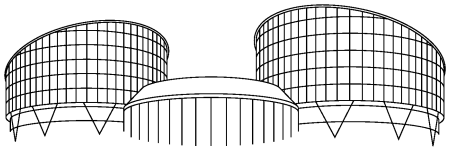

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF H.S. AND OTHERS v. CYPRUS

(Application no. 41753/10 and 13 other applications)
(See list appended)

JUDGMENT

STRASBOURG

21 July 2015

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 H.S. and others v. Cyprus,

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

Guido Raimondi, President,
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Yonko Grozev, judges,

and Françoise Elens-Passos, Section Registrar,

Having deliberated in private on 30 June 2015,

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

PROCEDURE

1. The case originated in fourteen applications (nos. 41753/10, 41786/10, 41793/10, 41794/10, 41796/10, 41799/10, 41807/10, 41811/10, 41812/10, 41815/10, 41820/10, 41824/10, 41919/10 and 41921/10) 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 twelve Syrian nationals of Kurdish origin and two Ajanib (registered stateless) Kurds of Syria ("the applicants"), on 14 June 2010 (see details in the Appendix).

2. The applicants were represented by Ms N. Charalambidou, a lawyer practising in Nicosia. The Cypriot Government ("the Government") were represented by their Agent at their time, Mr P. Clerides, Attorney-General of the Republic of Cyprus.

3. The applicants alleged that their deportation to Syria would entail the risk of being subjected to treatment in breach of Article 3. In this respect they also complained of the lack of a remedy satisfying the requirements of Article 13 of the Convention. Further, the applicants complained under Article 5 §§ 1 (f), 2 and 4 of the Convention about their detention by the Cypriot authorities. Lastly, they claimed that their deportation would be in breach of Article 4 of Protocol No. 4.

4. On 14 June 2010 the President of the First Section decided to apply Rule 39 of the Rules of Court, indicating to the respondent Government that the applicants should not be deported to Syria. The applications were granted priority on the same date (Rule 41). On 21 September 2010 the President of the First Section, following an examination of all the information received from the parties, decided to lift the interim measure (see paragraph 195 below).

5. On 19 January 2011 the President of the First Section decided to communicate the complaints under Article 5 §§ 1 (f), 2 and 4 of the Convention and Article 4 of Protocol No. 4. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

6. On 25 August 2011 the Court changed the composition of its Sections (Rule 25 § 1 of the Rules of Court) and the applications were assigned to the newly composed Fourth Section.

7. On 30 November 2012 the President of the Fourth Section decided on her own motion to grant the applicants anonymity (Rule 47 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicants' asylum claims and all relevant proceedings

1. Application no. 41753/10 - H.S v. Cyprus

8. The applicant, who is a Syrian national of Kurdish origin, was born in 1982 in Syria.

9. In his application form to the Court the applicant stated that following the events in Qamishli in March 2004 (see paragraph 242 above; paragraph 3.13 of the United Kingdom Border Agency's Country of Origin Information Report on Syria) he had participated in demonstrations that took place at his university. He was arrested in July the same year by the civil police and was detained for four days. During this period he was ill-treated and his health was adversely affected by the physical violence he was subjected to. The applicant was arrested again in March 2005 for three days and once again subjected to physical violence. Following his release, he was not able to find any employment as his police file remained open. He also submitted that he had not served compulsory military service.

10. The applicant left Syria on 10 February 2006 and entered Cyprus illegally on 5 March 2006 after travelling from Turkey. He submitted that he secured a visa for Turkey after bribing officials.

11. He applied for asylum in Cyprus on 12 March 2006.

12. The Asylum Service discontinued the examination of his application and closed his file on 29 August 2007 by virtue of section 16A (1) (a) of the Refugee Law of 2000-2004 (as amended up to 2004; Law no. 6(I)/2000; see paragraphs 236 below and *M.A. v. Cyprus*, no. 41872/10, § 74, ECHR 2013 (extracts)) as the applicant had not complied with the obligation deriving

from section 8 of that Law, according to which, in the event of a change of address, the applicant had to inform the Asylum Service either directly or through the local Aliens and Immigration Police Department, within three days (see paragraph 236 below). According to the note in his file the applicant had not attended the interview arranged for 6 July 2007. In the note it is stated that a letter had been sent to him on 7 June 2007 by the Asylum Service requesting him to attend the interview. The applicant, however, had not received this letter as he had changed address in the meantime without notifying the authorities. Furthermore, it had not been possible to make telephone contact with him as he had given a wrong number.

13. The applicant did not lodge an appeal with the Reviewing Authority for Refugees (hereafter "the Reviewing Authority").

14. The applicant submitted that he never received a letter asking him to attend an interview nor had he received notification of the decision of the Asylum Service to close his file so as to be able to appeal against it.

2. Application no. 41786/10 - A.T. v. Cyprus

15. The applicant, who is a Syrian national of Kurdish origin, was born in 1985 in Syria.

16. The applicant left Syria on 25 September 2008 and entered Cyprus illegally on 12 November 2008 after travelling from Turkey.

17. In his application form to the Court the applicant stated that he had left Syria because he had been harassed and ill-treated by the Syria Security Police due to his origin and his connections to the Yekiti party. He stated that he had left Syria illegally.

18. The applicant applied for asylum in Cyprus on 13 November 2008. In his application for asylum, the applicant claimed that he had left Syria for two reasons. First of all, he had been beaten up by members of the Security Forces as he had complained about having to repair their cars at his car repair garage without payment. Secondly, his business had suffered setbacks by rising oil prices. He stated that he had left Syria legally.

19. The Asylum Service held an interview with him on 15 May 2009. In his interview the applicant claimed that he had been arrested and beaten up by the Security Forces on a number of occasions in connection with their demands to have their cars repaired for free and that the Head of the Security Forces had threatened to imprison him for a very long period. He also claimed that after he had left Syria he had found out that the Security Forces as well as the Syrian authorities were looking for him on the pretext that he had participated in the Qamishli events in 2004. He therefore faced imprisonment if he returned to Syria.

20. His application was dismissed on 29 May 2009 on the ground that he did not fulfil the requirements of the Refugee Law of 2000-2007 (as amended up to 2007), and the 1951 Geneva Convention relating to the

Status of Refugees (hereafter "the 1951 Geneva Convention") in that he had not shown that he had a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group or political opinion or a well-founded fear of serious and unjustified harm for other reasons. The Asylum Service considered that there was no possibility of the applicant being subjected to inhuman or degrading treatment if returned to Syria. The Asylum Service noted that there had been significant discrepancies and inaccuracies in his account of the facts on which his allegations of persecution were based. It held that the applicant's allegations had been unfounded and had not been credible.

21. On 9 July 2009 the applicant lodged an appeal with the Reviewing Authority against the Asylum Service's decision.

22. In the copies of the records of the Civil Registry and Migration Department it was noted on 3 March 2010 that in accordance with instructions given by Minister of the Interior on 9 February 2010, if the applicant was traced, the possibility of granting him a special residence permit should be examined before deporting him. Deportation should take place only if the applicant was involved in illegal activities.

23. On 23 April 2010 the Asylum Service's decision was upheld and the appeal dismissed.

24. The Reviewing Authority pointed to contradictions in the applicant's claims and held, having regard to all the information and evidence available, that they were unsubstantiated. It noted that the applicant had given two different reasons for which the Head of Security Forces had allegedly threated him with imprisonment. Furthermore, although he initially claimed that the Security forces and the authorities were falsely accusing him of participating in the Qamishli events, he then stated that he had actually participated but was not able to give accurate information concerning these events. Furthermore, the events complained of had happened in 2004 whereas he had left Syria legally in 2008 and he did not allege that during this period he was persecuted by the authorities because of his alleged participation. He was also able to leave Syria legally. The Reviewing Authority further stressed that his claims concerning ill-treatment were incoherent and that the applicant had not been able to describe in any detail the treatment he had been allegedly subjected to. Lastly, in reply to the applicant's claims before it that he had been subjected to persecution because of his Kurdish origin, the Reviewing Authority observed that the applicant had not applied for asylum on this basis. In any event, it stressed that there was no indication that he had been subjected to any kind of discrimination on the ground of his origin.

25. The Reviewing Authority concluded by observing that the applicant had not established that he was at risk of persecution if he returned to Syria. Nor did he satisfy the conditions for temporary residence on humanitarian grounds.

26. The applicant submitted that he did not receive the decision of the Reviewing Authority but had only heard that his asylum file had been closed. He was therefore not able to appeal.

27. The Government submitted that a letter was sent on 10 May 2010 by double registered mail (registered mail with proof of delivery) to the address given by the applicant. The letter had been returned. They provided a copy of the receipt on which it was noted "insufficient address."

3. Application no. 41793/10 – F.T. v. Cyprus

28. The applicant, who is a Syrian national of Kurdish origin, was born in 1972 in Syria.

29. In his application form to the Court the applicant submitted that he had converted to Christianity. In 2003 he was detained by the Syrian police and was accused of organising a church congregation (organising people for church). During his detention, which lasted two days, he was tortured by police officers. He did not confess that he had changed religion but told them that he had been going to church to give music lessons. He was arrested again on 12 March 2004 and detained for five days during which he was subjected to torture. After he was released he was told that he would be contacted again. For this reason he started travelling around Syria but never staying in places where too many Kurds lived.

30. The applicant left Syria on an unspecified date in 2005. Although he had left legally, he had bribed a police officer at the border to let him go through. The applicant entered Cyprus illegally after travelling from Turkey.

31. He applied for asylum in Cyprus on 11 May 2005.

32. Following an interview on an unspecified date, his application was dismissed on 16 August 2008 on the ground that he did not fulfil the requirements of the Refugee Law of 2000-2005 (as amended up to 2005; see paragraph 20 above). The Asylum Service held that the applicant's claims and his alleged fear of persecution on return to Syria were not credible. It noted in this respect that the applicant had been able to obtain a passport lawfully and to leave Syria, that there had been discrepancies between his asylum application and his interview, concerning the grounds for which he had alleged left Syria, and that the applicant lacked basic knowledge of the Christian religion.

33. On 12 September 2006 the applicant lodged an appeal with the Reviewing Authority against the Asylum Service's decision.

34. It appears that on 17 October 2006 the applicant applied for a temporary residence permit.

35. On 20 March 2007 the decision was upheld and the appeal dismissed.

36. The Reviewing Authority, referring to the Asylum Service's decision, held that there had been discrepancies in the applicant's account of

the facts and reasons for his departure from Syria which undermined his credibility. The Reviewing Authority noted, *inter alia*, that although the applicant had claimed that he had left Syria because he had been persecuted by the Security Forces he had been able to obtain a passport lawfully and to leave the country. The applicant had also stated in his interview that he had not faced any difficulties going through passport control as he did not have any problems with the Syrian authorities. Moreover, although the applicant alleged that he had been persecuted and harassed for participating in Kurdish festivities, when requested he did not give any details concerning the alleged persecution. To the extent that the applicant claimed that he had been detained twice following the Qamishli events, the Reviewing Authority observed that the applicant had been released without conditions and had never been charged with any offence. Lastly, the applicant in his interview had claimed that he had converted to Christianity while in Syria in 2002 and that he had left Syria for this reason. He had not, however, mentioned this in his application form on which it was stated that he was a Muslim. In any event, the applicant lacked basic knowledge of the Christian religion and had not been baptised.

37. The Reviewing Authority concluded that the applicant had not established that he was at risk of persecution if he returned to Syria. Nor did he satisfy the conditions for temporary residence on humanitarian grounds.

38. On 25 April 2007 the applicant was put on a stop-list but it was noted that he was not to be deported until further instructions were received from the Ministry of Interior.

39. The applicant did not lodge a recourse against the Reviewing Authority's decision. He submitted that this was because of the costs of such proceedings and also due to the fact that he was subsequently given a temporary residence permit by the authorities (see paragraph 40 below).

40. On 6 July 2007, the Minister of Interior, following a meeting with the Cyprus-Kurdish Friendship Association on 5 July 2007, decided to grant the applicant a temporary residence permit for one year on the condition that he found a local employer who had authorisation to employ third country nationals. The applicant submitted that he was not able to find such an employer and that the Labour Office was not willing to approve a contract with other employers.

41. Following the expiry of his permit the applicant remained irregularly in Cyprus.

42. The Government submitted a copy of a letter dated 11 March 2009 which the Civil Registry and Migration Department had addressed to the applicant, informing him that following the negative decision of the Reviewing Authority, his application of 17 October 2006 for a residence permit (see paragraph 34 above) had been rejected and that he was requested to proceed to all necessary arrangements so as to depart from the territory of the Republic of Cyprus at once.

43. In the copies of the records of the Civil Registry and Migration Department it was noted on 3 March 2010 that in accordance with instructions given by the Minister of the Interior on 9 February 2010, if the applicant was traced, the possibility of granting him a special residence permit should be examined before deporting him. Deportation should take place only if the applicant was involved in illegal activities.

4. Application no. 41794/10 – A.M. v. Cyprus

44. The applicant is an Ajanib (registered stateless) Kurd born in 1978 in Syria.

45. In his application form to the Court the applicant stated that he was a musician and as he was stateless he was unable to get a licence in Syria in order to practise his profession. Furthermore, a decree by the Governor of Al-Hasakah province in 1988 reportedly prohibited the singing of non-Arabic songs at wedding or festivals (Order No. 1865/sad/24; *Human Rights Watch, Syria: The Silenced Kurds*, 1 October 1996, E804, page 28). The applicant feared that he would be subjected to arbitrary detention and possibly torture because he was singing Kurdish songs.

46. For this reason he left Syria illegally on 20 January 2007 and entered Cyprus illegally on 28 January 2007 after travelling from Turkey.

47. He applied for asylum on 1 February 2007.

48. The Asylum Service held an interview with him on 9 March 2009. In his interview the applicant alleged, firstly, that his human rights had been violated as he was an Ajanib Kurd; in particular, his rights to education, work and property. Secondly, the applicant stated that he did not want his children to be Ajanib. Thirdly, he claimed that he would be imprisoned if he returned to Syria, as he had left the country illegally. He, however, stated that he had never been arrested and detained, harassed or persecuted by the Syrian authorities.

49. His application was dismissed on 17 March 2009 on the ground that he did not fulfil the requirements of the Refugee Law of 2000-2007 (see paragraph 20 above). In particular, the Asylum Service held that the mere fact that the applicant was an Ajanib Kurd from the Al-Hasakah area did not mean that the applicant was in danger of persecution. In particular, the Asylum Service held that the applicant could not claim to be in danger of persecution and entitled to refugee status simply by reason of being an Ajanib Kurd from the Al-Hasakah area. Furthermore, it considered that there was no possibility of the applicant being subjected to inhuman or degrading treatment if he returned to Syria.

50. On 30 March 2009 the applicant lodged an appeal with the Reviewing Authority against the Asylum Service's decision.

51. It appears from the documents submitted by the Government that, on 25 August 2009, the applicant was put on the authorities' "stop list".

52. On 31 December 2009 the Reviewing Authority upheld the Asylum Service's decision and dismissed the appeal.

53. The Reviewing Authority stressed, *inter alia*, that Ajanib Kurds were not persecuted on the basis of their ethnicity when they were not involved in anti-regime activities. The applicant had neither alleged that he had been harassed by the Syrian authorities nor that he had been persecuted by them. Furthermore, the Reviewing Authority observed that unless a person was an opponent of the regime, there was no real risk that leaving Syria illegally would result in persecution on their return. It also noted that according to its own research, Ajanib Kurds were entitled to, among other things, work in the public and private sector, receive an education and register their property. Furthermore, the applicant had given a document which belonged to his father and on which his personal details and family situation were registered such as births, death and divorce. The applicant could thus register his children under his name. Lastly, the applicant's claim that he could not work as a musician did not constitute persecution or discrimination.

54. The Reviewing Authority concluded by observing that the applicant had not established that he was at risk of persecution if he returned to Syria. Nor did he satisfy the conditions for temporary residence on humanitarian grounds.

55. The applicant submitted that he did not lodge a recourse against this decision as he could not afford to do so.

56. The applicant submitted an attestation from the "Civata Demokratik a Kurd" ("CDK") in Cyprus dated 26 March 2009 stating that he was a compatriot and participated in the movement of the Kurdish peoples for national and human rights and that he was also a member of the party in Cyprus. It stated that, as many other Kurds and being a stateless Kurd, the applicant was deprived of his rights and had no identity card. He was therefore not able to obtain a licence to work as a musician and that if he was returned to Syria he would be subjected to long term imprisonment, torture and ill treatment.

5. Application no. 41796/10 –M.S. v. Cyprus

57. The applicant is an Ajanib (registered stateless) Kurd born in 1982 in Syria.

58. In his application form to the Court the applicant stated that he was a member of the Yekiti party in Syria and that he was involved in the Qamishli events. Following these events he was too scared to return to his village which had been closed for three months. During that period many people from his village were arrested and tortured by the authorities. Some disappeared. He decided to leave Syria as he was a stateless Kurd and given his political involvement in the Yekiti party and the Qamishli events.

59. The applicant left Syria illegally on 30 November 2006 and entered Cyprus illegally on 1 December 2006 after travelling from Turkey.

