention in the above facilities is in any event inadmissible for the following reasons.

164. The Court notes, firstly, that in his application form the applicant did not describe the conditions of his detention in any of these facilities; he did not give specific details about the cells or other aspects of the physical conditions, such as the lighting, ventilation, sanitary conditions, exercise or nutrition. Nor did he provide any details in his subsequent observations or challenge the Government's description of the conditions. His claim of a violation was based on the nature of these facilities *per se* and the duration of his detention in these facilities.

165. The Court has already ruled that police stations and other similar establishments which, by their very nature, are places designed to accommodate people for very short durations, are not appropriate places for the detention of people who are waiting for the application of an administrative measure, such as deportation (see, for example, *Haghilo*, § 160, and *Thuo*, § 159, both cited above, with further references; see also *S.Z. v. Greece*, no. 66702/13, § 40, 21 June 2018, with further references). However, in assessing whether there has been a violation of Article 3, the Court has taken into account the findings made by the CPT regarding the conditions of detention in such establishments for prolonged periods, the specific deficiencies concerning the applicant's detention in each case, in particular, overcrowding, a lack of outdoor space for exercise, poor sanitary conditions, poor quality food, as well as the duration of the applicant's detention (see, *inter alia*, *Haghilo*, cited above, §§ 160-69; *H.A. and Others v Greece*, no. 19951/16, §§ 166-70, 28 February 2019; *S.Z. v. Greece*, cited above, § 40; and *Thuo*, cited above, §§ 159-63; see also *Preci v. Greece* (dec.) [Committee], no. 9387/15, 17 November 2015; *Ciocan and Others v. Greece* (dec.) [Committee], no. 41806/13, 6 October 2015; and

Chazaryan and Others v. Greece, [Committee], no. 76951/12, 16 July 2015, in all of which the Court ruled that detention in that type of establishment for short periods did not automatically lead to a finding of a violation of Article 3 of the Convention).

166. Bearing in mind the above, the Court notes the following.

167. The applicant was held in Block 10 of Nicosia Central Prisons for seven days from 11 to 18 February 2013. From 6 July to 30 September 2013, the applicant was held at Aradippou police station for twelve days, then again in Block 10 for one month and twenty days, at Polis Chrysochous police station for four days and at Ayia Napa police station for eighteen days.

168. The Court notes that in the above facilities the applicant had between 3.5 and 10.8 sq. m of personal space. In Nicosia Central Prisons, where he was detained the longest, he had 4.5 sq. m, at Ayia Napa station about 9.4 sq m and at Polis Chrysochous station about 10.8 sq. m. In these three facilities he had access to natural light and air, and access to sanitary facilities and hygiene products. In both Nicosia Central Prisons and at Ayia Napa station he had access to outdoor exercise. Although at Polis Chrysochous station he only had access to an indoor yard for out-of-cell exercise, he was only detained there for four days and was then moved to Ayia Napa station.

169. At Aradippou police station, where the applicant had about 3.5 sq. m of personal space, the Court takes notes of the CPT's remarks about unsatisfactory access to natural light, poor conditions of hygiene and a malodorous detention centre (see paragraph 102 above, and, in particular, paragraph 24 of its 2014 report). It also observes that at this station there was only an indoor yard. However, it notes that the applicant was held there for a short period of twelve days and then moved to Nicosia Central Prisons where he benefited from better conditions and an outdoor yard.

170. In view of the general conditions prevailing in these establishments as described above, the lack of specific complaints by the applicant, and the duration of the applicant's detention in these establishments, the Court considers that the threshold of gravity required for detention to be qualified as inhuman or degrading treatment has not been reached (compare and contrast *Haghilo*, §§ 160-69, and *Thuo*, §§ 159-62, both cited above, and *Khanh v. Cyprus*, no. 43639/12, 4 December 2018).

171. The Court is mindful of the applicant's argument pertaining to his frequent transfers to, and detention in, various facilities. Albeit regrettable, bearing in mind the foregoing it finds that they raise no issue under Article 3.

172. It follows that the complaints under this head are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(ii) The complaint concerning Menoyia detention centre

173. The Court observes at the outset that the applicant was detained in this centre, which is a specialised detention centre for irregular migrants, on two different occasions, namely from 18 February until 6 July 2013 and from 30 September 2013 until his deportation on 8 July 2014.

