



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

THIRD SECTION

CASE OF K.A. v. CYPRUS

(Application no. 63076/19)

JUDGMENT

Art 5 § 4 • Failure to comply with speedy review requirement in pending appeal proceedings concerning lawfulness of asylum seeker's detention order
• Period of inactivity of over nine months, from lodging of appeal until applicant's release, entirely attributable to authorities

Prepared by the Registry. Does not bind the Court.

STRASBOURG

2 July 2024

FINAL

02/10/2024

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

In the case of K.A. v. Cyprus,

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

Pere Pastor Vilanova, *President*,

Georgios A. Serghides,

Darian Pavli,

Peeter Roosma,

Ioannis Ktistakis,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 63076/19) 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 a Moroccan national, Mr K.A. (“the applicant”), on 9 December 2019;

the decision to give notice to the Cypriot Government (“the Government”) of the complaints concerning the lawfulness of the applicant’s detention under Article 5 § 1 of the Convention and the absence of an effective procedure by which he could challenge the lawfulness of his detention under Article 5 § 4 of the Convention and to declare inadmissible the remainder of the application;

the decision not to have the applicant’s name disclosed;

the parties’ observations;

Having deliberated in private on 11 June 2024,

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

INTRODUCTION

1. The case concerns the lawfulness of the applicant’s detention, as an asylum seeker, on national security grounds and the protracted nature of the domestic proceedings.

THE FACTS

2. The applicant is a Moroccan national who was born in 1966 and lives in Cyprus. The applicant was represented by Ms N. Charalambidou, a lawyer practising in Nicosia.

3. The Government were represented by their Agent, Mr G. L. Savvides, Attorney General of the Republic of Cyprus.

4. The facts of the case may be summarised as follows.

I. THE APPLICANT'S ARRIVAL AND DETENTION IN CYPRUS

5. On 26 December 2018 the applicant entered Cyprus irregularly through the occupied areas of Cyprus, from where he subsequently crossed to the areas under the effective control of the Republic of Cyprus.

6. On 10 January 2019 he attended the Aliens and Immigration Service of the Cyprus Police ("AIS") and lodged an application for asylum. On the same day, he was interviewed by the Counter Terrorism Office of the Police ("CTO") and the Cyprus Intelligence Service ("CIS") because his name had appeared flagged as that of a "category B suspect" on the database of a foreign service collaborating with the CTO. The foreign service confirmed on that day that the applicant was suspected of involvement in carrying out terrorism-related operations in support of a terrorist group or organisation. In view of this information the CTO considered the applicant to present a danger to the public order and national security of the Republic of Cyprus and accordingly informed the relevant Cypriot authorities.

7. Based on the above, on 10 January 2019, the Deputy Director of the Civil Registry and Migration Department ("the CRMD") issued an order for the applicant's detention on national security grounds ("the detention order") pursuant to section 9ΣΤ(2)(e) of Law no. 6(I)/2020, as amended ("the Refugee Law").

8. The applicant was informed of the detention order the same day and was informed of his right to appeal against it. He was then placed in police custody.

9. On 11 January 2019 the applicant was transferred to the Menoyia Detention Centre for Prohibited Immigrants ("Menoyia Detention Centre") where he remained throughout his detention.

II. ASYLUM PROCEEDINGS

10. On 12 April 2019 the Asylum Service rejected the applicant's application for international protection. He challenged this decision unsuccessfully through an administrative appeal with the then Reviewing Authority for Refugees.

11. On 14 October 2019 the applicant filed a recourse (no. 229/19) with the Administrative Court for International Protection (ACIP) challenging the decision of the Reviewing Authority for Refugees.

12. On 21 April 2021 the applicant filed an interim application seeking a preliminary ruling from the Court of Justice of the European Union ("CJEU") and the suspension of the proceedings in the ACIP pending the CJEU's decision.