60. He applied for asylum on 18 December 2006.

61. The Asylum Service, however, discontinued the examination of his application and closed his file on 6 September 2007 by virtue of sections 8 and 16A (1) (a) of the Refugee Law of 2000-2007 as the applicant had not informed the Asylum Service or the local Aliens and Immigration Police Branch of his change of address (see paragraph 236 below). It was noted in the file that the Asylum Service had received a letter dated 19 March 2007 from the Nicosia District Immigration Office informing them that the applicant had not showed up at their offices within reasonable time and remained illegally in Cyprus. On 26 March 2007 he was put on the authorities' "stop-list" as a wanted person. Subsequently, by letter dated 4 July 2007 the applicant was asked to attend an interview at the Asylum Service on 22 August 2007. The applicant did not show up and the authorities had not been able to locate him. The letter was returned by the postal service with a note that the applicant had moved. It had not been possible to make telephone contact as he had given a wrong number.

62. On 10 June 2008 the applicant lodged an appeal with the Reviewing Authority which was dismissed on 3 September 2008. The Reviewing Authority observed that the appeal concerned the applicant's asylum claim and its substance and not the decision of the Asylum Service to close the file. As the substance of his claim had not been examined his appeal should have been directed against the decision to discontinue the examination of his application and not the merits of his case.

63. The applicant submitted that the Asylum Service had never called on him to attend an interview and that he had informed the Immigration Police about his change of address. He had only found out later from his lawyer that his file had been closed because he had not attended the interview. (He submitted an affidavit to this effect dated 24 November 2009 he made at the Paphos District Court.)

6. Application no. 41799/10 – M.J. v. Cyprus

64. The applicant, who is a Syrian national of Kurdish origin, was born in 1982 in Syria.

65. In his application form to the Court the applicant claimed that on 8 March 2005, some police officials approached him while he was working in his field. A fight ensued when the officers wanted to take his fingerprints and he resisted. He beat up one of the officers and managed to escape. He went into hiding as the Syrian police were looking for him.

66. He then left Syria on 25 August 2005 and entered Cyprus illegally on 29 August 2005 after travelling from Turkey.

67. He applied for asylum on 30 August 2005.

68. The Asylum Service held an interview with him on 26 June 2008.

69. His application was dismissed on 10 July 2008 on the ground that he did not fulfil the requirements of the Refugee Law of 2000-2007 and the 1951 Geneva Convention (see paragraph 20 above). The Asylum Service considered that there was no possibility of the applicant being subjected to inhuman or degrading treatment if returned to Syria. It observed in this respect that it transpired during the interview that the applicant had left Syria for financial reasons. Furthermore, to the extent that the applicant alleged that if returned to Syria he would be arrested, convicted and sentenced to long-term imprisonment because he had lodged an asylum application, this was unfounded. On the basis of the information before it, the Syrian authorities did not persecute persons just because they had applied for asylum.

70. On 25 July 2008 the applicant lodged an appeal with the Reviewing Authority against the Asylum Service's decision.

71. On 26 January 2009 the decision was upheld and the appeal dismissed.

72. The Reviewing Authority observed that in his application form the applicant claimed that he had left Syria because of fear following the Qamishli events. In his interview with the Asylum Service, however, he claimed that he had left Syria for financial reasons and that although he had taken part in the Qamishli events and had been arrested, arrests had been a general phenomenon and this had not been the reason he had left Syria. In his appeal he stated that he had left for financial and political reasons. He had not however, substantiated that he would be subjected to prosecution on political grounds. The applicant was not involved in any political parties and did not carry out any anti-regime activities. Lastly, it found that the applicant's allegation that he ran the risk of being imprisoned if returned to Syria because the authorities knew he had sought asylum was also unfounded as, on the basis of the information before it, the Syrian authorities did not persecute failed asylum seekers upon their return unless they were opponents of the regime.

73. The applicant submitted that he did not lodge a recourse against this decision as he could not afford to do so.

74. The Government submitted a copy of a letter dated 5 May 2009 which the Civil Registry and Migration Department had addressed to the applicant, informing him that following the negative decision of the Reviewing Authority and the expiry of his temporary residence permit, he was requested to proceed to all necessary arrangements so as to depart from the territory of the Republic of Cyprus at once.

75. On 29 May 2009 the applicant was put on the authorities' "stop list".

76. The applicant submitted that the Syrian authorities were still looking for him.

7. Application no. 41807/10 – A.Hu. v. Cyprus

77. The applicant, who is a Syrian national of Kurdish origin, was born in 1984 in Syria.

78. In his application form to the Court the applicant claims that on 20 March 2005, while he was serving in the Syrian army, he was arrested and taken into detention by the Syrian authorities along with other Kurds because of Nowruz (the Iranian New Year, Nowruz or Newroz marks the first day of spring or Equinox and the beginning of the year in the Persian calendar). He was tortured for ten days along with his co-detainees. They were put into a car tyre and were subjected to bastinado. They were accused of conspiring against the State. Military proceedings were brought against him but after completion of his military service the charges were dropped. During this time the military police collected information on him and his friends and he was entered on a database as a dangerous individual. He was arrested again on 21 March 2006 because he attended the Nowruz celebrations and was a member of Yekiti party. He was detained for a week and was released after bribing the District Officer. He was then re-arrested on 15 August 2006 at his house after attending a Yekiti party meeting. He was released after bribing the same official. He then decided to leave Syria and managed to obtain a Turkish visa after bribing a Syrian security official working at the Turkish embassy.

79. The applicant left Syria in August 2006 and entered Cyprus illegally after travelling from Turkey.

80. He applied for asylum on 25 August 2006. He claimed that he had left Syria because as a Kurd he had been subjected to discrimination. Kurds were persecuted and did not enjoy any rights. He had therefore left for fear of his life.

81. The Asylum Service held an interview with him on 27 February 2009. The applicant claimed, *inter alia*, that he was a follower/supporter of the Yekiti Party, he had left Syria due to the injustice that Kurds suffered, and in particular, although he had a passport he had no other rights and he could not buy a house or land or work. He claimed that he was known to the Syrian authorities and he had been taken at the police station and beaten up on several occasions. He had been arrested and detained on a number of occasions. In particular, in 2005 he had been arrested and detained for four or five days for participating in the Nowruz festivities. He had been arrested on another occasion for problems he had in the army. In May 2006 he was detained for a week and in August 2006 for four days. The latter two times he had been released after paying a sum of money. He also stated that he was not wanted by the authorities and no other member of his family had ever been arrested. He claimed that he feared arrest if returned to Syria.

82. Subsequently, the Asylum Service called the applicant for a second interview and asked him to provide any documents he had concerning his application. The second interview was held on 10 April 2009. In this the

applicant claimed, *inter alia*, that certain members of his family worked and that although the job market was not good, he would be able to work if he managed to find something. The applicant stated that he had been arrested on 20/21 March 2005 when he was in the army following a dispute with another soldier on 21 March 2006 for participating in the Nowruz festivities, and on 25 May 2006 and 2 August 2008 when demonstrations took place even though he was not involved. He was not, however, wanted by the authorities nor did he have any problems by reason of the fact that he was a follower of the Yekiti party.

83. His application was dismissed on 13 May 2009 on the ground that he did not fulfil the requirements of the Refugee Law of 2000-2007 (see paragraph 20 above). The Asylum Service considered that there was no possibility of the applicant being subjected to inhuman or degrading treatment if returned to Syria. It therefore held that his asylum application had not been substantiated. In particular, the Asylum Service pointed out that during his interview he had claimed that he had left Syria for two reasons: because of his Kurdish origin he could not work and buy a house or land and secondly due to his arrests by the Syrian authorities. With regard to the first claim, they noted that he had not substantiated that he had been subjected to any form of discrimination due to his origin. As regards the arrests the applicant's allegations remained unfounded as he had not given any specific answers to questions that had been put to him. Furthermore, during the interview the Asylum Service had spotted a number of significant untruths/falsehoods concerning his claim.

84. On 3 June 2009 the applicant lodged an appeal with the Reviewing Authority against the Asylum Service's decision.

85. On 28 April 2010 the decision was upheld and the appeal dismissed.

86. The Reviewing Authority observed that the applicant had not been subjected to persecution and had claimed that he was not wanted by the Syrian authorities. In its decision it observed that the applicant's claims had not been credible and had been vague and unsubstantiated. Although he claimed that he could not buy a house or land, he then stated that his parents owned a house which they lived in. Further, although he initially claimed that he could not work due to the fact that he was Kurdish he then stated that his family worked and he also was able to. The information he gave concerning his arrest and reasons was equally general and vague. He was not in a position to give specific replies to questions given concerning these matters. The Reviewing Authority observed that the applicant had not been able to reply satisfactorily and with precision to certain questions and give information concerning his claims.

87. In conclusion, the Reviewing Authority held that the applicant had not established that he was at risk of persecution if he returned to Syria. Nor did he satisfy the conditions for temporary residence on humanitarian grounds.

88. The applicant submitted that he did not lodge a recourse against this decision as he could not afford to do so and at that time no legal aid was granted in such cases.

8. Application no. 41811/10 – H.H. v. Cyprus

89. The applicant, who is a Syrian national of Kurdish origin, was born in 1979 in Syria.

90. In his application form to the Court the applicant claimed that he and his family are members of the Azadi Kurdish party in Syria which was banned by the authorities. In early September 2006 the applicant was driving his motorbike in his village carrying Azadi party papers. The civil police in Aleppo ordered him to stop but he fled as he was scared that they would find the papers. The police pursued him but he managed to escape. The next day the police went to his house. The same day he got a visa on his passport.

91. The applicant left Syria on 19 September 2006 and entered Cyprus illegally on 23 September 2006 after travelling from Turkey.

92. He applied for asylum on 26 September 2006.

93. The Asylum Service, however, discontinued the examination of his application and closed his file on 3 April 2009 by virtue of section 16A (1) (c) of the Refugee Law of 2000-2007 (see paragraph 236 below) as the applicant had not come to the interview which had been fixed for 27 March 2009 despite having received the letter requesting him to attend. It was noted in the file that the letter had been sent to him by double registered mail and there was indication he had received it. It was also noted that the applicant, on 19 March 2009, had confirmed on the telephone after receiving a call by the Asylum Service that he would come to the interview. Despite this he had not shown up. Lastly, there was no indication that the applicant had departed from the country.

94. The applicant did not lodge an appeal with the Reviewing Authority.

95. The applicant submitted that he never received a letter asking him to attend an interview and that he had not received notification of the decision of the Asylum Service to close his file. He was subsequently informed of the closure of his file but he did not appeal against the decision as he did not know the procedure to follow and the steps to take so he could appeal against it. He was also scared to approach the authorities.

96. In the copies of the records of the Civil Registry and Migration Department it was noted on 3 March 2010 that in accordance with the instructions of the Minister of the Interior given on 9 February 2010, if the applicant was traced, the possibility of granting him a special residence permit should be examined before deporting him. Deportation should take place only if the applicant was involved in illegal activities.

97. The applicant submitted that the Syrian police were still looking for him.

9. Application no. 41812/10 – A.Ab. v. Cyprus

98. The applicant, who is a Syrian national of Kurdish origin, was born in 1979 in Syria.

99. In his application form to the Court the applicant stated that on 13 March 2004 he participated in a demonstration in his village concerning the Qamishli uprising. He had a camera and was taking photographs of the event when the civil police arrested him. He was blindfolded, placed in a police vehicle and transferred to the central detention centre of the village. There he was continuously tortured and ill-treated for one month. After his release, he was obliged to report to the police every two days. On 2 January 2005, nine months after his release, the applicant decided to leave Syria as he was no longer able to handle the feeling of insecurity. He applied to get a passport from the authorities but this was refused. He succeeded in getting one after bribing officials.

100. The applicant left Syria on 14 March 2005 and entered Cyprus illegally travelling from Turkey.

101. He applied for asylum on 30 March 2005.

102. The Asylum Service held an interview with him on 12 June 2008.

103. His application was dismissed on 8 July 2008 on the ground that he did not fulfil the requirements of the Refugee Law of 2000-2007 (see paragraph 20 above). The Asylum Service considered that there was no possibility of the applicant being subjected to inhuman or degrading treatment if returned to Syria. It noted that no form of discrimination or persecution transpired from the applicant's claims. There had been discrepancies between his application and the allegations made during his interview, which undermined his credibility. It held that the applicant's claims and his alleged fear of persecution on return to Syria were not credible.

104. On 21 July 2008 the applicant lodged an appeal with the Reviewing Authority against the Asylum Service's decision.

105. On 29 September 2008 the decision was upheld and the appeal dismissed.

106. The Reviewing Authority noted that there were serious discrepancies between what he stated in his asylum application form and during his interview. For example, in his application he stated that he had left Syria because he was Kurdish and he had problems with the Syrian authorities. During the interview he had alleged that he had not left Syria for political reasons but because his family had reached an agreement with another family to marry against his wishes. The applicant had also claimed that he had to move about in the country in order to avoid being caught by the authorities but then stated that he did not face any serious problems. Further, he initially claimed during the interview that even though he had signed his application form he did not know the contents as this had been filled in by another person. He subsequently, stated, however, that the

contents were of a political nature and that he had told the person filling in the form to write whatever he wanted. This undermined the applicant's credibility.

107. The Reviewing Authority concluded that the applicant had not established that he was at risk of persecution if he returned to Syria. Nor did he satisfy the conditions for temporary residence on humanitarian grounds. The letter of notification addressed to the applicant by the Reviewing Authority dated 29 September 2008 stated that its decision was subject to adjudication before the Supreme Court within seventy-five days from the date he was informed of the decision.

108. The applicant submitted that he did not lodge a recourse against the Reviewing Authority's decision as he did not know he had the right to do so.

109. The Government submitted a copy of a letter dated 24 March 2009 which the Civil Registry and Migration Department had addressed to the applicant, informing him that following the negative decision of the Reviewing Authority as well as the expiry of his temporary residence permit, he was requested to proceed to all necessary arrangements so as to depart from the territory of the Republic of Cyprus at once.

110. On 10 August 2009 the applicant was put on the authorities' "stop-list".

10. Application no. 41815/10 – M.K. v. Cyprus

111. The applicant, who is a Syrian national of Kurdish origin, was born in 1985 in Syria.

112. In his application form to the Court the applicant claimed that on 20 March 2007 he lit a fire with some friends to celebrate Nowruz. When the police came he managed to flee but his friends were arrested. He later found out from his family that the police were looking for him. He left Syria on 29 September 2007 through the border with Turkey after the taxi driver bribed the officials.

113. The applicant entered Cyprus illegally in October or beginning of November 2011 after travelling from Turkey.

114. He applied for asylum on 7 November 2007. He claimed that he had left Syria because he had participated in a demonstration concerning Kurdish rights and that for this reason he was sought after by the Syrian authorities.

115. The Asylum Service held an interview with him on 4 November 2008. The applicant claimed, that following the demonstration the authorities had asked certain of the persons that had been arrested information about him. He had left Syria for this reason. He also claimed that if he returned to Syria he might not be allowed entry or he ran the risk of being arrested. Furthermore, he stated that he had never been detained, harassed or persecuted by the Syrian authorities and that he or his family did

not belong to any, *inter alia*, political, religious or military group/organisation.

116. His application was dismissed on 23 April 2009 on the ground that he did not fulfil the requirements of the Refugee Law of 2000-2007 and the 1951 Geneva Convention (see paragraph 20 above). The Asylum Service considered that there was no possibility of the applicant being subjected to inhuman or degrading treatment if returned to Syria. It observed that the applicant's allegations were general and vague. In particular, it noted that the applicant had failed to give any information/details about the demonstration he had allegedly participated in despite being asked during the interview. It concluded that his allegations had been unfounded and had not been credible.

117. On 20 May 2009 the applicant lodged an appeal with the Reviewing Authority against the Asylum Service's decision.

118. On 19 March 2010 the decision was upheld and the appeal dismissed.

119. The Reviewing Authority observed that the applicant had admitted that he had not been subjected to any harassment or persecution. His allegations concerning his fears of arrest were vague and general. He was not in a position to specify when and which demonstration he had taken part despite being asked specific questions on this during the interview. Furthermore, he had been able to leave the country legally without any problems. There was no indication that the Syrian authorities were searching for him.

120. In conclusion, the Reviewing Authority held that the applicant had not established that he was at risk of persecution if he returned to Syria. Nor did he satisfy the conditions for temporary residence on humanitarian grounds.

121. The applicant submitted that he did not lodge a recourse against this decision as he was advised by a lawyer that it would be a waste of time and effort as the Supreme Court dismissed all such cases.

11. Application no. 41820/10 – H.M. v. Cyprus

122. The applicant, who is a Syrian national of Kurdish origin, was born in 1985 in Syria.

123. In his application form to the Court the applicant claimed that when he was in the Syrian army he was detained for forty days on the basis of his ethnic identity. During that period he was subjected to ill-treatment such as standing still under the sun for long periods. There were also other Kurds detained with the applicant and they were all told that this was a preparation for what was going to happen to all the Kurds in the future. The applicant was also involved in cultural (folklore) activities of the Yekiti party. Participation in cultural groups such as dance, drama or folkloric groups that wear Kurdish traditional dress and participate in funerals or other social

rites was considered by the authorities to be political and thus repressed. The Syrian government and authorities tended to politicise ordinary people who participated in these activities and therefore they ran a risk of being criminalised and exposed to persecution by the authorities.