174. As with his complaint concerning the other detention facilities, the applicant's complaint in his application form and subsequent observations is general, without giving specific details about the physical conditions of his detention in this centre. Further, he did not contest the Government's description of the conditions. He simply relied on the CPT's 2014 report.

175. Bearing in mind the CPT's findings (see paragraph 102 above, and, in particular, paragraphs 37 and 43-45 of its 2014 report), the Ombudsman's findings (see paragraph 106 above), the Government's description of the conditions (see paragraphs 51-54 above), and the lack of specific information from the applicant as to any specific failings, the Court finds that solely the insufficient personal space allocated to detainees during the period of the applicant's detention in this centre raises an issue under Article 3. The Court will therefore limit its examination of the complaint under this head to this matter.

176. With regard to the Government's objection of non-exhaustion of domestic remedies, the Court notes in this respect that at the time the present application was lodged with the Court, the applicant was detained in Menoyia in allegedly inadequate conditions. To be considered effective, the remedy should therefore have been able to lead to the improvement of the situation, not only to compensation for the damage sustained (see *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, § 111, 20 October 2011). Accordingly, to the extent that the Government referred to a civil action under Law no. 163(I)/2005, the Court has already found that this constitutes a purely compensatory remedy which does not provide a way to improve the conditions of detention of the person concerned and thus lacks the preventive element required (see *Danilczuk v. Cyprus*, no. 21318/12, §§ 39-41, 3 April 2018). In the absence of any other remedy put forward by the Government, the Court finds that their objection must be dismissed

177. Lastly, the Court considers that this part of the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

5. Conclusion concerning admissibility

178. In the light of the foregoing, the Court declares admissible the complaint about the conditions of detention (on account of the lack of personal space) at Menoyia detention centre.

179. It further declares inadmissible the remainder of the complaints by the applicant concerning the material conditions of his detention at the other

facilities, his solitary confinement and his lack of access to medical treatment.

B. Merits

180. The parties' submissions are set out in paragraphs 152-156 and 158-162 above.

1. General principles

181. The Court refers to the principles summarised in its case-law regarding inadequate conditions of detention (for a summary of the relevant general principles, see *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-141, 20 October 2016).

2. Application to the present case

182. The Court observes that in its 2014 report, the CPT raised concern about the general problem of insufficient personal space per detainee at Menoyia detention centre, noting that living conditions were cramped, as up to eight persons were being held in multi-occupancy cells measuring only some 17 sq. m, that is, a little over 2 sq. m of living space per detainee (see paragraph 102 above, and, in particular, paragraph 37 of the report). It therefore recommended that the authorities reduce the official capacity in the multi-occupancy cells to four persons (see paragraph 102 above, and, in particular, paragraph 43 of the report). It appears from the information submitted by the Government that this recommendation was implemented from 16 January 2016 onwards (see paragraph 104 above).

183. The Government submitted that the applicant had been held in a multi-occupancy cell measuring 18.36 sq. m which had at the time been used to detain up to eight inmates, and that during his detention he had shared the cell with four to seven other inmates. The Court notes therefore that, depending on the number of inmates detained with him, the applicant would have had between 2.29 and 4.59 sq. m. of personal space. So, when the applicant was held with seven other detainees, he would have had as little as 2.29 sq. m personal space, which was clearly below the acceptable minimum standard. Taking into account the relevant principles enunciated in its case-law (see paragraph 181 above), the Court finds that a strong presumption of a violation of Article 3 arises in the present case.

184. Turning to whether there are factors capable of rebutting that presumption, it observes that the Government did not provide any records in relation to the number of detainees held with the applicant in the cell each day throughout his detention during both periods. Consequently, as the Government have not shown that there were only short, occasional and

minor reductions in the applicant's required personal space, this presumption cannot be called into question.

185. The foregoing considerations are sufficient to enable the Court to conclude that during the relevant period, the conditions of the applicant's detention subjected him to hardship going beyond the unavoidable level of suffering inherent in detention and thus amounted to degrading treatment prohibited by Article 3 of the Convention.