13. The proceedings before the ACIP have suspensive effect and are still pending.

III. CHALLENGE TO LAWFULNESS OF DETENTION

14. On 21 March 2019 the applicant asked the Administrative Court (recourse no. 422/2019) to invalidate the detention order as unlawful. He claimed that his detention could not be justified under any of the permissible grounds for detention under Article 5 of the Convention.

15. On 22 April 2019 the Administrative Court dismissed the applicant's recourse, holding that the detention order was lawful.

It held, *inter alia*, that the applicant's detention had been based on section 9ΣΤ of the Refugee Law, which was fully in line with article 8 of Directive 2013/33/EU as cited in the CJEU's judgment in *J. N. v Staatssecretaris van Veiligheid en Justitie* (c-601/15 PPU, Grand Chamber judgment, EU:C:2016:84). The court dismissed the applicant's argument of a violation of Article 5 of the Convention. It considered that even though his detention as an asylum seeker had been an extraordinary measure and had restricted his freedom, it nonetheless served a legitimate aim of public interest, namely, the protection of national security and the rights of others. In addition, it found that the order had been based on an individualised assessment and on information indicating the applicant's suspected involvement in terrorism-related activities.

16. On 6 May 2019 the applicant appealed to the Supreme Court (appeal no. 78/2019).

17. This appeal is pending.

IV. PROCEEDINGS CONCERNING THE LENGTH OF DETENTION

18. On 17 January 2020, following an unsuccessful petition for a writ of habeas corpus (no. 126/2019) the applicant filed a second petition (no. 4/2020) for a writ of habeas corpus with the Supreme Court, exercising its first-instance jurisdiction, challenging the lawfulness of his detention because of its length.

19. On 24 February 2020 the Supreme Court ordered the applicant's release. It held that the State had the burden of justifying the detention and in the absence of evidence or documents relevant to the detention order or to the review of the duration of the applicant's detention, it had had to order his release. Specifically, the State had failed to provide the court with the material which had been submitted to the Administrative Court or with any substantial evidence which might have been taken into account during an internal re-examination of his detention carried out by the authorities on 16 January 2020. In the absence of relevant evidence, the court could not establish whether and to what extent the reasons behind the applicant's detention continued to exist.

V. THE APPLICANT'S RELEASE AND SUBSEQUENT ACTION

20. On 24 February 2020, in compliance with the habeas corpus decision, the Senior Director of the CRMD revoked the detention order and released the applicant from detention, allowing him to stay at a hotel in Larnaca.

21. By a letter of 3 April 2020 the applicant was informed that the Minister of Interior had directed under section 9E(1)(β)(ii) of the Refugee law (see paragraph 30 below) that the applicant should reside at the Kofinou Reception and Accommodation Centre, for reasons of public interest and pending the examination of his appeal by the ACIP. The applicant was also informed that he would have the status of an applicant for international protection until that appeal had been heard. He was further informed that prior to his transfer to Kofinou Reception and Accommodation Centre, he would be placed in quarantine for fourteen days at Pournara Emergency Reception Centre ('Pournara').

22. On 10 April 2020 the applicant filed a new petition for a writ of habeas corpus (no. 43/2020) with the Supreme Court, exercising its first-instance jurisdiction, challenging the Minister of Interior's decision to place him in quarantine.

23. On 17 April 2020, at the end of the fourteen-day quarantine, the applicant was transferred to Kofinou Reception Centre.

24. In the beginning of June 2020, the Minister of Interior lifted the restriction measure concerning the applicant. On 9 June 2020 the applicant therefore withdrew his petition for a writ of habeas corpus.

25. The applicant submitted that he had been allowed to leave Kofinou Reception and Accommodation Centre on 1 October 2020. The Government made no specific submission in this regard.

26. By a letter of 26 September 2022, the AIS confirmed to the CRMD that the applicant, up until that point, had been residing in Larnaca, at an address known to the authorities.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

THE REFUGEE LAW

27. The Refugee Law was amended on a number of occasions for the purpose of harmonisation with the relevant provisions of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) ("the Asylum Procedures Directive") and the relevant provisions of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) ("the Reception Conditions Directive"). The relevant provisions of the Refugee Law as applicable at the relevant time and

following the amendments introduced by the relevant Directives, are set out below.