124. The applicant left Syria in June 2006 legally but only after bribing officials at the border with Turkey.

125. The applicant entered Cyprus illegally on 20 June 2006 after travelling from Turkey.

126. He applied for asylum on 28 June 2006.

127. The Asylum Service held an interview with him on 18 July 2008.

128. His application was dismissed on 8 August 2008 on the ground that he did not fulfil the requirements of the Refugee Law of 2000-2007 and the 1951 Geneva Convention (see paragraph 20 above). The Asylum Service considered that there was no possibility of the applicant being subjected to inhuman or degrading treatment if returned to Syria. It noted that the applicant, during the interview, had claimed that he had left Syria due to a long standing property dispute between his family and another family. Although the Asylum Service did not question the credibility of his allegations concerning the existence of this dispute as such it did not find the applicant's claims as to his involvement in this dispute credible and that his departure from Syria was justified on this ground. The statements made in his interview were contradictory and he had stated that his life was not in danger. Eventually, the applicant had admitted that he had left Syria for financial reasons and faced no danger if he returned.

129. On 8 September 2008 the applicant lodged an appeal with the Reviewing Authority against the Asylum Service's decision.

130. On 16 June 2009 the decision was upheld and the appeal dismissed.

131. The Reviewing Authority observed that the applicant's account of facts concerning the alleged family dispute were contradictory. Furthermore, in his asylum application form he had stated that he his life was not in danger and that he had left Syria lawfully and for financial reasons. It had also become clear during the interview that the applicant had not left Syria for the reasons he had initially claimed but for financial reasons; he could not find work with an adequate salary. He was therefore using the asylum procedure to extend his stay in Cyprus. New claims put forward by the applicant in his appeal that he was wanted by the Syrian authorities because he had taken part in the Nowruz celebrations and that had been detained for three months had not been substantiated and had not been raised by the applicant in his asylum application form or his interview with the Asylum Service. Lastly, the applicant had admitted that his life would not be in danger if he returned nor would he be punished.

132. In conclusion, the Reviewing Authority held that the applicant had not established that he was at risk of persecution if he returned to Syria. Nor

did he satisfy the conditions for temporary residence on humanitarian grounds.

133. The applicant submitted that he did not lodge a recourse against this decision as he could not afford to pay a lawyer.

134. The Government submitted a copy of a letter dated 30 July 2009 which the Civil Registry and Migration Department had addressed to the applicant, informing him that following the negative decision of the Reviewing Authority, he was requested to proceed to all necessary arrangements so as to depart from the territory of the Republic of Cyprus at once.

12. Application no. 41824/10 – I.K. v. Cyprus

135. The applicant, who is a Syrian national of Kurdish origin, was born in 1984 in Syria.

136. In his application form to the Court the applicant claimed that on 20 March 2006 he and his mother lit a small fire to celebrate Nowruz. They also had the Kurdistan flag on their roof. The police raided their house during which they hit the applicant's mother. She fell and had a minor head injury. They arrested the applicant and put him in detention. There were no formal legal proceedings and the applicant was released after his family bribed the police. In 2007 he was arrested once again but was released with the help of his family who bribed the officers. He managed to obtain a passport through bribery and left Syria on 15 July 2007.

137. The applicant entered Cyprus illegally on an unspecified date after travelling from Turkey.

138. He applied for asylum on 30 September 2007.

139. The Asylum Service held an interview with him on 8 January 2009.

140. His application was dismissed on 10 February 2009 on the ground that he did not fulfil the requirements of the Refugee Law of 2000-2007 and the 1951 Geneva Convention (see paragraph 20 above). The Asylum Service considered that there was no possibility of the applicant being subjected to inhuman or degrading treatment if returned to Syria. It noted that the applicant, during the interview, had claimed that he had left Syria because he had been persecuted by the Syrian authorities for being a member of the PKK (the Kurdistan Workers Party, an illegal organisation). It held that the applicant's claims were not credible as he had not been able to reply satisfactorily to basic questions concerning the party. He was not therefore able to establish that his was a member of the party and therefore substantiate that this was the ground for which he was allegedly persecuted.

141. On 24 February 2009 the applicant lodged an appeal with the Reviewing Authority against the Asylum Service's decision.

142. On 25 August 2009 the decision was upheld and the appeal dismissed.

143. The Reviewing Authority in its decision observed that the applicant's claims had not been credible and had been unsubstantiated. It noted that although the applicant claimed that he had been persecuted for being a member of the PKK and participating in activities and had fled for this reason, he was not able to give any information about the party. For example, he did not know who was the leader of the PKK, he was not able to draw the flag or to explain what the initials meant. Furthermore, he had a passport and had left the country legally without any problems.

144. In conclusion, the Reviewing Authority held that the applicant had not established that he was at risk of persecution if he returned to Syria. Nor did he satisfy the conditions for temporary residence on humanitarian grounds.

145. The applicant did not lodge a recourse against this decision.

146. By a letter dated 26 January 2010 the Civil Registry and Migration Department asked the applicant, following the negative decision of the Reviewing Authority, to proceed to all necessary arrangements so as to depart from the territory of the Republic of Cyprus at once.

147. On 3 March 2010 the applicant was put on the authorities' "stop-list".

13. Application no. 41919/10 – M.Y. v. Cyprus

148. The applicant, who is a Syrian national of Kurdish origin, was born in 1981 in Syria. He is married and has one child.

149. In his application form to the Court the applicant stated that he was a member of the banned Azadi Kurdish party. On 7 August 2003 he completed his military service and then went back to his village where he discovered that the Syrian authorities had changed the name of his village into an Arabic one. Along with four other persons they rewrote the original name over the Arabic one on the road signs. After this, the intelligence service detained two of his friends. The applicant and the others fled to Aleppo. From the two persons arrested, the one disappeared in the hands of the authorities and the second one was released after spending two years in detention and after disclosing the identities of the ones who managed to escape. After getting help from members of the Azadi party, the applicant managed to get a passport.

150. The applicant left Syria on 23 September 2003 and came to Cyprus on 27 September 2003 with a tourist visa after travelling from Lebanon.

151. He applied for asylum on 23 September 2004, about a year later. In his form he claimed that he had left Syria because of the inhuman treatment Kurds were subjected to and their difficult living conditions.

152. The Asylum Service held an interview with him on 20 May 2008. During this he stated that he had left Syria because the Kurds had no rights and that a photograph had been taken of him during a demonstration of the

Azadi party. He stated that he feared arrest and imprisonment upon his retrun.

153. His application was dismissed on 30 May 2008 on the ground that he did not fulfil the requirements of the Refugee Law of 2000-2007 (see paragraph 20 above). The Asylum Service found that the asylum application had not been substantiated. It noted that there had been discrepancies in his account of the facts which undermined his credibility in so far as he claimed that he had taken part in a demonstration during which his photo had been taken by the Syrian authorities. Further, it considered that there was no possibility of the applicant being subjected to inhuman or degrading treatment if returned to Syria.

154. On 11 June 2008 the applicant lodged an appeal with the Reviewing Authority against the Asylum Service's decision.

155. On 12 September 2008 the decision was upheld and the appeal dismissed.

156. The Reviewing Authority in its decision observed that the applicant in his application had claimed that he had left Syria because of the conditions of living and human rights violations of Kurds. In his interview he also claimed that he had left as the authorities had taken a photo of him during a demonstration of the Azadi party in 2001 and if he returned he would be imprisoned as this is normally the case. The applicant was not able to give a more specific time frame for the demonstration The Reviewing Authority noted that the applicant had not had any problems with the authorities following that demonstration. At the same time he had claimed that he worked on and off in Lebanon for a period of two years and occasionally returned to Syria without any problems. He alleged that only on one occasion did the authorities force him and some friends to break up a meeting for Nowruz. The applicant's account of facts and claims were full of discrepancies and unsubstantiated, undermining his credibility.

157. In conclusion, the Reviewing Authority held that the applicant had not established that he was at risk of persecution if he returned to Syria. Nor did he satisfy the conditions for temporary residence on humanitarian grounds.

158. The applicant submitted that he did not lodge a recourse against this decision as he was advised by a lawyer that it would be a waste of time and effort as the Supreme Court dismissed all such cases.

159. It appears that the applicant's wife also applied for asylum. Her application was rejected on 24 July 2008 and her appeal on 25 September 2008. She was then asked, in a letter dated 23 June 2009 sent by the Civil Registry and Migration Department, to proceed to all necessary arrangements so as to depart from the territory of the Republic of Cyprus at once.

160. On 27 August 2009 she was put on the authorities' "stop-list".

14. Application no. 41921/10 – H.Sw. v. Cyprus

161. The applicant, who is a Syrian national of Kurdish origin, was born in 1981 in Syria. He is married and has a child.

162. In his application form to the Court the applicant stated that on 12 March 2004 during the events at the football match in Qamishli, he got scared and left the town. He went to his home village, Amer Capi, where he stayed for seven months. When the situation improved he returned to Qamishli. On 1 June 2005 the civil police killed a prominent Kurdish religious leader. During the demonstration at the mosque the police officers took pictures of the demonstrators and two days later went to the applicant's house searching for him. On 14 June 2005 the applicant left Syria. He travelled from Qamishli to Aleppo and then obtained a visa after bribing someone to issue a visa for Turkey.

163. The applicant entered Cyprus illegally on 16 June 2005 after travelling from Turkey.

164. He applied for asylum in June or July 2005. He claimed that he had left Syria legally in order to find work.

165. The Asylum Service held an interview with him on 1 August 2008.

166. His application was dismissed on 23 October 2008 on the ground that he did not fulfil the requirements of the Refugee Law of 2000-2007 and the 1951 Geneva Convention (see paragraph 20 above). The Asylum Service considered that there was no possibility of the applicant being subjected to inhuman or degrading treatment if returned to Syria. It noted that the applicant, during the interview, had claimed that he had left Syria because he was wanted by the Syrian authorities for participating in an illegal demonstration. His allegations, however, were unfounded and not credible, as during the interview his account of facts was full of discrepancies, contradictions and untruths. Furthermore, there were discrepancies between his written application form and the allegations made during the interview. In particular, the grounds he gave in his interview for leaving Syria where not the same as those he had given in his application. This undermined his overall credibility.

167. The applicant claims that he was not informed of the decision and in August 2009 he asked a non-governmental organisation to follow up his case. It was then that he discovered that his application had been dismissed.

168. In the meantime it appears that his temporary residence permit granted to him on the ground that he was an asylum seeker expired.

169. On 3 December 2009 the applicant lodged an appeal with the Reviewing Authority against the Asylum Service's decision.

170. On 3 March 2010 his appeal was dismissed under Section 28 F (2) of the Refugee Law 2000-2009 (as amended up to 2009) on the ground that it had been filed out of time. The Reviewing Authority observed that the letter informing the applicant of the dismissal of his asylum application dated 23 October 2008 was served through a private messenger and that the

delivery slip was signed by his fellow lodger. It noted that on 10 August 2009 a letter had been sent by a non-governmental organisation requesting information about the stage of proceedings of the applicant's application. A letter was sent dated 17 August 2009 informing the NGO that the applicant's claim had been examined, the decision had been sent to the applicant by registered post and according to the file it had been received. The appeal deadline was twenty days from the date the applicant was notified of the decision on the basis of section 28 F (2) of the Refugee Law (see paragraph 237 below). The appeal was filed on 9 December 2009, more than thirteen months following the date he had been notified of the decision.

171. The Government submitted that a letter was sent on 19 March 2010 informing him of this decision by double registered mail to the address given by the applicant. The letter had been returned. They provided a copy of the receipt on which it was noted "unclaimed".

172. The applicant did not lodge a recourse against the Reviewing Authority's decision.

173. The Government submitted a copy of a letter dated 27 May 2010 which the Civil Registry and Migration Department had addressed to the applicant, informing him that following the negative decision of the Reviewing Authority he was requested to proceed to all necessary arrangements so as to depart from the territory of the Republic of Cyprus at once.

B. The applicants' arrest and detention

174. On 17 May 2010 the Yekiti Party and other Kurds from Syria organised a demonstration in Nicosia, near the Representation of the European Commission, the Ministry of Labour and Social Insurance and the Government Printing Office. They were protesting against the restrictive policies of the Cypriot Asylum Service in granting international protection. About 150 Kurds from Syria, including the applicants, remained in the area around the clock, having set up about eighty tents on the pavement. According to the Government, the encampment conditions were unsanitary and protesters were obstructing road and pedestrian traffic. The encampment had become a hazard to public health and created a public nuisance. The protesters performed their daily chores on the pavement, including cooking and washing in unsanitary conditions. The sewage pits had overflown, causing a nuisance and offensive odours. The public lavatories were dirty and the rubbish bins of the Government buildings were being used and, as a result, were continuously overflowing. Furthermore, the protesters were unlawfully obtaining electricity from the Printing Office. Members of the public who lived or worked in the area had complained to the authorities. The Government submitted that efforts had been made by the authorities to persuade the protesters to leave, but to no avail. As a

result, the authorities had decided to take action to remove the protesters from the area.

175. On 28 May 2010 instructions were given by the Minister of the Interior to proceed with the deportation of Syrian-Kurdish failed asylum seekers in the normal way. According to the Government these instructions superseded the ones given by the Minister of the Interior on 9 February 2010 (see paragraphs 22, 43 and 96 above).

176. On 31 May 2010 the Minister requested the Chief of Police, among others, to take action in order to implement his instructions. Further, he endorsed suggestions made by the competent authorities that deportation and detention orders be issued against Syrian-Kurdish failed asylum seekers who had passports and did not have Ajanib or Maktoumeen status and that the police execute the orders starting with the ones issued against the leaders of the protesters. The police were also directed to take into account the policy guidelines and to use discreet methods of arrest.

177. According to the Government, letters were sent by the Civil Registry and Migration Department to a number of failed Syrian-Kurdish asylum-seekers informing them that they had to make arrangements to leave Cyprus in view of their asylum applications being turned down (see *M.A. v. Cyprus*, no. 41872/10, § 32, ECHR 2013 (extracts)). The letter sent to H.Sw. was dated 27 May 2010, in thirteen cases, including those of H.S., A.T., M.S, A. Hu, H.H. and M.Y the letters were dated 1 June 2010, in respect of AM, the letter was dated 9 June 2010 and in respect of M.K., the letter was dated 28 June 2010. Another letter was dated 16 June 2010 (the asylum procedures having been completed in early 2008) and one letter was dated 5 February 2011 in a case where the asylum procedure had been completed on 22 April 2010 and the person in question had voluntarily agreed and did return to Syria on 24 September 2010. Letters had been sent out to the remaining applicants much earlier (see paragraphs 42, 74, 109 and 134 above).

178. From documents submitted by the Government it appears that from 31 May until 7 June 2010 the authorities kept the area under surveillance and kept a record of the protesters' daily activities and of all comings and goings. In the relevant records it is noted that invariably, between 1.30 a.m. and 5.30 a.m., things were, in general, quiet, and everyone was sleeping apart from those keeping guard. During the above-mentioned period a large-scale operation was organised by the Police Emergency Response Unit, "ERU" ("ΜΜΑΔ"), and a number of other authorities, including the Police Aliens and Immigration Unit, for the removal of the protesters and their transfer to the ERU headquarters for the purpose of ascertaining their status on a case-by-case basis.

179. In the meantime, between 28 May 2010 and 2 June 2010 orders for the detention and deportation of forty-five failed asylum seekers were issued following background checks. These included applicants A.T., F.T. and

H.H. in respect of whom the orders were issued on 2 June 2010 pursuant to section 14 (6) of the Aliens and Immigration Law on the ground that they were "prohibited immigrants" within the meaning of section 6(1)(k) of that Law. Letters were sent by the District Aliens and Immigration Branch of the Nicosia Police to the Director of the Aliens and Immigration Service and the Ministry of Justice and Public Order, containing a short paragraph with information as to the immigration status of each person. This information included the date of rejection of the asylum application or the closure of the asylum file by the Asylum Service, the date of dismissal of the appeal by the Reviewing Authority, where lodged, and the date some of those concerned had been included on the authorities' "stop list" (a register of individuals whose entry into and exit from Cyprus is banned or subject to monitoring). The letters recommended the issuance of deportation and detention orders. The Government submitted copies of two such letters with information concerning thirteen people.

180. The letter that included information on F.T. and another four of the persons detained stated that they all appeared to lead the political group, YEKITI, which was active in Cyprus and that they organised demonstrations complaining about their rights in Cyprus. It was considered that if the opportunity was given to them to organise themselves they could constitute a future threat to the security of Cyprus.

181. On 2 June 2010, letters were also prepared in English by the Civil Registry and Migration Department informing those concerned of the decision to detain and deport them. These included applicants A.T.., F.T. and H.H. The Government submitted that, at the time, the authorities did not know whether the individuals concerned by the decisions were among the protesters.

182. The removal operation was carried out on 11 June 2010, between approximately 3 a.m. and 5 a.m. with the participation of about 250 officers from the Police Aliens and Immigration Unit, the ERU, the Nicosia District Police Division, the Traffic Division, the Fire Service and the Office for Combating Discrimination of the Cyprus Police Headquarters. The protesters, including the applicants, were led to buses, apparently without any reaction or resistance on their part. At 3.22 a.m. the mini buses carrying the male protesters left. The women, children and babies followed at 3.35 a.m. A total of 149 people were located at the place of protest and were transferred to the ERU headquarters: eighty-seven men, twenty-two women and forty children. Upon arrival, registration took place and the status of each person was examined using computers which had been specially installed the day before. The Government submitted that during this period the protesters had not been handcuffed or put in cells but had been assembled in rooms and given food and drink. It appears from the documents submitted by the Government that by 6.40 a.m. the identification of approximately half of the group had been completed and that the whole

operation had ended by 4.30 p.m. The applicants do not contest the Government's account.