186. There has accordingly been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention at Menoyia detention centre.

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

187. The applicant complained that his detention from 11 February 2013 until his deportation on 8 July 2014 had been unlawful and therefore in breach of Article 5 § 1 (f) of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

188. The Government contested that argument.

A. Admissibility

189. The Court finds that the applicant's complaint under this provision is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

190. The applicant submitted that he had been unlawfully deprived of his liberty in breach of Article 5 § 1 (f) of the Convention for a period of about seventeen months. He maintained that his detention had been unlawful, both in terms of domestic law and the Convention, and arbitrary on a number of grounds.

191. Firstly, the applicant submitted that the authorities, at least until August 2013, had taken no action to effect his deportation. Up to that date, they had merely conducted interviews with him on various occasions during which he had confirmed that he had not been willing to cooperate for the issuance of a travel document. It had been evident from the Government's observations that the authorities had just relied on the fact that he had refused to cooperate, even though the Egyptian embassy had made it clear that his consent had been required in order to issue a travel document. The authorities had only started actively pursuing his deportation in August 2013, following the meeting of the Director with the Egyptian authorities. By this time the Supreme Court had already ruled that the applicant's continued detention was unlawful and ordered his release. Following the above-mentioned meeting, the authorities had limited themselves to interviews with the applicant and had only contacted the Egyptian embassy four months later which had been to no avail as the applicant had still been refusing to cooperate. Following the lodging of the applicant's asylum application in January 2014, it appeared that no meaningful steps had been taken until his actual deportation in July 2014.

192. Secondly, there had been no substantive review of his detention by the Minister of the Interior. Prior to the first review on 19 June 2013, he had been in detention without any examination as to whether his continued detention had been justified. The review subsequently carried out by the Minister had been formalistic. It appeared from the documents submitted by the Government that the Police Aliens and Immigration Unit had informed the Minister of the reasons for which certain detainees, including the applicant, had had to remain in detention until 30 June 2013 and the Minister had then merely approved the orders without any further consideration of the actions taken in order to effect deportation. The subsequent reviews by the Minister had also been formalistic, his decision having been based on the fact that the applicant had not been cooperating in the process for the issuance of a travel document. In fact, the CPT in its 2014 report had confirmed the formalistic nature of the reviews by the Minister (the applicant referred to paragraph 30 of the CPT's 2014 report; see paragraph 102 above). Nor had the Minister or the Director examined the possibility of applying less coercive measures in the applicant's case.

193. Thirdly, the applicant had continued to be detained from 30 June 2013 onwards, despite the Supreme Court's judgment ordering his release. The authorities had shown disregard for, and had not acted in compliance with, not only the Aliens and Immigration Law but also the Court's case-law. The Director had rendered the remedy of habeas corpus void of any purpose and her decision to issue new orders, bearing in mind the grounds on which she had relied, had been arbitrary and taken in bad faith. The Minister should not have been allowed to issue new orders simply because

the government had omitted to make submissions before the Supreme Court.

194. Fourthly, following the lodging of his asylum application, the applicant had had the status of asylum-seeker and should have been released. In this connection, the applicant argued that an individual assessment of the circumstances of his case had not been made by the Cypriot authorities in order to ascertain whether his asylum application had been lodged for the sole purpose of delaying or jeopardising the enforcement of the return decision. Contrary to the Government's submissions, the applicant had not applied for asylum in order to frustrate the deportation process.

195. Lastly, the applicant pointed out that throughout the material period he had been detained in conditions of detention that had amounted to a breach of Article 3 of the Convention.

(b) The Government

196. The Government submitted that from 11 February 2013 until 8 July 2014 the applicant had been deprived of his liberty on the basis of deportation and detention orders that had been issued pursuant to section 6(1)(i), (k) and (l) of the Aliens and Immigration Law, on the grounds that the applicant had been a prohibited immigrant and a person liable to deportation under section 14(1) of the same Law. Therefore, the applicant's deprivation of liberty throughout this period fell within the ambit of Article 5 § 1 (f) of the Convention, as he had been detained for the purposes of being deported, in accordance with domestic law. There was also nothing to suggest that the orders had been issued in bad faith or arbitrarily.