28. Under section 9Δ of the Refugee Law, asylum-seekers enjoyed freedom of movement and residence in the areas controlled by the Government and were entitled to choose their place of residence. This right could be restricted by a decision on the part of the relevant authorities to determine the applicant's place of residence in the public interest, or in the interest of public order, or where necessary for the timely processing and effective follow-up of the application (see section 9E of the Refugee Law).

29. Under section 9ΣΤ of the Refugee Law, applicants for international protection could be detained and had the right to challenge such detention. The relevant parts of that section read as follows:

“(1) It shall be prohibited to detain an applicant on the sole ground of his or her status as an applicant, or to detain any applicant who is a minor.

(2) Unless alternative, less coercive measures, such as those provided for in paragraph 3, can be applied effectively in a given case, the Minister may, where such a measure proves necessary following an individual assessment of each case, issue a written order for an applicant's detention for any of the following reasons only:

(α) ...

(ε) where the protection of national security or public order so requires;

...

(4)(α) The detention of an applicant shall be for as short a period as possible and shall last only as long as the grounds set out in paragraph 2 remain applicable.

(β) Administrative proceedings in connection with a ground of detention set out in paragraph 2 shall be carried out without unnecessary delay. Continued detention shall not be justified on the basis of delays in the administrative proceedings that are not attributable to the applicant.

...

(6)(α) The detention order shall be subject to a recourse under Article 146 of the Constitution, pursuant to the provisions of that Article and subject to the conditions under which such a recourse is authorised thereunder.

(β)(i) The first-instance adjudication of a recourse referred to in sub-paragraph α shall be completed as soon as possible and the decision shall be delivered within four weeks from the time the recourse was lodged, except in case of force majeure. ...

...

(7)(α)(i) The period of detention under the present section shall be subject to a petition for and issuance of a writ of habeas corpus under Article 155.4 of the Constitution and in accordance with the provisions thereof.

(ii) The detained applicant may file more than one petition mentioned in clause i, especially in cases of protracted detention. ...

(β)(i) the first-instance adjudication of the petition mentioned in sub-paragraph α, shall be completed as soon as possible and the decision shall be delivered within three weeks from the time the petition was lodged, except in case of force majeure. Where

applicable, the adjudicating court shall give the necessary instructions to speed up the proceedings as a whole. ...

...

(γ) Where the petition referred to in sub-paragraph α has been granted by the Supreme Court, the Minister shall immediately release the applicant concerned ...”

30. Section 9E(1)(β)(ii) provided that the Minister could define an applicant’s place of residence for purposes of the public interest or national security, or when that was necessary for the timely processing and conclusion of his asylum application.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

31. The applicant complained that his immigration detention from 10 January 2019 to 24 February 2020 and his detention from 3 April 2020 to June 2020 had been unlawful in breach of Article 5 § 1 of the Convention, and that he did not have an effective remedy at his disposal by which he could challenge the lawfulness of his detention in that, *inter alia*, the proceedings before the Administrative Court had failed to respect the principle of equality of arms, while the appeal proceedings challenging the Administrative Court’s decision had not complied with the speediness requirement, in breach of Article 5 § 4 of the Convention. Article 5 §§ 1 and 4 provides, where relevant, 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:

...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(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.

...

4. 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.”

A. Admissibility

32. The Government submitted that the applicant’s complaint concerning his detention from 3 April to June 2020 was inadmissible as he had failed to exhaust domestic remedies. According to the Government, the Minister of

Interior's direction as to the applicant's place of residence and originally confining him in quarantine at Pournara First Reception Center had been based on section 9E(1)(β)(ii) of the Refugee Law and had constituted an individual administrative act, which the applicant ought to have challenged in the Administrative Court.