183. It was ascertained that seventy-six of the adults, along with their thirty children, were in the Republic unlawfully. Their asylum applications had either been dismissed or their files closed for failure to attend interviews. Those who had appealed to the Reviewing Authority had had their appeals dismissed. Some final decisions dated back to 2006. A number of people had also been included on the authorities' "stop list". Deportation orders had already been issued for twenty-three of them (see paragraph 34 above).

184. The authorities deported twenty-two people on the same day at around 6.30 p.m. (nineteen adults and three children). Forty-four people (forty-two men and two women), including the applicants, were arrested. Applicants A.T., F.T.. and H.H were detained under the deportation and detention orders that had been issued on 2 June 2010 (see paragraph 181 above). The remaining applicants were charged with the criminal offence of unlawful stay in the Republic under section 19(2) of the Aliens and Immigration Law (see *M.A.*, cited above, § 65). The applicants, along with the other detainees, were transferred to various detention centres in Cyprus. H.S., A.T., F.T., and M.S. were placed in the Limassol Police Station Detention Facility; A.M. in the Larnaca Police Station Detention facility; M.J. and H.Sw. in the Paphos Police station Detention facility; A.Hu., H.H., A.Ab., I.K. and M.Y. in the immigration detention facilities in the Nicosia Central Prisons (Block 10); M.K. in the Paralimni Police Station Detention facility and H.M. in the Xilofagou Police Station Facility. All those detained who were found to be legally resident in the Republic returned to their homes. Further, on humanitarian grounds, thirteen women whose husbands were detained pending deportation and who had a total of twenty-seven children between them were not arrested themselves. This included M.Y's wife (see paragraphs 159-160 above).

185. According to the Government, the applicants and their co-detainees were informed orally that they had been arrested and detained on the basis that they had been staying in the Republic unlawfully and were thus "prohibited immigrants" (see *M.A.*, cited above, § 62). They were also informed of their rights pursuant to the Rights of Persons Arrested and Detained Law 2005 (Law no. 163(I)/of 2005) (see *M.A.*, cited above, § 93) and, in particular, of their right to contact by phone, in person and in private, a lawyer of their own choice. The applicants submitted that they had not been informed of the reasons for their arrest and detention on that date.

186. On the same day letters were sent by the District Aliens and Immigration Branch of the Nicosia Police to the Director of the Aliens and Immigration Service and the Ministry of Justice and Public Order, recommending the issuance of deportation and detention orders. The letters contained a short paragraph in respect of each person with information as to

his or her immigration status. This included the date of rejection of the asylum application or the closure of the asylum file by the Asylum Service and the date of dismissal of the appeal by the Reviewing Authority where lodged. Some letters also referred to the date the asylum application had been lodged and the date some of the individuals concerned had been included on the authorities' "stop list". The Government submitted copies of letters concerning thirty-seven people (most of these letters referred to groups of people).

187. Deportation and detention orders were also issued in Greek on the same day in respect of the remaining fifty-three people detained (see paragraph 183 above), including the remaining eleven applicants (see paragraph 179 above), pursuant to section 14 (6) of the Aliens and Immigration Law on the ground that they were "prohibited immigrants" within the meaning of section 6(1)(k) of that Law. These were couched in identical terms. The order issued in respect of A.Ab. also referred to 6(1)(l) of the Law. In respect of one more person the order mentioned sections 6(1)(i) (see *M.A.*, cited above, § 41).

188. Subsequently, on the same date, letters were prepared in English by the Civil Registry and Migration Department informing all the detainees individually, including the remaining applicants (see paragraph 187 above), of the decision to detain and deport them. The Government submitted thirty-seven copies of these letters, including those addressed to the applicants, the text of which was virtually identical, a standard template having been used.

The text of the letter reads as follows:

> "You are hereby informed that you are an illegal immigrant by virtue of paragraph (k). section 1, Article 6 of the Aliens and Immigration law, Chapter 105, as amended until 2009, because you of illegal entry [sic]
>
> Consequently your temporary residence permit/migration permit has been revoked and I have proceeded with the issue of deportation orders and detention orders dated 11th June 2010 against you.
>
> You have the right to be represented before me, or before any other Authority of the Republic and express possible objections against your deportation and seek the services of an interpreter."

189. The only differences was that some letters referred to illegal stay rather than illegal entry and that the letters issued earlier referred to 2 June 2010 as the date of issuance of the deportation and detention orders (see paragraph 181 above).

190. On the copy of the letters to the applicants provided by the Government, there is a handwritten signed note by a police officer stating that the letters were served on the applicants on 18 June 2010 but that they refused to receive and sign for them. The other letters had a similar note or stamp on them with the same date, stating that the person concerned had refused to sign for and/or receive the letter. In a letter dated 7 September 2010 the Government stated that the applicants had been served on 18 June

2010. In their subsequent observations the Government submitted, however, that this was the second attempt to serve the letters, the first attempt having been made on 11 June 2010, that is, the day of the arrest.

191. The applicants submitted that they had never refused to receive any kind of information in writing. They claimed that it had only been on 14 June 2010 that they had been informed orally that they would be deported to Syria on the same day but that the deportation and detention orders were not served on them on that date or subsequently. They submitted that they had eventually been informed by their lawyer, following the receipt of information submitted by the Government to the Court in the context of the application of Rule 39 of the Rules of Court, that deportation and detention orders had been issued against them.

192. From the documents submitted by the Government, it appears that at least another fourteen of the detainees were to be deported on 14 June 2010 (this figure is stated in documents submitted by the Government with no further details).

C. Background information concerning the applicants' request under Rule 39 of the Rules of Court

193. On Saturday, 12 June 2010, the applicants, along with twenty-nine other persons of Kurdish origin, submitted a Rule 39 request in order to prevent their imminent deportation to Syria.

194. On 14 June 2010 the President of the First Section decided to apply Rule 39, indicating to the respondent Government that the detainees should not be deported to Syria until the Court had had the opportunity to receive and examine all the documents pertaining to their claim. The parties were requested under Rule 54 § 2 (a) of the Rules of Court to submit information and documents concerning the asylum applications and the deportation.

195. On 21 September 2010 the President of the First Section reconsidered the application of Rule 39 in the light of information provided by the parties. He decided to lift Rule 39 in thirty-nine applications, including the present ones. He decided to maintain the interim measure in respect of five applications (for further details see *M.A.*, cited above, § 58). Rule 39 was subsequently lifted with regard to three of the applications.

196. Following this decision the applicants who were not covered by Rule 39 were deported to Syria on various dates (see section D below).

D. The applicants' deportation

1. Application no. 41753/10 - H.S. v. Cyprus

197. The applicant was deported on 14 December 2010.

198. By a letter dated 27 December 2010 the applicant's representative informed the Court that she had received information from the Kurdish Organization for the Defence of Human Rights and Public Freedoms in Syria ("DAD") that the applicant had been arrested and detained in Adra prison in Damascus.

199. By a letter dated 24 July 2012 the applicant's representative informed the Court that the applicant was living in the Kurdish area of Northern Iraq.

2. Application no. 41786/10 - A.T. v. Cyprus

200. The applicant was deported on 14 December 2010.

201. By a letter dated 27 December 2010 the applicant's representative informed the Court that she had received information from DAD that the applicant had been arrested and detained in Adra prison in Damascus.

202. By a letter dated 24 July 2012 the applicant's representative informed the Court that the applicant was still in Syria.

3. Application no. 41793/10 - F.T. v. Cyprus

203. The applicant was deported on 25 September 2010.

204. By a letter dated 27 December 2010 the applicant's representative informed the Court that she had received information from DAD that the applicant upon his arrival in Syria had been requested by the authorities to present himself to the civil police on two different occasions. He had then been arrested in November 2010 and detained in Damascus on unknown grounds.

205. By a letter dated 5 December 2012 the applicant's representative informed the Court that on 2 March 2011 the applicant had been sentenced to six months' imprisonment. Following his release from prison he left Syria and went to Austria.

4. Application no. 41794/10 - A.M. v. Cyprus

206. The applicant was deported on 14 December 2010.

207. By a letter dated 27 December 2010 the applicant's representative informed the Court that she had received information from DAD that upon his return to Syria the applicant had been arrested and detained in Adra prison in Damascus.

208. By a letter dated 5 December 2012 the applicant's representative informed the Court that on 2 March 2011 the applicant had been sentenced to six months' imprisonment. Following his release from prison he left Syria and went to Northern Iraq.

5. Application no. 41796/10 -M.S. v. Cyprus

209. The applicant was deported on 14 December 2010.

210. By a letter dated 27 December 2010 the applicant's representative informed the Court that she had received information from DAD that upon his return to Syria the applicant had been arrested and detained in Adra prison in Damascus for two months.

211. By a letter dated 5 December 2012 the applicant's representative informed the Court that the applicant, following his release from prison, had left Syria and gone to Northern Iraq.

6. Application no. 41799/10 -M.J. v. Cyprus

212. The applicant was deported on 25 September 2010.

213. By a letter dated 27 December 2010 the applicant's representative informed the Court that she had received information from DAD that the applicant had been arrested upon his arrival at Damasucs airport.

214. By a letter dated 24 July 2012 the applicant's representative informed the Court that the applicant had been detained in Damascus for two days during which he had been interrogated and had revealed that he had sought asylum in Cyprus. He was then taken by the police to Al-Hasakah where he was detained by the civil police for fifteen days. He was detained in a cell measuring 1.6 square meters and he was subjected to torture and ill-treatment. In particular, he was beaten on various parts of his body with wooden sticks. During his detention he was interrogated in relation to his affiliation to political parties. Subsequently he was transferred to Al-Hasakah Central Prison where he was detained for about a month and eight days. After that he was brought before a court in Qamishli without having been informed of the charges brought against him. He was questioned as to his affiliation to political parties. He was then taken back to Al-Hasakah Central Prison. He was subsequently transferred to the Devik Central Prison in his hometown where he was detained for a night and the next day he was taken to court again. He was released after his family bribed officials and he immediately went into hiding. He hid in friends' and relatives houses and subsequently in a bakery in Damascus, until he could find a way to leave from Syria again. While in Damascus, his cousin informed him that he had received a letter requesting the applicant to present himself at the Aleppo Police. He was told by members of his family that he was still wanted from the military and civil police. After a failed attempt to leave Syria he managed to leave through Northern Iraq. He returned to Cyprus after travelling from Turkey and was in the process of submitting a new asylum application. The applicant stated that he was still wanted by the military police in Syria and that his family was still trying to find out the reason why he was a wanted person.

7. Application no. 41807/10 - A.Hu. v. Cyprus

215. The applicant was deported on 25 September 2010.

216. By a letter dated 5 December 2012 the applicant's representative informed the Court that the applicant had been arrested and detained upon his arrival in Syria and that on 2 March 2011 he had been sentenced to six months' imprisonment. Following his release, the applicant left Syria and went to Greece.

8. Application no. 41811/10 - H.H. v. Cyprus

217. The applicant was deported on 25 September 2010.

218. By a letter dated 27 December 2010 the applicant's representative informed the Court that she had received information from DAD that the applicant upon his arrival in Syria had his passport retained by the authorities and had been asked to show up for checks at the civil police on different occasions. His passport was eventually returned to him.

219. By a letter dated 24 July 2012 the applicant's representative informed the Court that the applicant was still in Syria.

9. Application no. 41812/10 -A.Ab. v. Cyprus

220. By a letter dated 27 December 2010 the applicant's representative informed the Court that the applicant had agreed to return voluntarily to Syria on 24 September 2010.

221. By a letter dated 24 July 2012 the applicant's representative informed the Court that the applicant was still in Syria.

10. Application no. 41815/10 - M.K. v. Cyprus

222. The applicant was deported on 25 September 2010.

223. By a letter dated 4 July 2012 the applicant's representative informed the Court that the applicant had been arrested a week after he returned to Syria and was still detained in Aleppo prison. He had been accused of acting against the Syrian Government while he was in Cyprus and had been sentenced to imprisonment for one year and eight months. She stated in the letter that it was expected that he would be released soon.

11. Application no. 41820/10 - H.M. v. Cyprus

224. The applicant was deported on 25 September 2010.

225. By a letter dated 27 December 2010 the applicant's representative informed the Court that she had received information from the DAD that when the applicant, upon his arrival in Syria, had his passport retained by the authorities and was asked to present himself to the political police on different occasions. After bribing the authorities 1000 United States dollars (USD) he was given back his passport. They authorities put a written warning in his passport that he was forbidden to travel to Greece.

226. By a letter dated 24 July 2012 the applicant's representative informed the Court that the applicant was still in Syria.

12. Application no. 41824/10 - I.K. v. Cyprus

227. The applicant was deported on 25 September 2010.

228. By a letter dated 12 December 2012 the applicant's representative informed the Court that the applicant had to serve compulsory military service once he returned to Syria. He fled, however, to Northern Iraq, before completing it.

13. Application no. 41919/10 - M.Y. v. Cyprus

229. The applicant returned to Syria voluntarily on 1 October 2010. No information has been given as to whether the applicant's wife and child were eventually deported with him as planned by the authorities.

230. By a letter dated 5 December 2012 the applicant's representative informed the Court that according to information she had received from members of the Kurdish community in Cyprus the applicant was living in Aleppo in Syria.

14. Application no. 41921/10 - H.Sw. v. Cyprus

231. The applicant was deported on 14 December 2010. No information has been given as to whether the applicant's wife and child were also deported.

232. By a letter dated 27 December 2010 the applicant's representative informed the Court that the applicant's representative informed the Court that she had received information from DAD that the applicant upon his arrival in Syria had been arrested and detained in Adra prison in Damascus.

233. By a letter dated 24 July 2012 the applicant's representative informed the Court that the applicant had been detained for six months, during which he had been ill-treated. After his release he remained in Syria.

II. RELEVANT DOMESTIC LAW AND PRACTICE

234. The relevant domestic law and practice, are set out in detail in *M.A.,* (cited above, §§ 61-93).

235. In addition, the following provisions of the Refugee Law (Law 6 (I)/2000), as applicable at the material time, are relevant for the purposes of the present applications.

236. Pursuant to section 16A of the Refugee Law (Amending Law 9(I)/2004) as applicable at the time (further amendments were subsequently made to the Refugee Law, including section 16A, by Amending Law 122(I)/2009), the Head of the Asylum Service, by a decision recorded in the file, closes the file and discontinues the procedure of examination of an asylum application where, *inter alia*, an asylum seeker has not complied with the obligations emanating from section 8 of the same law and the asylum seeker has not responded to letters addressed to him by the competent

officer of the service and, following adequate investigation, it is established that the applicant had received the said letters (sections 16A (1) (a) and (c) respectively. Section 8 (3)(a) of the same law provides that an asylum seeker who has been granted a temporary residence permit is under an obligation to inform the local Aliens and Immigration Police Branch, within three days, of any change of address. The departments concerned must then immediately inform the Asylum Service and the Director of the Civil Registry and Migration Department of the change. In case of non-compliance with this section, the provisions of Section 16A apply.

237. Furthermore, section 28 F (2) of the Refugee Law provides that an administrative recourse before the Reviewing Authority shall be lodged within twenty working days from the date an applicant is notified of the asylum decision or obtains knowledge of it.

III. INTERNATIONAL TEXTS AND DOCUMENTS

238. The relevant international texts and documents, are set out in *M.A.*, cited above, §§ 94-105.

239. In addition, the following material concerning Syria is relevant for the purposes of the present applications.

240. There are a number of reports concerning the human rights situation in Syria at the material time, including on the situation of the Kurdish minority. These include, *inter alia*, the United Kingdom Border Agency's Country of Origin Information Report on Syria of 3 September 2010; the report by Human Rights Watch, "*A Wasted Decade: Human Rights in Syria during Basharal-Asad's First Ten Years in Power*" published on 16 July 2010; the report by Landinfo published on 16 June 2010 "*Kurds in Syria: Groups at risk and reactions against political activists";* the report by the Austrian Red Cross and the Danish Immigration Service on human rights issues concerning Kurds in Syria published in May 2010; the report of the Information and Refugee Board of Canada, 1 May 2008, "*the Syrian government's attitude towards, and its treatment of, citizens who have made refugee or asylum claims, particularly when the claim was made in Canada or the United States*" and the report by the Danish Immigration Service published in April 2007 "*Syria: Kurds -Honour killings and illegal departure*". (The applicants also submitted, amongst other documents, the paper by Chatham House of January 2006 "*The Syrian Kurds: A People Discovered"*; a report by the Canadian section of Amnesty International in January 2004, dealing with the risk on return to Syria and the report by Human Rights Watch: "*Syria: the Silenced Kurds*", dated 1 October 1996).

241. Extracts of some of the above reports are set out below:

A. The situation of the Kurdish minority

242. In its Country of Origin Information Report on Syria of 3 September 2010, the United Kingdom Border Agency noted, *inter alia*, the following (footnotes omitted):

"3. HISTORY: 1946–2009

...

THE REIGN OF BASHAR AL-ASAD: 2000 TO THE PRESENT

...

Increased opposition and subsequent clampdown: 2003–2007

...