197. While it was true that on 30 July 2013 the Supreme Court had ordered the applicant's release, new deportation and detention orders had been issued on the same day as the Supreme Court had not been duly informed of the reasons for the applicant's continued detention, the government having failed to file an objection to his application. The court had only heard the applicant's version of events. Furthermore, the applicant had remained a prohibited immigrant. On 7 November 2013 in the context of recourse no. 5848/13, the Supreme Court had rejected the applicant's application for a provisional order on the basis that he had not shown flagrant illegality in the issuance of the new orders. The Supreme Court had also reviewed the length of the applicant's detention in the context of his second habeas corpus application (no. 183/13) and had ruled that the new orders had not affected the overall length of his detention, which had started running on 11 February 2013. It had found that his continued detention had been lawful and in accordance with section 18ΠΣΤ of the Aliens and Immigration Law.

198. It was also true that while the applicant had been detained he had applied for asylum on 27 January 2014. Under domestic law at the time, the authorities had had the power to maintain deportation and detention orders issued against an applicant so long as those orders had been issued on grounds unrelated to the asylum application and had a suspensive effect pending the outcome of that application. Further, there was no obligation to release a person just because he or she had applied for international protection if the circumstances indicated that the application had been lodged in order to delay or frustrate the enforcement of return proceedings, which was what had happened in the present case. The overall behaviour of the applicant had indicated that he wished to remain in Cyprus and had been willing to go to great lengths to achieve this. Indeed, he had not cooperated with the authorities and had lodged an asylum application twenty years after arriving in Cyprus.

199. The authorities had not been able to deport the applicant to Egypt because he had not had travel documents and he had refused to cooperate with the Egyptian embassy for their issuance. The deportation proceedings against the applicant had been carried out with the required diligence and the authorities had pursued his repatriation to Egypt throughout his detention. Regular interviews had been held with the applicant in an attempt to persuade him to apply for travel documents and the authorities had been in contact repeatedly with the Egyptian embassy with a view to securing a travel document for the applicant without his consent. As a matter of policy, the Egyptian embassy did not issue travel documents unless its national had consented to repatriation. The protracted length of the deportation proceedings had been due to the applicant's unwillingness to cooperate. Pursuant to section 18ΠΣΤ(4) and (8) of the Aliens and Immigration Law (see *Haghilo*, cited above, § 101), the Minister and the Director had reviewed the applicant's detention five times and renewed or extended it on the above grounds. Although the deportation proceedings had been temporarily suspended for about two months, namely between 12 August 2013 and 14 October 2013, in order to give the authorities the chance to examine his allegations of inhuman or degrading treatment if deported to Egypt, the deportation had still been in progress as shown by the steps taken by the authorities during that period. It had not been an option to release the applicant, as this would have led to a real risk of losing track of his whereabouts, rendering his deportation impossible. The government's efforts and the risk of absconding had been noted by the Supreme Court in its judgment of 28 January 2014.

200. The Government thus concluded that the applicant had been detained lawfully with a view to his deportation under and in conformity with Article 5 § 1 (f) of the Convention.

2. The Court's assessment

(a) General principles

201. Article 5 of the Convention enshrines a fundamental human right – namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. 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, and no deprivation of liberty will be lawful unless it falls within one of those grounds. One of those exceptions, set out in sub-paragraph (f), permits the State to control the liberty of aliens within the context of immigration (see *Saadi v. the United Kingdom* [GC], no. 13229/03 § 43, ECHR 2008). Article 5 § 1 (f) does not demand that detention be reasonably considered necessary – for example, to prevent the individual from committing an offence or fleeing. Any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified, however, only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (ibid., § 72, with further references).

202. It is well established in the Court's case-law (under the above-mentioned sub-paragraphs of Article 5 § 1) that any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f), be "lawful". In other words, it must conform to the substantive and procedural rules of national law (ibid., § 67, with further references).

203. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among many other authorities, *Saadi*, cited above, § 67, and *Chahal v. the United Kingdom*, 15 November 1996, § 118, *Reports of Judgments and Decisions* 1996-V). It is a fundamental principle that no detention that is arbitrary can be compatible with Article 5 § 1, and the notion of "arbitrariness" in Article 5 § 1 extends beyond a lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention.