The Government further submitted that the remainder of the applicant's complaints had been premature in that on 9 December 2019 when he lodged his application with the Court, the examination of his appeal no. 78/2019 challenging the Administrative Court's decision was, and still is, pending before the Supreme Court.

In addition, the Government submitted that the fact that the main appeal proceedings had not been conducted in a timely manner had not meant that they had not been effective, and therefore they needed to have been exhausted.

33. The applicant submitted that he had complied with the admissibility criteria and reiterated his complaints.

34. The Court notes first that it has doubts as to whether the period from 3 April 2020 until June 2020 amounted to a "deprivation of liberty" within the meaning of Article 5 of the Convention. In any event, the Court agrees with the Government that the applicant ought to have challenged the Minister of the Interior's decision in the Administrative Court before raising that complaint with the Court. The Court therefore considers that the applicant has failed to exhaust domestic remedies with regards to his complaint under Article 5 § 1 concerning the period from 3 April 2020 until June 2020. This part of the application must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

35. The Court notes second, that the requirement of speediness is relevant for the duration of a person's detention (see *Kováčik v. Slovakia*, no. 50903/06, 29 November 2011). While the guarantee of speediness is no longer relevant for the primary purpose of Article 5 § 4 after the person's release, the guarantee of efficiency of the review should continue to apply even thereafter since a former detainee may well have a legitimate interest in the determination of his or her detention even after having been liberated (*ibid.*)

36. In these circumstances, the Court considers that the applicant's complaint under Article 5 § 1 concerning the lawfulness of his immigration detention from 10 January 2019 to 24 February 2020 and the Administrative Court's failure to respect, *inter alia*, equality of arms under Article 5 § 4, is indeed premature as the appeal proceedings no. 78/2019 could determine, even after his release, issues relating to the lawfulness of the applicant's detention and the guarantee of efficiency of the review. It follows that at the present stage this head of the applicant's complaint is premature and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

37. As regards the applicant's complaint concerning failure to conduct the appeal proceedings no. 78/2019 "speedily", the Court finds that the issue raised by the Government's plea of non-exhaustion of domestic remedies goes to the merits of Article 5 § 4, namely, whether the applicant had at his disposal during his detention a remedy which could have provided him with an adequate and speedy judicial review of the lawfulness of his detention. The Court will therefore address this issue when examining the substance of the applicant's complaint under this provision.

38. The Court notes that the applicant's complaint concerning the "speediness" requirement 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

39. The applicant argued that the appeal proceedings (no. 78/2019) in relation to the decision of the Administrative Court had not been timely. Specifically, over nine months had elapsed from the day he lodged the appeal (6 May 2019) until his release (24 February 2020) with no significant activity in the proceedings, which were first listed for directions – not for hearing – on 6 April 2020. The applicant said that by the time the Supreme Court listed the appeal for directions a period of one year and twenty-six days had elapsed without any activity, and that his release was irrelevant.

(b) The Government

40. The Government disputed the applicant's claims. With reference to the issue of timeliness, the Government contended that the proceedings concerning the lawfulness of the applicant's detention had been conducted at two levels of jurisdiction. The first instance proceedings had been conducted under section 9ΣΤ(6)(β)(i) of the Refugee Law and had taken the four weeks between 22 March 2019 and 22 April 2019. Concerning the appeal proceedings, the Government argued that the fact that they were still not concluded was irrelevant given that the applicant had been released on 24 February 2020. It submitted that the period between 6 May 2019, when the appeal had first been lodged and 24 February 2020, when the applicant had been released, had not been excessive considering the complexity of the issues surrounding national security.