3.13 The May 2010 DIS and ACCORD/Austrian Red Cross report, *Human rights issues concerning Kurds in Syria*, provided brief details of the March 200Kurdish riots:

"On March 12, 2004 at a football match in Qamishli, a town in the Jazira region, tensions rose between Kurdish fans of the local team and Arab supporters of a visiting team from the city of Deir al-Zor, and fights eventually erupted between members of the opposing supporter groups. Security forces responded by firing live bullets which resulted in death of at least seven Kurds. The next day, members of the security forces fired at a Kurdish funeral procession and demonstration, causing a number of additional Kurdish fatalities and injuries. Two days of violent protests and riots in Qamishli and other Kurdish towns in the north and northeast, including al-Qahtaniya, al-Malkiya, and 'Amuda followed. The army moved into Qamishli and other major Kurdish towns in northern Syria, and a week later calm was restored. At least 36 people were killed, 160 injured, and more than 2,000 detained during the unrest. Most of the detainees were released, including 312 detainees who were released under an amnesty announced by President Bashar al-Asad on March 30, 2005.

...

20. ETHNIC GROUPS

"20.01 The US Department of State 2009 Country Reports on Human Rights Practices (USSD Report 2009), released 11 March 2010 stated, "The government generally permitted national and ethnic minorities to conduct traditional, religious, and cultural activities; the government's actions toward the Kurdish minority remained a significant exception." Further:

"During the year [2009], according to the IWPR [Institute for War and Peace Reporting], authorities began enforcing a years-old ruling that requires at least 60 percent of the words on signs in shops and restaurants to be in Arabic. Officials enforcing the ruling reportedly sent patrols into commercial districts to threaten

...

KURDS

...

20.05 The USSD Report 2009 stated, "Although the government contended there was no discrimination against the Kurdish population, it placed limits on the use and teaching of the Kurdish language. It also restricted the publication of books and other materials in Kurdish, Kurdish cultural expression, and at times the celebration of Kurdish festivals."

20.06 The Foreign and Commonwealth Office (FCO) *Annual Report on Human Rights 2009*, reported:

"Syria's estimated 1.7 million Kurds continue to suffer from discrimination, lack of political representation, and tight restrictions on social and cultural expression. In particular, there are a number of measures in place repressing Kurdish identity, through restricting the use of the Kurdish language in public, in schools and in the workplace. Kurdish-language publications are banned and celebrations of Kurdish festivities, such as Nowruz, the traditional Kurdish New Year, are prohibited.

"In addition, as many as 300,000 Kurds continue to be denied recognised citizenship. Presidential Decree 49, which was passed in October 2008, still remains in force. This questions the rights of Syrian citizens to hold property rights in the border areas of the country and particularly affects the Kurdish population. Kurds in Syria claim that it effectively prohibits them from selling, buying or inheriting land."

...

20.07 Amnesty International's *Annual Report 2010* stated, "Kurds, who comprise up to 10 per cent of the population and reside mostly in the north-east, continued to face identity-based discrimination, including restrictions on use of their language and culture. Thousands were effectively stateless and so denied equitable access to social and economic rights." Human Rights Watch's (HRW) *World Report 2010*, released January 2010 also reported that "Kurds, Syria's largest non-Arab ethnic minority, remain subject to systematic discrimination, including the arbitrary denial of citizenship to an estimated 300,000 Syria-born Kurds. Authorities suppress expressions of Kurdish identity, and prohibit the teaching of Kurdish in schools."

20.08 The May 2010 DIS and ACCORD/Austrian Red Cross fact finding mission report, *Human rights issues concerning Kurds in Syria* reported, "According to representatives of the UN Development Programme (UNDP), Syria, there is no discrimination of ethnic groups, including Kurds, concerning their access to health or education since the fees for these services are very small and nobody is required to present ID in order to access the services." The report went into more detail concerning the ability of stateless Kurds to access public services..[see Stateless Kurds below].

...

20.09 Freedom House's *Freedom in the World 2010*, stated:

"The Kurdish minority faces severe restrictions on cultural and linguistic expression. The 2001 press law requires that owners and top editors of print publications be Arabs. ... In 2009, the government made it more difficult to hire noncitizens, resulting in the dismissal of many Kurds. While one demonstration to demand more rights for the Kurdish community was allowed to take place in northern Syria, security forces stopped four demonstrations in February and March, detaining dozens of people and referring some to the judiciary for prosecution. Intelligence services generally monitor Kurdish leaders closely, sometimes excluding them and their families from public-sector employment. At least 15 such leaders are barred from leaving Syria."

20.10 The Kurdish Human Rights Project (KHRP) *Impact Report 2009* noted, "In 2009, the arrest and incommunicado detention of Kurds peacefully attempting to promote Kurdish culture, was an ongoing concern. So too were the continued violations of the rights to free expression and association against political activists."

20.11 The USSD Report 2009 stated, "Security services arrested hundreds of Kurdish citizens during the year [2009], and the SSSC [Supreme State Security Court] prosecuted them, in some cases on charges of seeking to annex part of Syria to another country."

The report went on to relate over a dozen specific instances when the Syrian authorities detained, arrested and/or prosecuted Kurds, some but not all known political activists, during 2009. The report also noted that the reasons for arrest and whereabouts of many of these Kurds remained unknown at the end of 2009.

20.12 The FCO *Annual Report on Human Rights 2009* related brief details of the arrest and abuse of Kurds during 2009 for political reasons, or ostensibly for expression of their cultural identity at events, such as the celebration of the Kurdish New Year (Newroz).

20.13 Sources consulted for the May 2010 DIS and ACCORD/Austrian Red Cross fact finding mission report, *Human rights issues concerning Kurds in Syria*, noted the difficulty in separating Kurdish cultural and political activities in terms of the perception of the Syrian authorities:

"... a Western diplomatic source stated that the government and state security services undoubtedly are quite sensitive to any cultural or political sign of Kurdish nationalism which could be perceived by the state as a threat to the national integrity, or any form of resistance to the state authorities. That is the reason why the government reacts harshly to Kurdish cultural activities.

"[The same source] went on to explain that Kurdish cultural activities are generally perceived as political by the government, and it is therefore difficult to distinguish between political and non‑political activities. When Kurdish cultural activities are banned by the authorities, they also politicise ordinary people participating in those activities. Participants in Kurdish cultural activities are therefore at risk of being criminalized and exposed to persecution by the authorities."

...

Stateless Kurds

...

20.18 The USSD Report 2009 stated:

"Following the 1962 census, approximately 120,000 Syrian Kurds lost their citizenship. As a result, those individuals and their descendants remain severely disadvantaged in terms of social and economic opportunities and in receiving government services including health and education, as well as employment open only to citizens. Stateless Kurds had limited access to university education, and lack of citizenship or identity documents restricted their travel to and from the country. The UNHCR and Refugees International estimated there were approximately 300,000 stateless Kurds.

"Despite the president's repeated promises to resolve the matter of stateless Kurds, most recently in his 2007 inauguration speech, there was no progress during the year [2009]."

20.19 The same report also noted, "In general, ... noncitizens, including stateless Kurds, can send their children to school and universities. Stateless Kurds are ineligible to receive a degree documenting their academic achievement."

20.20 The May 2010 DIS and ACCORD/Austrian Red Cross fact finding mission report, *Human rights issues concerning Kurds in Syria*, stated:

"An international organisation pointed out that stateless Kurds are a very vulnerable group in Syria. Stateless Kurds are excluded from owning land, access to basic public health care services and having any public jobs. In practice though, stateless persons have access to the private health care system or to the public health care system if they have the right personal connections and sufficient financial means to pay the necessary bribes."

20.21 Reporting further on access to health care, the report noted that UNDP representatives had remarked "... that stateless Kurds have unconditional access to education and health, as they are not required to show any ID either." Conversely, other sources consulted by the fact finding mission indicated that stateless persons were not entitled to or were unable to access any, or all but basic free, health care.

20.22 On education, various sources consulted by the DIS and ACCORD/Austrian Red Cross reported that, while primary education was free and compulsory for all, secondary and higher education was not. Also, an international organisation "...stressed that most stateless Kurds face certain socioeconomic difficulties which makes them less likely to enrol their children in school. Furthermore, stateless Kurds have no ID cards and stateless children are not issued school certificates or exam papers." Section 10 of the fact finding mission report recounted the differing views concerning the extent of illiteracy among persons who have finished primary school.

20.23 A diplomatic source consulted for the May 2010 DIS and ACCORD/Austrian Red Cross fact finding mission report, *Human rights issues concerning Kurds in Syria*, noted, "Most stateless Kurds generally do not have the economic means to travel to Europe in order to apply for asylum." Also, "A representative of an international relief organisation confirmed that due to poverty it is more difficult for the stateless Kurds to find the means to leave the country compared to other Syrian Kurds." The same report also noted, on internal movement, that "Stateless persons are restricted in their movement in the country as they cannot check in hotels without permission by the security services."

20.24 Underlining the economic disadvantages faced by stateless Kurds in Syria, the May 2010 DIS and ACCORD/Austrian Red Cross fact finding mission report, *Human rights issues concerning Kurds in Syria*, stated:

"According to a prominent Kurdish political leader stateless persons are subjected to various forms of discrimination. Following a new law, it is now prohibited to employ persons who have no ID card in the private sector as has been the case in the public sector. This means that if a stateless Kurd from al‑Hassakeh goes to Aleppo, Damascus or other places in Syria, he cannot get employment in restaurants, hotels etc."

Ajanibs ('foreigners') and Maktoumeen ('concealed')

20.25 Chatham House's January 2006 paper, *The Syrian Kurds: A People Discovered*, noted that Ajanibs were Kurds who took part in the 1962 census but were stripped of their nationality whilst Maktoumeen were Kurds who did not take part in the census or were born of at least one Ajanib parent.

20.26 The April 2009 United States Institute for Peace (USIP) special report, *The Kurds in Syria – Fueling Separatist Movements in the Region?*, stated:

"Since 1962, the Syrian state has divided Kurds in Syria into three major demographic categories: Syrian Kurds, foreign Kurds [Ajanib], and 'concealed' Kurds [Maktoumeen]. Syrian Kurds have retained their Syrian nationality. Foreign Kurds were stripped of citizenship and registered in official archives as foreigners; in 2008, there were about 200,000 of them. Concealed Kurds are denationalized Kurds who have not been registered in official records at all and whom Syrian authorities characterize as concealed. Nearly 80,000 people belong to this category. Among the concealed Kurds are persons whose fathers are classified as foreigners and whose mothers are citizens, persons whose fathers are aliens and whose mothers are classified as concealed, and persons whose parents are both concealed. In addition, there are about 280,000 undocumented Kurds who reside in Syria but have no citizenship, according to Kurdish sources. No government statistics are available on this group."

...

20.27 Refugee International's January 2006 paper *Buried Alive: Stateless Kurds in Syria* reported that Ajanib's and Maktoumeen were issued different identity documents to Syrian citizens:

"Most denationalized Kurds and their descendents are labeled Ajanib ('foreigners') and issued red identity cards by the Ministry of Interior, stating they are not Syrian nationals and are not entitled to travel. Even some children listed on red cards are listed under the statement, 'His name was not in the survey of 1962,' an irony given that they were born long after the date of the census. Replacing such documents or obtaining them for the first time poses particular problems, as they often involve paying large bribes of up to SY P 3,000-5,000 (US $60-100) and approaching several branches of security for authorization over the course of months or even years.

"A significant number of stateless Kurds in Syria do not possess even this identity document and are effectively invisible. Maktoumeen now number between 75,000 and 100,000. At one time, they were able to obtain certified 'white papers' recognizing their identity from their local mayor's office (a Mukhtar or traditional village head), although these papers were not recognized legally by the government. However, this practice has now ended under special orders from the Syrian government."

20.28 The USIP report of April 2009 also stated:

"Kurds classified as foreigners carry red identity cards that permit them to be recorded as aliens in official records. They cannot, however, obtain a passport or leave the country. Concealed Kurds carry only a yellow definition certificate, or residence bond, issued by a local mukhtar (chieftain) and used purely to identify the holders whenever authorities found it necessary to do so. Though authorities issue the certificates, official Syrian institutions do not accept them, so for all intents and purposes the holders of yellow documents have no official status in Syria at all."

...

29. Citizenship and nationality

...

Stateless Kurds

29.04 The US Department of State *2009 Country Reports on Human Rights Practices* (USSD Report 2009) stated:

"Following the 1962 census, approximately 120,000 Syrian Kurds lost their citizenship. As a result, those individuals and their descendants remain severely disadvantaged in terms of social and economic opportunities and in receiving government services including health and education, as well as employment open only to citizens. Stateless Kurds had limited access to university education, and lack of citizenship or identity documents restricted their travel to and from the country. The UNHCR and Refugees International estimated there were approximately 300,000 stateless Kurds.

"Despite the president's repeated promises to resolve the matter of stateless Kurds, most recently in his 2007 inauguration speech, there was no progress during the year [2009]."

243. Human Rights Watch, in its report of 16 July 2010, "A Wasted Decade: Human Rights in Syria during Basharal-Asad's First Ten Years in Power" stated the following:

"...

IV. Repression of Kurds

Kurds are the largest non-Arab ethnic minority in Syria; estimated at approximately 1.7 million, they make up roughly 10 percent of Syria's population. Since the 1950s, successive Syrian governments have pursued a policy of repressing Kurdish identity because they perceived it to be a threat to the unity of an Arab Syria. Under Bashar al-Asad, Syrian authorities have continued to suppress the political and cultural rights of the Kurdish minority, including banning the teaching of Kurdish in schools and regularly disrupting gatherings to celebrate Kurdish festivals such as Nowruz (the Kurdish New Year).

Harassment of Syrian Kurds increased further after they held large-scale demonstrations, some violent, throughout northern Syria in March 2004 to voice long-simmering grievances. Syrian authorities reacted to the protests with lethal force, killing at least 36 people, injuring over 160, and detaining more than 2,000, amidst widespread reports of torture and ill-treatment of detainees. Most detainees were eventually released, including 312 who were freed under an amnesty announced by al-Asad on March 30, 2005. However, since then, the Syrian government has maintained a policy of banning Kurdish political and cultural gatherings. Human Rights Watch has documented the repression of at least 14 Kurdish political and cultural gatherings since 2005. The security forces also have detained a number of leading Kurdish political activists and referred them to military courts or the SSSC for prosecution under charges of "inciting strife" or "weakening national sentiment.

In addition, large numbers of Kurds are stateless and consequently face a range of difficulties, from getting jobs and registering weddings to obtaining state services. In 1962, an exceptional census stripped some 120,000 Syrian Kurds—20 percent of the Syrian Kurdish population—of their Syrian citizenship. By many accounts, the special census was carried out in an arbitrary manner. Brothers from the same family, born in the same Syrian village, were classified differently. Fathers became foreigners while their sons remained citizens. The number of stateless Kurds grew with time as descendants of those who lost citizenship in 1962 multiplied; as a result, their number is now estimated at 300,000.

Al-Asad has repeatedly promised Kurdish leaders a solution to the plight of the stateless Kurds, but a decade later, they are still waiting. He first promised to tackle the issue when he visited the largely Kurdish-populated region of al-Hasaka on

August 18, 2002, and met with a number of Kurdish leaders. In his second inaugural speech on July 17, 2007, he mentioned the promise he made in 2002, but noted that political developments had prevented progress in this area:

I visited al-Hasaka governorate in August 2002 and met representatives of the community there. All of them without exception talked about this issue [the 1962 census]. I told them, "we have no problem, we will start working on it." That was the time when the United States was preparing to invade Iraq.... We started moving slowly, the Iraq war happened, and there were different circumstances which stopped many things concerning internal reform. In 2004, the riots in al-Qamishli governorate happened, and we did not exactly know the background of the riots, because some people took advantage of the events for non-patriotic purposes.... We restarted the process last year on the government's initiative since the events have gone and it was shown that there were no non-patriotic implications.

Later in his speech, al-Asad referred to a draft law that would solve the problem for some stateless Kurds, namely those who became stateless even though other members of their family obtained citizenship. He concluded by saying that "the consultations continue...and when we are done with those...the law is ready." Three years later, and despite the fact that the political justifications for the delays have long ceased to exist, there is no new law, and no steps have been taken to address Kurdish grievances.

244. Following a fact-finding mission to Damascus in January 2007 the Danish immigration Service published a report on Syria: Kurds, Honour-killings and illegal departure in April 2007

"3.4.2.3 Today: Prosecution and Persecution

An Embassy in Damascus told the delegation that those Kurdish activists who engage in activities such as distribution of political leaflets, celebration of the Kurdish New Year/ Newrouz or participation in demonstrations risk being arrested.

A Kurdish representative told the delegation that a member of a Kurdish political party who is discovered as engaging in political activity, for instance demonstrations, risks arrest. Suspicion of political activism may lead to arrest and political activists are regularly arrested in North-East Syria.

A lawyer and a local observer said that Kurdish political activists are still regularly arrested in Syria.

A Human Rights Organization observed that Kurds who participated in the demonstrations in Qamishli in March 2004 and who engaged in political activity prior to these events may risk arrest.

A Human Rights Organization, an Embassy in Damascus and several Kurdish sources pointed to the recent arrest in Aleppo of a leading member of the Kurdish Yekiti Party. A Kurdish representative mentioned the arrest in December 2006 of a Kurd who had published a collection of poetry in the Kurdish language. A lawyer said that in 2006 for instance some Kurds were arrested on suspicion of attempts to conduct a census of the Kurdish population in Syria.