204. While the Court has not previously formulated a global definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. It is, moreover, clear from the case-law that the notion of arbitrariness in the context of Article 5 varies to a certain extent depending on the type of detention involved (see, for example, *Saadi*, cited above, § 68).

205. One general principle established in the case-law is that detention will be "arbitrary" where, despite complying with the letter of national law,

there has been an element of bad faith or deception on the part of the authorities or where the domestic authorities neglected to attempt to apply the relevant legislation correctly (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, §§ 75-76, 22 October 2018, with further references). Further, in order to avoid being branded arbitrary, detention under Article 5 § 1 (f) of the Convention 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, for example, *Saadi*, cited above, § 74).

(b) Application to the present case

206. The Court would begin by observing that the applicant was held in immigration detention from 11 February 2013 until 8 July 2014 for the purpose of his being deported from Cyprus. His detention therefore came within the ambit of Article 5 § 1 (f) of the Convention.

207. The Court notes, firstly, that on 30 July 2013 the Supreme Court ordered the applicant's immediate release, finding that the government had failed to show that his continued detention for over five months had been lawful. Despite the issuance of the writ of habeas corpus, the applicant was not in reality able to regain his liberty on that date as he was rearrested by the authorities while still at the court on the basis of new deportation and detention orders issued against him on the same grounds as those cited in respect of the first orders (see paragraphs 7 and 17 above, and, *mutatis mutandis*, *Haghilo*, cited above, § 186). It is evident from the documents in the case file and, in particular, the subsequent decisions taken by the Minister of the Interior (see paragraphs 18 and 22 above) and the Supreme Court's judgment of 28 January 2014 on the applicant's second habeas corpus application (see paragraph 21 above) that the applicant's detention on the basis of these new orders was not a new period of detention, but an extension of his detention from 11 February 2013 within the eighteen-month time-limit set by the Aliens and Immigration Law (see *Haghilo*, cited above, § 101).

208. The Court notes that, in spite of the Supreme Court's judgment of 30 July 2013, the Director (of the Civil Registry and Migration Department) decided, contrary to that court's verdict, that the applicant's continued detention was lawful, and ordered the issuance of the new orders with the aim of providing justification for his continued detention. It appears from the internal note she wrote on the same date that she acted on the assumption that if the government had filed an objection to the habeas corpus application and provided the Supreme Court with all the factual information, the court would possibly have decided differently (see paragraph 16 above). It is to be noted, however, that the government did not appeal against this judgment (see paragraph 14 above). In view of the

above, the Court cannot but discern bad faith on the part of the Director who, without the proper way of an appeal being used, clearly tried to make up for the authorities' poor handling of the habeas corpus application and to circumvent the Supreme Court's order.

209. The Court finds it noteworthy that Amnesty International in its 2012 report concerning the detention of migrants and asylum-seekers in Cyprus had expressed concern about a number of cases in which successful challenges against immigration detention had been mounted by way of habeas corpus applications but had not led to the release of the detainees concerned, as ordered by the Supreme Court. Instead, the persons concerned had been rearrested before leaving the Supreme Court building, or immediately thereafter, on the basis of new detention orders issued on the same grounds as those cited in respect of the previous detention orders (see paragraph 105 above). The Court also refers in this respect to the case of *Haghilo* and the domestic case-law cited therein (cited above, §§ 109-12).

210. The Supreme Court was clear in its judgment of 30 July 2013 when ordering the applicant's immediate release that the government had not established that keeping the applicant in detention beyond a period of five months was lawful. The government's failing to plead properly before it does not and cannot affect the order for the applicant's release and its binding effect. Under the relevant domestic law the writ of habeas corpus is the remedy specifically provided for challenging the lawfulness of detention with a view to deportation on length grounds (section 18 ΠΣΤ(5)(a) of the Aliens and Immigration Law; see *Haghilo*, cited above, § 106). Pursuant to section 18ΠΣΤ(5)(γ) of the Aliens and Immigration Law, if a habeas corpus application is granted by the Supreme Court, the Minister of the Interior must immediately release the person concerned (ibid). It therefore follows that the applicant should have been released on the basis of that judgment and his detention should have ended. The fact that he still remained an irregular migrant under domestic law could have no bearing on the above. Lastly, as stated above, this judgment was not appealed against. It is true that the Supreme Court on 18 January 2014 considered lawful the applicant's continued detention from 11 February 2013 (see paragraph 21 above). However, this judgment appears to attach no legal importance to the writ granted on 30 July 2013 and relies, *inter alia*, on the Minister's decision of 19 June 2013 which predated the first habeas corpus application and, hence, the immediate release order of 30 July 2013.