2. The Court's assessment

41. As regards the applicant's complaint concerning the timeliness of appeal proceedings no. 78/2019 before the Supreme Court, the Court refers

to the general principles set out in *Ilmseher v. German* [GC] (nos. 10211/12 and 27505/14, §§ 251-256, 4 December 2018); *Khlaifia and Others v. Italy* [GC] (no. 16483/12, §§ 128-31, 15 December 2016); and *Kučera v. Slovakia* (no. 48666/99, § 107, 17 July 2007), which all concerned Article 5 § 4 and, in particular, the requirement of “speediness”. In this connection, the Court notes at the outset that the scope of the applicant’s complaint concerning the right to a speedy decision, as raised in the application form, and as developed in the observations, is limited to the appeal proceedings. The Court will therefore limit its assessment under this head to those proceedings only (see *Khokhlov v. Cyprus*, no. 53114/20, § 76, 13 June 2023).

42. Specifically, the applicant filed an appeal (no. 78/2019) challenging the Administrative Court’s judgment on 6 May 2019. On 9 December 2019 the applicant lodged his application with the Court. According to the applicant, and the Government have not disagreed with his assertion, the appeal was first listed for directions on 6 April 2020. The Government have not suggested that any steps were taken in the appeal proceedings whether before 9 December 2019 when the applicant lodged his application with the Court or even before the applicant’s release. There is also nothing to suggest that the applicant’s lodging of the appeal and his subsequent conduct caused delays in its examination. The applicant therefore justifiably lodged his application with the Court on 9 December 2019 as by that time over seven months had passed without any progress in the appeal proceedings. The applicant was therefore not required to wait for the outcome of the appeal proceedings before applying to the Court under that head. This is especially so considering that the inactivity was entirely attributable to the authorities. The Court reiterates that where an individual’s personal liberty is at stake, the Court has set very strict standards for the State’s compliance with the requirement of a speedy review of the lawfulness of detention (see, for example, *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006, where appeal proceedings lasting twenty-six days were found to be in breach of the “speediness” requirement). The Government’s objection concerning the applicant’s failure to exhaust domestic remedies must accordingly be dismissed.

43. Given the fact that over nine months had elapsed from the day the applicant lodged the appeal until his release with no significant activity in the proceedings, the Court concludes that the proceedings in appeal no. 78/2019 concerning the lawfulness of the detention order were not conducted “speedily” within the meaning of Article 5 § 4 of the Convention.

44. Having examined the facts in the light of the information provided by the parties and having regard to its case-law on the subject, the Court considers that there has been a violation of Article 5 § 4 of the Convention on account of the failure to comply with the speedy review requirement in appeal proceedings no. 78/2019.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage for the mental and physical suffering endured during his detention.

47. The Government dismissed the above claim as tenuous, speculative and in any event, exaggerated.

48. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the lack of a speedy review of his detention in Cyprus in breach of Article 5 § 4 of the Convention and, ruling on an equitable basis, awards him EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

49. The applicant also claimed EUR 6,409.83 for the costs and expenses incurred before the domestic courts for the two appeals filed in the Supreme Court as well as those incurred before the Court.

50. The Government rejected this claim, arguing that the applicant had not submitted any documents showing that he had either paid such costs or that he had been bound to pay such them pursuant to a legal or contractual obligation.

51. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case the applicant did not submit any documents showing that he had paid or was under a legal obligation to pay the fees charged by his representative or the expenses incurred by her. The applicant has only provided the court with documents titled ‘Request for payment’. These documents do not constitute valid invoices, nor have they been accompanied by a letter of engagement or other binding agreement. The Court therefore finds no basis on which to accept that the costs and expenses claimed by the applicant have actually been incurred by him.

52. It follows that the claim must be rejected.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's preliminary objection concerning non-exhaustion of domestic remedies concerning the complaint of failure to conduct appeal proceedings no. 78/2019 speedily and *dismisses* it;
2. *Declares* the complaints concerning the alleged unlawfulness of the applicant's detention under Article 5 § 1 and the absence of equality of arms and adversarial proceedings before the Administrative Court under Article 5 § 4 of the Convention inadmissible, and the remaining complaint admissible;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the lack of a speedy review of the lawfulness of the applicant's detention in appeal proceedings no. 78/2019;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Pere Pastor Vilanova
President