The consulted Kurdish sources, an Embassy in Damascus and a Human Rights Organization stressed in unison that there is no pattern in the arrests of Kurdish activists in Syria. According to the sources it is arbitrary which activists are arrested and which are not arrested.

An Embassy in Damascus stressed that it is very difficult to say which political activists will be arrested and which will not be arrested. According to the source that is the big question.

A Kurdish representative said that traditionally it is very difficult to predict what sort of activity will lead to arrest. Syria: Kurds, Honour-killings and Illegal Departure 14.

A Kurdish representative observed that the authorities probably have very specific reason for arresting individual Kurds. However, it is not clear why some are arrested and others are not. According to the source, there are no known criteria behind the arrests of Kurds.

A Kurdish representative said that the reaction of the authorities to political activism is highly unpredictable. For instance according to the source sometimes the celebration of Newrouz is tolerated, at other times participants are arrested.

A Kurdish representative and an Embassy in Damascus pointed out that the arrests of Kurds are deliberately arbitrary in order to spread a sense of general insecurity.

An Embassy in Damascus observed that the Syrian regime is built on inspiring such insecurity.

A Kurdish representative added that probably there is an unofficial suspension of arrests against Kurds in place at the moment in order not to attract negative attention to the Syrian regime.

A Kurdish representative pointed out that the Syrian authorities have a "one-time-policy" meaning that political activists who have been arrested and released will be under surveillance. Such persons are often forced to cooperate with the security service.

A Kurdish representative told the delegation that arrested persons who are released often are obliged to report regularly to the security service. Such persons will normally be under surveillance by the security service. They risk arrest if they do not cooperate with the security service.

A lawyer said that the most common reason for arresting Kurdish activists are membership of an illegal party, political activity and possession of printed materials in the Kurdish language.

A Human Rights Organization, said that Kurds in Syria are not subject to persecution due to their ethnicity alone. Most Kurds in Syria do not risk persecution since they have no political activities.

An Embassy in Damascus pointed out that Kurdish political activists do not face a greater risk of arrest than other people considered opponents of the regime.

A Human Rights Organization and shared this point of view.

A lawyer said that Kurdish activists are not oppressed to a larger degree than political activists of Arab or other origins.

A Human Rights Organization observed that there is much exaggeration about the number of injustices against Syrian Kurds. According to the source, Kurdish asylum seekers from Syria exaggerate their problems in order to obtain asylum.

A Kurdish representative said that some asylum seekers may abuse the situation in Syria in order to obtain asylum abroad."

B. The treatment of returned failed asylum seekers

245. In its Country of Origin Information Report on Syria of 3 September 2010, the United Kingdom Border Agency noted, *inter alia*, the following (footnotes omitted):

"31. Exit and return

...

31.11 The Kurdish Human Rights Project's (KHRP) June 2010 *Submission to the Office of the United Nations High Commissioner for Human Rights, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, reported "... some Syrian nationals who have been returned to the country after living abroad have been arbitrarily detained on arrival or shortly after their return. To seek asylum abroad is perceived as manifestation of opposition to the Syrian government, so returned asylum seekers face the likelihood of arrest."

31.12 In its *Impact Report 2009*, the KHRP remarked that it was:

"... increasingly concerned by the arbitrary detention of Kurds who were forcibly returned to Syria. In September [2009], Khaled Kenjo was held incommunicado and charged with 'spreading 'false' news abroad' under Article 287 of the Syrian Penal code after his failed appeal for political asylum in Germany. Similarly, Berzani Karro, forcibly returned from Cyprus to Syria in June, was arrested at Damascus Airport, held incommunicado and reportedly tortured."

31.13 A June 2010 release by the International Support Kurds in Syria Association – SKS, *Call to Cyprus Government to stop deportation of Kurds to Syria*, noted:

"On 11 June 2010, twenty-seven people including women and children, were forcibly removed by authorities in Cyprus, back to Damascus airport. They had been on hunger strike along with many others for some time in Cyprus. Others remain in Cyprus. On return to Damascus, they were each interviewed by the authorities, and were issued with a summons to report to intelligence security a week later."

31.14 In the May 2010 DIS and ACCORD/Austrian Red Cross fact-finding mission report a number of sources agreed that failed asylum seekers and persons who had left Syria illegally would generally face detention and investigation upon return.

"[A Western diplomatic source] mentioned that the computer system employed at border controls to screen persons upon their entry into Syria works well. Border guards check whether the name of someone who enters Syria can be found on one of the wanted persons lists of the security services. These lists contain information from the various security services' offices from all parts of the country, including from Qamishli. Immigration authorities are thus able to see whether a returnee has a file with the security services somewhere, and can subsequently inquire about the file's details with the authorities from these cities or municipalities. It was added that there is no single list of wanted persons but that every security agency maintains its own list. If one of the security services has a file concerning a returnee, he or she would be transferred from the immigration services' detention facilities to the security agency's detention centre.

"A[nother] Western diplomatic source stated that if somebody is called in for interrogation by the security services and the person does not show up, he would be arrested, and if his absence is due to the fact that he has left the country, he would be put on the list of wanted persons. Upon return to Syria, such a person would be

arrested and interrogated by the security service. However, it was emphasized that it is very hard to say what exactly would happen in such cases."

246. The Information and Refugee Board of Canada, in its report of 1 May 2008, "the Syrian government's attitude towards, and its treatment of, citizens who have made refugee or asylum claims, particularly when the claim was made in Canada or the United States", cites the Office of the United Nations High Commissioner for Refugees (UNHCR) Representation in Canada as stating on 14 April 2008 as follows:

"According to information available to the UNHCR Representation in Damascus, and confirmed by a number of European Embassies in Syria, the mere unsuccessful application for asylum abroad will not lead *per se* to prosecution or other forms of persecution in Syria.

1. However, persons who left Syria illegally may have to face prosecution because of illegal departure and this is in many cases most probable.

The Syrian authorities have indicated to different embassies that the mere illegal departure is not considered as a serious crime. This does not apply if there should be any person who is suspected on matters related to terrorism. The same is the case if there is any indication that the person was involved in trafficking activities.

2. Persons who have engaged abroad in political activities (e.g. demonstrations in front of Syrian Embassies against the Syrian Government) may indeed have to face prosecution upon return.

... .

4. The procedure upon return of the unsuccessful asylum-seeker to Syria is the following:

a. The person has to report to the Immigration Department in order to apply for new documentation.

b. The procedure also comprises a visit to the Political Security Branch by which the person will be interrogated regarding the earlier motives and reasons for the illegal departure from Syria. Should this arise, it will be very difficult for the returnee to keep the information on a potential asylum application abroad confidential. Inquiries on the reasons for an asylum application abroad may follow.

c. Should there be no problem, then the person will obtain, in about three months, new identity documents.

d. Should the authorities come to the conclusion that the person may be considered as an opponent against the regime, the consequences may be very serious. UNHCR is not aware of the fate of such persons. Human Rights Reports on the conditions and treatment of detainees in different types of detention facilities, in particular of those facilities belonging to different Security Branches, speak for themselves.

The UNHCR also stated that the following information that was provided to the Research Directorate on 28 August 2003 was still accurate:

The Syrian law on departure of Syrian nationals, Law no. 42 of 31 December 1975 remains in force and has not been amended. Available information indicates that the practical implementation of this law has not changed since [April 1995]. Any Syrian national who departs the country illegally faces judicial consequences that may, in principle, result in up to three months imprisonment.

Generally speaking, one may expect the same treatment for unsuccessful Syrian asylum-seekers who have departed the country illegally. ... [T]he response of the Syrian authorities is very much dependent upon the nature of the departure and the profile and background of the individual. If it becomes known that they have applied for asylum, the consequences may be severe. However, if the individual's claim for asylum remains confidential then s/he may avoid further complications with the local law enforcement agencies and judicial authorities. Of course, the maintenance of confidentiality will depend, in part, on the manner in which the individual is returned to the country of origin.

Refugees International, a Washington-based organization that provides advice on displacement issues to governments and non-governmental organizations (NGOs) (n.d.), reports on the case of a man who was deported to Syria from Germany after his asylum application was refused (Refugees International 13 Feb. 2006). Upon his return, he "was sentenced to two years in prison by the high security court and severely tortured" (ibid.). Refugees International also indicates that "[t]he average length of detention for seeking political asylum abroad was reported to be three to six months" (ibid.). According to the United States (US) Department of State *Country Reports on Human Rights Practices for 2007*, "[p]ersons who have unsuccessfully sought asylum in other countries and who have past connections with the MB [Muslim Brotherhood] have been prosecuted upon their return to Syria" (11 Mar. 2008, Sec 2.d).

According to Amnesty International (AI), two men, Abdul Rahman Musa and Usama Sayes were detained by the Syrian authorities after having failed to secure asylum from the United Kingdom (UK) and the United States (US) respectively (13 May 2005). A 2007 AI report indicates that, in June 2005, both Sayes and Musa were sentenced to death but that their punishment was decreased to a twelve-year prison sentence (see also *Independent on Sunday* 2 July 2006). The Official from the SHRC provided the following information on Musa and Sayes:

Mr Abdul Rahman Musa who was deported to Syria from the USA after applying for asylum was charged with distributing false and fabricated information and undermining the prestige of the state. The same was applied to other deportees including Mr. Usama Sayes who was deported from the UK in 2005 [and] whose sentence was increased [to] two years because he was charged [with] distributing false information and undermining the state's prestige because he applied [for] asylum in the UK. (SHRC 4 Apr. 2008)".

247. After a fact-finding mission to Syria, Lebanon and the Kurdistan Region of Iraq, the Austrian Red Cross and the Danish Immigration Service published a report on human rights issues concerning Kurds in Syria in May 2010. The relevant part of the report reads as follows:

"8. Treatment upon return and lists of wanted persons

Nadim Houry, senior researcher, Human Rights Watch, Beirut, stated that returned failed asylum seekers are most likely detained upon return to Syria, although not necessarily for a long period of time. It was added that there is a high likelihood of ill-treatment during their initial detention which can amount to torture if the person is expected to know something of interest to the security service. What will happen to a returnee depends on what is in the file (if there is one) or on whether the security services believe what the returnee tells. Usually, the authorities release returnees after

making a file on them and probably refer them to an investigative judge. Upon release persons are very commonly required to report regularly.

A Western diplomatic source stated that failed asylum seekers would be detained upon return to Syria simply because of the fact that he or she has been abroad. The person would be subjected to interrogation by the security services. However, it is unclear how the person would be treated during this detention that in some cases could last for weeks or even longer.

A prominent Kurdish political leader emphasized that anyone deported from a foreign country to Syria would be requested to collaborate with the security services by reporting about his community, or he would be imprisoned.

According to representatives of a Kurdish human rights organisation persons who have left Syria illegally are generally arrested upon return to Syria and investigated to establish whether or not they are wanted by the security services.

Nadim Houry, HRW, added that the immigration service is not necessarily the first instance which returned failed asylum seekers meet at the border, and that they can as well be detained and interrogated by the security services immediately upon arrival. The security service is generally present at the airport. It could happen that the immigration service at the airport contacts the security service in advance informing them about the returnee so that the security service is already waiting for the returnee at the airport.

Regarding the situation for returned failed asylum seekers, Nadim Houry, HRW, stated that every returned failed asylum seeker will automatically be detained and interrogated. He referred to a recently documented case of a Kurdish musician who had left the country in the aftermath of the uprising in March 2004 and asked for asylum in Norway. He was returned from Norway in July 2008 accompanied by two Norwegian police officers. The returnee informed HRW that he had first been detained by the Immigration Service in the airport and had then been referred to the political security service where he was subjected to severe ill-treatment, including Falaka and beatings on the back, hands and feet. After one week his case was referred to an investigative judge who released him and obliged him to report regularly to the political security service branch. However, before his name showed up in the list of wanted persons at the border he fled to Lebanon.

According to a Western diplomatic source persons who have left Syria illegally have been, upon return, subject to investigation by the immigration authorities. This can include detention in the immigration service's own detention centres, which the source considered to be routine if it does not exceed two weeks. It was stressed that in almost all cases known to the source, the detainees have then been released. According to the source its country has repatriated four Syrian citizens in the past three months, out of which three were first detained but later released, while one person was charged with spreading false information abroad as part of his political activities, although the person's lawyer argued in court that his client had not been politically active at all. The source mentioned that the computer system employed at border controls to screen persons upon their entry into Syria works well. Border guards check whether the name of someone who enters Syria can be found on one of the wanted persons lists of the security services. These lists contain information from the various security services' offices from all parts of the country, including from Qamishli. Immigration authorities are thus able to see whether a returnee has a file with the security services somewhere, and can subsequently inquire about the file's details with the authorities from these cities or municipalities. It was added that there is no single list of wanted persons but that every security agency maintains its own

list. If one of the security services has a file concerning a returnee, he or she would be transferred from the immigration services' detention facilities to the security agency's detention centre.

A Western diplomatic source stated that if somebody is called in for interrogation by the security services and the person does not show up, he would be arrested, and if his absence is due to the fact that he has left the country, he would be put on the list of wanted persons. Upon return to Syria, such a person would be arrested and interrogated by the security service. However, it was emphasized that it is very hard to say what exactly would happen in such cases.

A Western diplomatic source stated that amnesties are not reliable in Syria stressing that persons who are on the list of wanted persons remain targeted even after an amnesty."

THE LAW

I. JOINDER

248. Given their similar factual and legal background, the Court decides that the fourteen applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 13

249. Relying on Article 3 of the Convention, the applicants complained about their deportation to Syria. They further complained, under Article 13 in conjunction with Article 3, that they did not have an effective domestic remedy against their intended deportation. These provisions read as follows:

Article 3

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

250. With regard to their complaint under Article 3, apart from their individual circumstances (see paragraphs 9, 17, 29, 45, 58, 65, 78, 90, 99, 112, 123, 136, 149 and 162 above), the applicants invoked a number of common reasons why they faced a risk of ill-treatment or torture in Syria. First of all they raised the general situation for the Kurdish ethnic minority

in Syria. In particular, they claimed that they were at risk of persecution by reason of their Kurdish origin, as Kurds in Syria were members of a generally oppressed minority whose human rights were systematically violated. The applicants relied on a number of reports concerning this matter. They relied, inter alia, on: Human Rights Watch: *"A Wasted Decade: Human Rights in Syria during Bashar al-Asad's First Ten Years in Power"* July 2010 and Human Rights Watch: *"Syria: the Silenced Kurds"*, 1 October 1996 (see paragraphs 240 and 243 above). Two of the applicants, A.M. and M.S., also pointed out that they were statelessness Syrian Kurds (Ajanib). Relying, in particular, on Chatham House's January 2006 paper, "*The Syrian Kurds: A People Discovered"*, they noted that as Ajanib they were not allowed passports, could not vote or own property and were forbidden from working in the public sector and in many professions. They were not entitled to the same education or health care as Syrian citizens, and their lack of the standard Syrian identity card meant that they could not receive state benefits, travel internally or stay in a hotel.

251. Secondly, the applicants claimed that as failed asylum seekers, some of whom had also left the country illegally, they ran the risk of being imprisoned upon return to Syria. They referred to the Syrian penal code and a report by the Canadian section of Amnesty International in January 2004, dealing with the risk on return to Syria (see paragraph 240 above).

252. Lastly, the applicants relied on their connections with the Yekiti party or other political activities. A number of them submitted a "to whom it may concern" letter in their name dated 4 July 2010 by the "Kurdistan Yekiti Party (Syria) European Organisation" stating that they were members of the party in Syria and that if returned they would face persecution. In addition, F.T. submitted a list of persons involved in the Yekiti party in Cyprus in which he was included as being in charge of "information affairs" and A.Ab., submitted black and white photocopies of photographs of two demonstrations, two celebrations, a conference and a collection of signatures in Cyprus in 2009 and 2010. A. M. also submitted an attestation from the CDK in Cyprus (see paragraph 56 above). The applicants also claimed in this connection that they had all participated in the demonstration of 17 May 2010 organised by the Yekiti party and Syrian Kurds in Cyprus. Some of them, once in Cyprus, had been active in the party and participated in other demonstrations organised by the party. They believed that their activities were well known to the Syrian Embassy in Cyprus and the Syrian authorities in general.

253. In so far as Article 13 of the Convention is concerned, the applicants complained of the lack of an effective domestic remedy with regard to their complaint under Article 3. In particular, they claimed that a recourse challenging the decisions of the Reviewing Authority and the deportation and detention orders did not have automatic suspensive effect

and did not entail an examination of the merits of the administrative decisions.

254. The applicants' complaints under this head were not communicated to the Government. The Court will proceed to examine the admissibility of the complaints by dividing the applicants in two groups.

A. Applicants H.S., M.S., H.H. and H.Sw. (application nos. 41753/10, 41796/10, 41811/10 and 41921/10)

255. The Court reiterates that the rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the Court for their acts before they have had an opportunity to put matters right through their own legal system. That rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Vučković and Others v. Serbia* [GC], no. 17153/11, § 69, 25 March 2014, with further references).

256. For a remedy to be effective it has to be available in theory and in practice at the relevant time, meaning that it has to be accessible, capable of providing redress in respect of the applicant's complaints and offer reasonable prospects of success. Article 35 must also be applied to reflect the practical realities of the applicant's position in order to ensure the effective protection of the rights and freedoms guaranteed by the Convention (*NA. v. the United Kingdom*, no. 25904/07, § 88, 17 July 2008, with further references).