211. In view of all the foregoing considerations, even assuming that the applicant's continued detention from 11 July 2013 until his deportation on 8 July 2014 could be considered in compliance with domestic law, the Court finds that it was arbitrary, within the meaning of Article 5 § 1 of the Convention.

212. There has, accordingly, been a violation of that provision.

213. In view of this conclusion, the Court does not find it necessary to examine the preceding period of the applicant's detention or whether the requirement of diligence was complied with.

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

214. The applicant furthermore complained that he had not had an effective remedy at his disposal with which to challenge the lawfulness of his detention. He relied on Article 5 § 4 of the Convention, which provides as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

215. The Court notes that this complaint is linked to the applicant's complaint under Article 5 § 1 and must therefore likewise be declared admissible.

216. Having regard to its findings under Article 5 § 1 of the Convention (see paragraphs 206-212 above), the Court considers that there is no need for a separate examination of this complaint on its merits (see, for example, *Haghilo*, cited above, § 211).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

217. 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

218. The applicant claimed EUR 30,000 in respect of non-pecuniary damage. Specifically, he claimed EUR 10,000 in respect of the mental and physical suffering that he had had to endure as a result of being detained for over seventeen months, and EUR 20,000 in respect of the alleged ill-treatment and conditions of detention he had been subjected to, which had amounted to inhuman and degrading treatment.

219. The Government considered the applicant's claim to be excessive.

220. Making its assessment on an equitable basis and having regard to all the circumstances of the present case and the nature of the violations found, the Court awards the applicant EUR 26,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

221. The applicant claimed EUR 4,867.99 in total in respect of the costs and expenses incurred before the domestic courts and before the Court. This amount, which included VAT, was broken down as follows:

– EUR 3,320.99 in respect of the costs and expenses incurred in relation to the domestic proceedings: specifically, EUR 1,084.87 for the second habeas corpus application (no. 183/13); and EUR 2,236.12 for the recourse against the deportation and detention orders of 30 June 2013 (no. 5848/13), including the application for a provisional order in the context of those proceedings. He submitted that these sums had been calculated in accordance with the Supreme Court's fee scales.

– EUR 1,547.00 in respect of the costs and expenses incurred before the Court. This sum included: EUR 476 for the lodging of the application; EUR 595 for the preparation of the observations; and EUR 476 in respect of correspondence.

222. The applicant submitted three separate pro forma invoices from his lawyer itemising the fees and expenses for the above amounts.

223. The Government submitted that the costs claimed were excessive and not reasonable as to quantum.

224. The Court reiterates that an applicant is entitled to be reimbursed for those costs actually and necessarily incurred in preventing or redressing a breach of the Convention, to the extent that such costs are reasonable as to quantum (see, among other authorities, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 256, ECHR 2009).

225. In the present case, in respect of the costs and expenses incurred by the applicant before the Supreme Court in both sets of proceedings, the Court considers that they were necessarily and reasonably incurred in the applicant's attempt to seek redress for the violation of the Convention that it has found under Article 5 § 1 of the Convention. Thus, they are in principle recoverable under Article 41 of the Convention. The Court also finds, bearing in mind the complexity of the case, that the sum claimed is reasonable as to quantum. The Court considers, therefore, that this claim should be met in full.

226. Furthermore, having regard to the documents available to it and to its case-law, the Court considers it reasonable to award the applicant the full amount claimed in respect of the proceedings before it.

C. Default interest

227. 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 of the Convention concerning the conditions of detention at Menoyia detention centre (on account of the lack of personal space) and Article 5 §§ 1 and 4 of the Convention admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention at Menoyia detention centre;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

4. *Holds* that no separate examination of the complaint under Article 5 § 4 of the Convention is required;

5. *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, the following amounts:
      (i) EUR 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,867.99 (four thousand eight hundred and sixty-seven euros and ninety-nine cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 June 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President