257. In some cases there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his or her disposal. However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Vučković,* cited above, § 74 and *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 52, ECHR 2013 (extracts)). In cases where an applicant seeks to prevent his or her removal from a Contracting State, a remedy will only be effective if it has suspensive effect. Conversely, where a remedy does have suspensive effect, the applicant will normally be required to exhaust that remedy. Judicial review, where it is available and where the lodging of an application for judicial review will operate as a bar to removal, must be regarded as an effective remedy which in principle applicants will be required to exhaust before lodging an application with the Court or indeed requesting interim measures under Rule 39 of the Rules of

Court to delay a removal (*NA*, cited above, § 90; contrast *M.A.*, cited above, §§ 131-143).

258. In so far as the present cases are concerned, for the reasons set out below the Court does not consider that the applicants took the necessary steps to exhaust effective domestic remedies in respect of their complaints under this head. The Court notes the following in this respect.

259. The Court first observes that the Asylum Service is the first instance in the domestic asylum proceedings and that there is a right to appeal to the Reviewing Authority (see *M.A.*, cited above, §§ 73-74). Both proceedings are suspensive and asylum seekers have a right under the Refugee Law to remain in Cyprus pending the examination of their claim before these authorities (ibid., § 74).

260. Although H.S., M.S. and H.H. filed asylum claims the consideration of their applications was discontinued and their files closed by the Asylum Service as none of them attended the scheduled interview. According to the relevant decisions, the authorities had not been able to locate H.S. and M.S. as they had failed to inform the authorities of a change of address and to give the right telephone number. Furthermore, there was indication that H.H. had received the letter inviting him to the interview and had also confirmed in a telephone call that he would attend. H.S. and H.H. did not appeal to the Reviewing Authority. Although M.S. filed an appeal this was dismissed by the Reviewing Authority as it had been made on the wrong grounds; in particular, the appeal dealt with the merits of his application rather than contesting the grounds of the decision to discontinue it (see paragraph 62 above). Consequently, the substance of the applicants' asylum claims was never examined by the domestic authorities.

261. Although H.S. and H.H. claimed that they were not invited to attend an interview by the authorities, they have not made any comments concerning that or contested as such the findings of the Asylum Service in its decisions. H.S. appears not to have followed-up on his asylum application at all whereas H.H. did not file an appeal when he eventually found out about the decision. He submitted that he had not done so because he was not aware how to proceed and was scared to approach the authorities. In the Court's view, however, these are not legitimate grounds for not exhausting the relevant remedy. Furthermore, M.S. was represented by legal counsel in the appeal proceedings. The Court further notes that none of the three applicants attempted to re-apply for asylum.

262. In so far as H.Sw. is concerned the Court notes that he had his asylum claim examined by the Asylum Service. It was dismissed as he had failed to make plausible that he was in need of international protection. The applicant claimed that he was not informed of this decision until a non-governmental organisation followed up his case. His appeal was dismissed by the Reviewing Authority under Section 28 F (2) of the Refugee Law 2000-2009 (as amended up to 2009) on the ground that it had been

filed out of time. The Reviewing Authority observed that the letter informing the applicant of the dismissal of his asylum application had been served through a private messenger and that the delivery slip had been signed by his fellow lodger. The applicant has not commented on the findings of the Reviewing Authority.

263. The Court cannot identify any grounds for considering that the specific remedies available in the domestic system are in any way inadequate or ineffective. Nor does it find any exceptional circumstances absolving the applicants from the obligation to exhaust domestic remedies.

264. It follows that the applicants' complaint under Article 3 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies. Consequently, the complaint under Article 13 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Applicants A.T., F.T., M.J., A.M., A.Hu., A.Ab., M.K., H.M., I.K., and M.Y. (application nos. 41786/10, 41973/10, 41799/10, 41794/10, 41807/10, 41812/10, 41815/10, 41820/10, 41824/10 and 41919/10)

265. The Court notes that these ten applicants had the substance of their claims examined by both the Asylum Service and the Reviewing Authority. All of their applications were rejected. Deportation orders were issued against them on 2 and 11 June 2010. None of the applicants brought recourse proceedings with the Supreme Court challenging the decisions of the Reviewing Authority and the deportation and detention orders.

266. As a preliminary note, the Court, referring to the general principles on exhaustion of domestic remedies set out above (see paragraphs 255-257 above), observes that although the applicants complain that recourse proceedings are ineffective as they did not have automatic suspensive effect, it transpires from the submissions to the Court made in their application forms, that this may well not have been the real reason they did not lodge such proceedings, at least against the asylum decisions. Different explanations have been put forward by the applicants in this connection, including, *inter alia*, costs, lack of information and legal advice that such proceedings would have had no realistic prospect of success. It is also worth noting that in the majority of cases, the decisions of the Reviewing Authority were taken a long time before the applicants applied to this Court. Furthermore, it appears that some of the applicants may not have raised before the domestic authorities all the reasons for which they claim before this Court that they would face risk of ill-treatment or torture in Syria.

267. The Court, however, does not find it necessary to address any questions of exhaustion of domestic remedies that might arise in these

cases, as the applicants' complaints concerning Article 3 are in any way inadmissible for the reasons set out below.

268. The Court reiterates that the Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, *inter alia*, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 113, ECHR 2012). Moreover, the right to political asylum is not contained in either the Convention or its Protocols (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 102, Series A no. 215).

269. However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3 in the receiving country, regardless of whether this risk emanates from a general situation of violence, a personal characteristic of the person concerned, or a combination of the two (see *A. and M. v. the Netherlands* (dec.), no. 50386/12, 1 October 2013 and *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 218, 28 June 2011). In these circumstances, Article 3 implies the obligation not to expel the person in question to that country (see *Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008 with further references).

270. The assessment of whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires that the Court assess the conditions in the receiving country against the standards of Article 3 of the Convention (*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case (*Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II).

271. The assessment of the existence of a real risk must necessarily be a rigorous one (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, Reports 1996-V, § 96; and *Saadi v. Italy*, cited above, § 128). The Court acknowledges that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies (see, among other authorities, *Collins and Akasiebie v. Sweden* (dec.), no. 23944/05, 8 March 2007, and *Matsiukhina and Matsiukhin v. Sweden* (dec.), no. 31260/04, 21 June 2005). In principle, the applicant has to adduce evidence capable of

proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *R.C. v. Sweden*, no. 41827/07, § 50, 9 March 2010; *NA.*, cited above, § 111; and *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it.

272. Finally, in cases concerning the expulsion of asylum seekers, the Court does not itself examine the actual asylum applications or verify how the States honour their obligations under the Geneva Convention. It must be satisfied, though, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations (see, *NA.*, cited above, § 119,).

273. In so far as the common grounds put forward by the applicants are concerned, the Court reiterates that a general situation of violence will not normally in itself entail a violation of Article 3 in the event of an expulsion (see, amongst many authorities, *A. A. M. v. Sweden*, no. 68519/10, § 62, 3 April 2014 and *Sufi and Elmi*, cited above, § 241).

274. However, the Court has never excluded the possibility that the general situation of violence in a country of destination may be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there is a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return (*NA.*, cited above, § 115).

275. The Court notes that at the relevant time there was no indication that the general situation in Syria for Kurds was so serious that the return of the applicants thereto would constitute, in itself, a violation of Article 3 of the Convention (contrast *Sufi and Elmi*, cited above, §§ 241-250). The Court has considered the reports of serious human rights violations in Syria concerning the relevant period, in particular, for the Kurdish minority, including stateless Kurds (see paragraphs 239-247 above). Although these attest to the discrimination and deprivations experienced by Kurds in Syria, these are not of such a nature or intensity as to show, on their own, that at the relevant time there would have been a violation of the Convention if the applicants were returned to that country. Nor could it be said on the basis of the material before the Court that the mere unsuccessful application for asylum abroad would lead per se to prosecution or other forms of persecution in Syria.

276. In this connection, the Court finds it important to point out that at the time of deportation of the applicants in 2010, the Syrian uprising and the

ongoing armed conflict in Syria between forces loyal to the Ba'ath Party government and those seeking to oust it, had not yet begun.

277. In addition, the Court observes that the applicants did not substantiate that there was a real risk that the Syrian authorities were aware of their activities *sur place* in Cyprus or participation in the demonstration of 17 May 2010. It should be noted that about 150 Syrian Kurds took part in the demonstration. There is no indication that the Syrian authorities could have known who all the protesters were or that they were in a position to identify them. No evidence has been submitted establishing that there was a real risk of identification of any of the applicants from this demonstration or, indeed, any other protest or activity they may have participated in. None of the information given by the applicants has been enough to substantiate an increased profile risk. Furthermore, the photocopies of photographs provided by A.Ab. are too general and unclear. There is no indication that the applicant is in these photographs and that he can be identified.

278. Turning to the applicants' individual situations, it is noted that the applicants' claims were carefully examined by both the Asylum Service and the Reviewing Authority and that these authorities gave fully reasoned decisions. It is clear from these decisions that the applicants failed to make a plausible case that they were in need of international protection. The relevant decisions underline the lack of substantiation and credibility or consistency of the applicants' claims. There is nothing to indicate that the domestic authorities' decisions, which are extensively reasoned, were arbitrary or otherwise flawed. The applicants have equally failed to substantiate the accounts of their stories and allegations before this Court.

279. In view of the above, the Court finds that the applicants failed to establish that there were substantial grounds for believing that they would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention, when they were to be deported to Syria at the material time.

280. The Court notes that following the applicants' deportation their representative informed the Court that the majority of the applicants had been arrested and detained upon their return to Syria. Furthermore, one applicant, M.J., claimed that he had been subjected to ill-treatment during their detention. Even assuming, however, that he was subjected to treatment contrary to Article 3 upon his return to Syria at the time of his deportation in 2010, there was no evidence before the domestic authorities or the Court that at the material time the applicant was at risk of being subjected to such treatment (see, *mutatis mutandis*, *M.E. v. Denmark*, no. 58363/10, §§ 62 and 64, 8 July 2014 and *Mannai v. Italy*, no. 9961/10, § 36, 27 March 2012, § 36).

281. In view of the above, the Court finds that the applicants' complaint under Article 3 is manifestly ill-founded within the meaning of Article 35

§ 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

282. The Court reiterates that Article 13 guarantees the availability at national level of a remedy where there is an "arguable claim" of a violation of a substantive Convention provision (see, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). Having regard to the Court's conclusions above as regards the applicants' complaint under Article 3, it cannot be said that they have an "arguable claim" under this provision.

283. Consequently the complaint under Article 13 is also manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

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

284. The applicants complained that they did not have an effective remedy at their disposal to challenge the lawfulness of their detention. They relied on Article 5 § 4 of the Convention, which provides as follows:

Article 5 § 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. The parties' submissions

1. The Government

285. The Government's submissions were the same as those made in the case of *M.A.* (cited above, §§ 146, and 158-159).

2. The applicants

286. The applicants made virtually the same submissions as those made in *M.A.* (cited above, §§ 147, and 150-157). Although as in the above case, the applicants also complained of the effectiveness of habeas corpus proceedings (see *M.A.*, cited above, § 156), they pointed out that they could not have brought such proceedings as the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals was not applicable at the time they were in detention with a view to deportation (see relevant domestic law part in *M.A.*, cited above, §§ 85-87).

B. Admissibility and Merits

287. The Court notes that the issue raised under this provision concerning judicial review proceedings is identical to that examined in the case of *M.A.*, (cited above).

288. The Court recalls that in that case it declared this complaint admissible (ibid., §§ 148-149) and held that there had been a violation of that provision as a recourse under Article 146 of the Constitution did not comply with the requirement of "speediness" (ibid., §§ 160-170).

289. The Court finds no reason in the instant cases to depart from the above findings made in the *M.A.* judgment.

290. Accordingly, it concludes that there has been a violation of Article 5 § 4 the Convention.

291. As in *M.A.*, in view of the above finding, it does not consider it necessary to examine the remainder of the applicants' complaints concerning judicial review proceedings and habeas corpus proceedings (ibid., § 171).

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

292. The applicants further complained that their detention had been unlawful and therefore in breach of Article 5 § 1 (f) of the Convention, which, in so far as relevant, reads as follows:

Article 5 § 1

"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."

A. The applicants' complaints under this provision

293. The Court notes that the applicants' complaint under Article 5 § 1 of the Convention can be divided into two parts that require separate examination:

- the first part concerns their transfer, along with the other protesters, to the ERU headquarters on 11 June 2010 and their stay there pending their identification later on the same date (see *M.A.*, cited above, § 36, *in fine*);

- the second part concerns their detention on the basis of the deportation and detention orders issued against them on 2 and 11 June 2010 under the

Aliens and Immigration Law until their respective deportation, voluntary departure from Cyprus.

B. The applicants' transfer to and stay at the ERU headquarters on 11 June 2010

1. The parties' submissions

294. The parties' submissions in respect to this complaint were the same as those made in the case of *M.A.* (cited above, §§ 173, 177-180).

2. The Court's assessment

Admissibility

295. The Court notes that the applicants' complaint concerning this period arises from the same factual circumstances as those in *M.A.* (cited above) and that the issue at stake is identical to that examined in the above case. M.A. and the applicants in the present cases were all transferred to the E.R.U. headquarters together and stayed there for a number of hours pending their identification and ascertainment of their status.

296. The Court recalls that in the case of *M.A.* it declared this complaint admissible (§§ 185-196) finding that the applicant's transfer to and stay in the ERU headquarters during this period amounted to a *de facto* deprivation of liberty within the meaning of Article 5 § 1 and that this provision applied to the case *ratione materiae* . It further held that the complaint was not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

297. The Court went on to find that M.A's deprivation of liberty during this period was contrary to Article 5 § 1 of the Convention in the absence of a clear legal basis for the deprivation of his liberty (§§ 197-203).

298. For the same reasons, as in the case of *M.A.*, the Court finds that the applicants' complaint concerning the same period is admissible and that there has been a violation of Article 5 § 1 concerning the applicants' deprivation of liberty during this period.

C. The applicants' detention on the basis of the deportation and detention orders issued against them

1. The parties' submissions

(a) The applicants

299. The applicants submitted that their detention had been arbitrary and contrary to Article 5 § 1 (f) of the Convention. First of all, although the Government claimed that charges had been brought against them on 11 June

2010 for unlawful residence they had not submitted any evidence before the Court to this effect. The copies of the letters sent by the District Aliens and Immigration Branch of the Nicosia Police to the Director of the Aliens and Immigration Service and the Ministry of Justice and Public Order which have been provided by the Government (see paragraph 179 above), simply recommended the issuance of deportation orders against the applicants.

300. They had then been detained on the basis of detention and deportation orders which had been issued on the same day. Once, however Rule 39 had been applied the authorities were not able to deport them. Although the authorities could have released them on conditions or granted them a temporary residence permit on humanitarian grounds pending the examination of their case by the Court, they continued to detain them even though no action could have been taken with a view to their deportation as required by the Convention (relying on *Chahal*, cited above, §§ 112 -113). The applicants claimed that their detention for such a long period was arbitrary and could only be considered as punishment (relying on *Saadi v. the United Kingdom* ([GC], no. 13229/03, §§ 69 -70, ECHR 2008). They had been arrested and detained as punishment for demonstrating against the Government. This was evidenced by a number factors: A.M. and M.S. (applications nos. 41794/10 and 41796/10) were stateless Ajanib and they should not have been subject to deportation as the instructions given by the Minister of the Interior did not apply to failed asylum seekers with Ajanib or Maktoumeen status (see paragraph 176 above). Furthermore, the records given by the Government indicated that the instructions concerning some of the applicants (A.T., F.T. and H.H.) were that if they were traced they should not be deported unless they were involved in illegal activities (see paragraphs 22, 43 and 96 above). Consequently, it was clear to the applicants that the authorities had acted in bad faith.

301. The applicants emphasised that the decisions of the Chief Immigration Officer for detention and deportation were not at the time subject, under law, to a maximum period of detention. Section 14 of the Aliens and Immigration Law provided a wide margin of discretion to the Chief Immigration Officer to detain indefinitely for the purpose of deportation. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals was not applicable at the time the applicants were kept in detention (see *M.A.*, cited above, §§ 85-87). Finally, domestic law did not provide for periodic review of detention for the purpose of deportation.

(b) The Government

302. The Government maintained that the applicants had been detained lawfully during the relevant period with a view to their deportation under Article 5 § 1 (f) of the Convention within the meaning of the Court’s case-

law. In this respect the Government submitted that the applicants' arrest and detention on the ground of unlawful stay had been lawful as it had been in conformity with domestic law and procedure. The applicants had been "prohibited immigrants" within the meaning of section 6(1)(k) of the Aliens and Immigration Law as they had stayed in the Republic unlawfully after the rejection of their asylum applications. Three of the applicants, namely, A.T.., F.T., and H.H. had been arrested and detained on the basis of deportation and detention orders that had already been issued against them on 2 June 2010 pursuant to section 14 (6) of the Aliens and Immigration Law on the same grounds. The remaining eleven applicants had been charged with the criminal offence of unlawful stay which was a flagrant offence punishable by imprisonment under section 19 (2) of the Aliens and Immigration Law (see *M.A.*, cited above, § 65). Article 11 (4) of the Constitution permitted arrest without a warrant for flagrant offences carrying a term of imprisonment (see *M.A.*, cited above, § 88). Their detention continued on the basis of deportation and detention orders with a view to their deportation. For these applicants the orders had been issued on the same day, that is, 11 June 2010, before the lapse of the twenty-four hour time-limit set by Article 11 (5) of the Constitution (see *M.A.*, cited above, § 88) pursuant to Section 14 (6) of the Aliens and Immigration Law on the ground that they "prohibited immigrants" within the meaning of section 6(1)(k) of that Law (the order issued in respect of A.Ab. also referred to 6(1)(l) of the Law). Contrary to the applicants' submissions, the letters sent by the District Aliens and Immigration Branch of the Nicosia Police to the Director of the Aliens and Immigration Service and the Ministry of Justice and Public Order stated that after ascertaining that the applicants had been staying unlawfully in the Republic, the applicants had been arrested and charged with the commission of this offence and had been informed of their rights under Law 163(I) of 2005 (see paragraph 185 above and relevant domestic law part in *M.A.*, cited above, § 40.)

303. Furthermore, the Government pointed out that when Rule 39 was applied by the Court on 14 June 2010, the Court's indication was that the applicants should not be deported to Syria until the Court received and examined all the documents that it had requested pertaining to the applicants' claims. The Government submitted all documents and information and had every reason to believe that their examination by the Court would soon result in the lifting of the interim measure. Therefore, during the period that the Court's interim measure was in force the Government had not abandoned but continued their efforts in order to be ready to carry out the deportation of the applicants as soon as the interim measure was lifted. When the Court decided to lift the measure on 21 September 2010 the authorities started deporting the persons concerned within a matter of days and within ten weeks the deportations had ended. Seven of the applicants, F.T., M.J., A.Hu., H.H., M.K., H.M. and I.K., were

deported on 25 September 2010; A.Ab. and M.Y. had agreed to leave voluntary and departed from Cyprus on 24 September 2010 and on 1 October 2010 respectively; and five applicants, namely, H.S., A.T.., A.M., M.S., and H.S.w, were deported on 14 December 2010. In view of the above, the Government argued that it was clear that the applicants had been detained during the relevant period with a view to their deportation within the meaning of the Court's case-law.

2. The Court's assessment

(a) Admissibility

304. The Court notes that it is not disputed that the applicants were deprived of their liberty from 11 June 2010 until their deportation or voluntary departure from Cyprus on the basis of deportation and detention orders issued under the Aliens and Immigration Law.

305. The Court further notes that the applicants' complaints under this head are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

(b) Merits

(i) Applicants F.T., M.J., A.Hu., H.H., A.Ab., M.K., H.M., I.K. and M. Y (application nos. 41793/10, 41799/10, 41807/10, 41811/10, 41812/10, 41815/10, 41820/10, 41824/10 and 41919/10)

306. As in *M.A.*, (cited above, § 206), the Court is satisfied that the deprivation of liberty of the nine applicants during the relevant period fell within the ambit of Article 5 § 1 (f) of the Convention as they were detained for the purpose of being deported from Cyprus. This provision does not require that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary, for example to prevent his committing an offence or fleeing; in this respect Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c) (see *Chahal*, cited above, §§ 112-113 and *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I). All that is required under this provision is that "action is being taken with a view to deportation". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see *Chahal*, cited above, § 112).

307. The Court notes that Cypriot law allows for the possibility of detention with a view to deportation. The Court observes in this respect that the decisions of 2 and 11 June 2010 ordering the applicants' detention and deportation were based on section 14 of the Aliens and Immigration Law, which permits the Chief Immigration Officer to order the deportation of any

alien who is a prohibited immigrant and his or her detention in the meantime (see *M.A.*, cited above, §§ 63 and 207).

308. It follows that, as in *M.A.*, the issue to be determined is whether the applicants' detention under that provision was "lawful", including whether it complied with "a procedure prescribed by law".

309. The Court observes that two of the applicants, F.T. and H.H., were detained on the basis of deportation and detention orders issued against them on 2 June 2010 and the remaining seven applicants were charged on 11 June 2010 with the offence of unlawful stay and then their detention continued on the basis of deportation and detention orders issued on the same day. All the orders had been issued pursuant to section 6(1)(k) of the Aliens and Immigration Law on the ground that the applicants were "prohibited immigrants" staying in the Republic unlawfully. The order issued in respect of A.Ab. also referred to 6(1)(l) of the Law. Eight of the applicants had their asylum applications rejected and one had his asylum file closed. Furthermore, although one of the applicants had subsequently been granted a temporary permit he had continued to remain in the country after this had expired. Under domestic law therefore the applicants had no longer the right to remain in Cyprus (see *M.A,* cited above, § 75).

310. In view of the foregoing, the Court finds that the applicants' detention had a legal basis in domestic law and was ordered "in accordance with a procedure prescribed by law".

311. This having been said, the Court reiterates that any deprivation of liberty under Article 5 § 1 (f) of the Convention will be justified as long as deportation proceedings are in progress. If such proceedings are not conducted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (see *Chaha*l, cited above, § 113). In other words, the length of the detention for this purpose should not exceed what is reasonably required (see *Saadi v. the United Kingdom*, cited above, § 74.). The Court reiterates in this regard that the Contracting States are obliged under Article 34 of the Convention to comply with interim measures indicated under Rule 39 of the Rules of Court and any deportation proceedings should therefore be suspended (see *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, §§ 73 and 74, ECHR 2007-V). The Court has previously found that where expulsion or extradition proceedings are provisionally suspended as a result of the application of an interim measure, that does not in itself render the detention of the person concerned unlawful, provided that the authorities still envisage expulsion at a later stage, and on condition that the detention is not unreasonably prolonged (*Keshmiri v. Turkey (no. 2)*, no. 22426/10, § 34, 17 January 2012 and *S.P. v. Belgium* (dec.), no. 12572/08, 14 June 2011).

312. The Court observes that the applicants were all arrested on 11 June 2010 and that Rule 39 was applied on 14 June 2010. It was lifted on 21 September 2010 and all the applicants remained in detention during this

period which lasted a total of three months and eleven days. The Government submitted that during this period they continued their efforts in order to be ready to carry out the deportations as soon as the Court lifted the interim measure. The applicants, however, argued that as no action could be taken during this period with a view to their deportation, their detention for such a long period had been unlawful and their deportation should have been suspended (*Gebremedhin*, cited above).

313. The Court first notes that all the nine applicants were deported promptly within three to ten days of the lifting of the measure; A.Ab. was deported on 24 September 2010 and was therefore detained in total for a period of three months and fourteen days; F.T., M.J., A.Hu,. H.H., M.K., H.M., and I.K. were deported on 25 September 2010 and were therefore detained for three months and fifteen days. Lastly, M. Y was deported on 1 October 2010. He was thus detained for three months and twenty days.

314. Furthermore, the Court notes that the above periods of detention do not appear to be unreasonably long (see, for example, *Umirov v. Russia*, no. 17455/11, §§ 137-142, 18 September 2012 and *Al Husin v. Bosnia and Herzegovina*, no. 3727/08, §§ 67-69, 7 February 2012, where the relevant periods of detention following the application of an interim measure by the Court, which lasted eight months and for more than a year respectively, were found to be compatible with Article 5 § 1 (f)). Nor have there been any significant unjustified delays or any inaction in deporting the applicants. It is also relevant that, as the Court has established above (see paragraph 310 above), the applicants' detention during this period was in compliance with domestic law. Lastly, there is no indication that the authorities acted in bad faith, and there is no information on the part of the applicants that they were detained in unsuitable conditions or that their detention was arbitrary for any other reason (see *Saadi v. the United Kingdom*, cited above, § 74).

315. In view of the foregoing, the Court is satisfied that the requirement of diligence was complied with and the overall length of the abovementioned applicants' detention was not excessive.

316. It therefore finds that there has been no violation of Article 5 § 1 (f) on this account.

(ii) Applicants H.S., A.T., A.M., M.S. and H.Sw. (application nos. 41753/10, 41786/10, 41794/10, 41796/10 and 41921/10)

317. The Court is satisfied that the deprivation of liberty of the five applicants during the relevant period fell within the ambit of Article 5 § 1 (f) of the Convention as they were detained for the purpose of being deported from Cyprus. The decisions of 2 and 11 June 2010 ordering the applicants' detention and deportation were based on section 14 of the Aliens and Immigration Law (see *M.A*, cited above, § 63).

318. The Court observes that one of the applicants, A.T., was detained on the basis of deportation and detention orders issued against him on

2 June 2010 and the remaining four applicants were charged on 11 June 2010 with the offence of unlawful stay and then their detention continued on the basis of deportation and detention orders issued on the same day. All the orders had been issued pursuant to section 6(1)(k) of the Aliens and Immigration Law on the ground that the applicants were "prohibited immigrants" staying in the Republic unlawfully. A.T., AM. and H.Sw had their asylum applications rejected and H.S. and M.S. had their asylum files closed. Under domestic law therefore the applicants had no longer the right to remain in Cyprus (see *M.A*, cited above, § 75).

319. In view of the foregoing, the Court finds that the applicants' detention had a legal basis in domestic law and was ordered "in accordance with a procedure prescribed by law".

320. The Court observes, however, that the applicants were deported on 14 December 2010, that is, two months and twenty-three days after the interim measure was lifted and were in the meantime kept in detention. Although the Government submitted that throughout the period that Rule 39 was in force they had continued their efforts to prepare the applicants' deportation, they have not provided any information at all as to what action was taken or what difficulties may have been encountered during the following period, subsequent to the lifting of the Rule 39 measure. They have not therefore shown that they acted with the required diligence for the purpose of making the necessary arrangements for deporting these applicants and thus putting an end to their detention as soon as reasonably possible. The Court further observes that during this latter period there were no pending proceedings that might account for the delay in their deportation.

321. The Court has found in a number of cases longer periods of detention to be in compliance with Article 5 § 1 (f) of the Convention (see for example, see *Chaha*l, cited above, and *Raza v. Bulgaria*, no. 31465/08, 11 February 2010, where the duration was of more than three and two and a half years respectively). It underlines, however, that in those cases, unlike the present ones, there were specific indications that deportation proceedings were indeed in progress.

322. Consequently the Court finds, in the absence of relevant and sufficient information on the part of the Government, that the applicants' detention was unjustifiably prolonged.

323. In view of the foregoing, the Court is not satisfied that the requirement of diligence had been complied with. Therefore there has been a violation of Article 5 § 1 (f) of the Convention.

D. Overall conclusion

324. The Court finds that there has been:

(a) a violation of Article 5 § 1 of the Convention in respect of the applicants' arrest and detention on 11 June 2010 following their transfer to and stay at the ERU headquarters pending their identification;

(b) no violation of Article 5 § 1 (f) in respect of applicants F.T., M.J., A.Hu., H.H, A.Ab., M.K., H.M., I.K. and M.Y (applications nos. 41793/10, 41799/10, 41807/10, 41811/10, 41812/10, 41815/10, 41820/10, 41824/10 and 41919/10 – see paragraphs 306-316); and,

(c) a violation of Article 5 § 1 (f) in respect of applicants H.S., A.T., A.M., M.S. and H.Sw (applications nos. 41753/10, 41786/10, 41794/10, 41796/10 and 41921/10 – see paragraphs 317-323 above).

V. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

325. The applicants complained that the authorities had not complied with the requirements of Article 5 § 2 of the Convention. This provision reads as follows:

Article 5 § 2

" Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

A. The parties' submissions

326. The parties' submissions in respect to this complaint were the same as those made in the case of *M.A.* concerning the reasons of their arrest and detention on 11 June 2010 (cited above, §§ 221-222 and 224-225).

B. Admissibility and Merits

327. The Court notes that the applicants' complaint in the present cases is identical and arises from the same factual circumstances with the first part of *M.A.'s* complaint concerning his arrest on the same date (*M.A.*, cited above, §§ 221 and 223).

328. The Court recalls that in that case it declared this complaint admissible (ibid., § 220) and held that there had not been a violation of Article 5 § 2 (ibid.,§§ 234-236). It found that it had no reason to doubt, in the circumstances, that *M.A.* was informed at the time that he had been arrested on the ground of unlawful stay or that he at least understood, bearing in mind the nature of the identification process, that the reason for his arrest and detention related to his immigration status. In this connection, the Court also noted that *M.A.* had filed a Rule 39 request, along with a number of other protesters, the very next day, seeking the suspension of their deportation. A reading of this request indicates that they were all aware of the fact that they were detained for the purpose of deportation.

329. The Court finds, for the same reasons as in the above case, that there has been no violation of this provision.

VI. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 4 TO THE CONVENTION

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

Article 4 of Protocol No. 4

"Collective expulsion of aliens is prohibited."

A. The parties' submissions

331. The parties' submissions in respect to this complaint were the same as those made in the case of *M.A.* (cited above, §§ 240-244).

B. Admissibility and Merits

332. The Court notes that this complaint arises from the same factual circumstances as those in *M.A.* (cited above) and that the issue at stake is identical to that examined in the above case.

333. The Court recalls that in that case it declared this complaint admissible (ibid., § 239) and held that there had not been a violation of Article 4 of Protocol No. 4 as it was not persuaded that the measure taken by the authorities revealed the appearance of a collective expulsion within the meaning of this provision (ibid., §§ 245-255).

334. The Court sees no reason in the instant cases to depart from the conclusions which it reached in the *M.A.* judgment.

335. Accordingly, it concludes that there has not been no violation of Article 4 of Protocol No. 4.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

336. 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

337. In the observations submitted on behalf of the applicants in August 2011, the applicants' representative stated that, following their deportation to Syria, she had not managed to establish contact with them before the relevant deadline. She had not therefore, been in a position at that point in time to submit just satisfaction claims for non–pecuniary damage on their behalf. In subsequent correspondence she informed the Court that she had re-stablished contact with the applicants.

338. The Government did not make any comments on the matter.

339. The Court notes that the applicants' representative did not make a request to submit a claim for non-pecuniary damage after she managed to establish contact with the applicants. As a result, no such claim was ever submitted. In these circumstances, the Court considers that there is no call to award them a sum under this head.

B. Costs and expenses

340. The applicants also claimed 200 euros (EUR) each (EUR 2800 in total), plus VAT for costs and expenses incurred before the Court. In this connection, their representative submitted that this was the amount they had agreed upon together. The applicants had not paid her, however, as they had in the meantime been deported.

341. The Government contested the applicants' claim and maintained was excessive considering that the applications shared common facts and legal issues.

342. 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 have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that the applicants have failed to provide any supporting documents – such as itemised bills or invoices – substantiating their claim (Rule 60 §§ 1 and 2 of the Rules of Court; see *M.A.*, cited above, § 262). The Court accordingly makes no award under this head.

C. Default interest

343. 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. *Decides* to join the applications;

2. *Declares* the complaints concerning Article 5 §§ 1, 2 and 4 of the Convention and Article 4 of Protocol No. 4 admissible and the remainder of the complaints inadmissible;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention in so far as the applicants' arrest and detention on 11 June 2010 following their transfer to and stay at the ERU headquarters is concerned;

5. *Holds* that there has been no violation of Article 5 § 1 of the Convention in respect of applicants F.T., M.J., A.Hu., H.H, A.Ab., M.K., H.M., I.K. and M. Y., (applications nos. 41793/10, 41799/10, 41807/10, 41811/10, 41812/10, 41815/10, 41820/10, 41824/10 and 41919/10);

6. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of applicants H.S., A.T., A.M., M.S. and H.Sw., (applications nos. 41753/10, 41786/10, 41794/10 41796/10 and 41921/10);

7. *Holds* that there has been no violation of Article 5 § 2 of the Convention;

8. *Holds* that there has been no violation of Article 4 of Protocol No. 4 of the Convention;

9. *Dismisses* the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Guido Raimondi
Registrar	President

APPENDIX:
List of the applications

No.	Application No.	Case title	Applicant's nationality/origin	Deportation/ Departure Date
1.	41753/10	H.S.. v. Cyprus	Syrian national of Kurdish origin	14 December 2010
2.	41786/10	A.T.. v. Cyprus	Syrian national of Kurdish origin	14 December 2010
3.	41793/10	F.T. v. Cyprus	Syrian national of Kurdish origin	25 September 2010
4.	41794/10	A.M. v. Cyprus	Ajanib (registered stateless) Kurd	14 December 2010
5.	41796/10	M.S. v. Cyprus	Ajanib (registered stateless) Kurd	14 December 2010
6.	41799/10	M.J. v. Cyprus	Syrian national of Kurdish origin	25 September 2010
7.	41807/10	A.Hu. v. Cyprus	Syrian national of Kurdish origin	25 September 2010
8.	41811/10	H.H. v. Cyprus	Syrian national of Kurdish origin	25 September 2010
9.	41812/10	A.Ab. v. Cyprus	Syrian national of Kurdish origin	24 September 2010 (returned voluntarily)
10.	41815/10	M.K. v. Cyprus	Syrian national of Kurdish origin	25 September 2010
11.	41820/10	H.M. v. Cyprus	Syrian national of Kurdish origin	25 September 2010
12.	41824/10	I.K. v. Cyprus	Syrian national of Kurdish origin	25 September 2010
13.	41919/10	M.Y. v. Cyprus	Syrian national of Kurdish origin	1 October 2010 (returned voluntarily)
14.	41921/10	H.Sw. v. Cyprus	Syrian national of Kurdish origin	14 December 2010