

ECtHR - Al- Nashif v Bulgaria, Applciation no. 50963/99, 20 September 2002

Country of Applicant:

Bulgaria
Syria

Date of Decision:

20-09-2002

Citation:

Application no. 50963/99

Court Name:

European Court of Human Rights, Fourth Section

Keywords:

[Effective access to procedures](#) [1]

[Effective remedy \(right to\)](#) [2]

[Detention](#) [3]

[Return](#) [4]

[Religion](#) [5]

Relevant Legislative Provisions:

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [6] > [Article 3](#) [7]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [6] > [Article 5](#) [8]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [6] > [Article 8](#) [9]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [6] > [Article 9](#) [10]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [6] > [Article 13](#) [11]

Headnote:

After the revocation of his residence permit due to his religious activities (alleged links with a fundamentalist organisation), the applicant was detained for a period of 26 days and later

deported from Bulgaria. The applicant claims to have been refused access to a lawyer and to have been detained incommunicado. He also claims that his detention and deportation was an interference with his right to family life and right to religious freedom.

Facts:

The first Applicant, Mr Al-Nashif and his wife Mrs Saleh arrived in Bulgaria on 20 September 1992. The second and third applicants, are Mrs Saleh and the first applicant's children. They were born in Bulgaria in 1993 and 1994 and have Bulgarian nationality. The first applicant obtained a permanent residence permit in February 1995. The first applicant and his family moved to Smolyan at the end of 1995.

In February 1995 the first applicant contracted a Muslim religious marriage with Ms M., a Bulgarian citizen. Under Bulgarian law, the marriage has no legal effect. At the beginning of 1996, Ms M. followed the first Applicant to Smolyan where she stayed several months in an apartment rented by him. The first applicant stated that he had continued to live on a permanent basis with his wife Mrs Saleh. The first applicant and Ms M.'s relationship ended in early 1998.

On 14 January 1999, a police officer in Smolyan reported Mr Al-Nashif's religious activities to his superiors (alleged danger stemming from the Islamic lessons given by the first applicant from November 1998 to April 1999). Following a report of 18 March 1999 to the Passport Department, the local police in Smolyan proposed that the first applicant's residence permit be revoked. On 19 April 1999, the Passport Department issued an order to revoke the first applicant's permanent residence permit, based on Section 40 (1)(2) and Section 10 (1)(1) of the Aliens Act (providing that he posed a threat to the 'security and interests of the Bulgarian State?'). His appeal against the Order no. 63552 (the revocation of residence order) was rejected on 1 June 1999 by the Passport Department on the grounds that in accordance with Section 47 (1) of the Aliens Act an order concerning a matter of national security could not be subject to review.

On 10 June 1999 two orders (deportation and prohibition of re-entry) were served on the first applicant in the presence of his lawyer without further information. He was placed in detention for 26 days before being deported to Syria. His appeals were unsuccessful. His wife eventually had to move to Syria with the second and third applicants as she had no income and the first applicant could not support the family. As there was allegedly no room for the family there, Mrs Saleh and the children went to Jordan. The first applicant travelled to Jordan and on 5 September 2000 returned to Syria as he allegedly had no legal right to remain in Jordan.

Decision & Reasoning:

The Court examines the complaint under Article 5 § 4 that Bulgarian law did not provide for judicial review against the applicant's detention and that the applicant was detained incommunicado and could not see a lawyer. The Court states that it is undisputed that in Bulgarian law no judicial appeal lies against detention pending deportation in cases where the deportation order is issued on grounds of national security. The court however adds that no reasons were stated in the detention order and that the first applicant was detained practically incommunicado and was not allowed to meet a lawyer to discuss any possible legal challenge to the measures against him. The Court adds that national authorities cannot do away with effective control of lawfulness of detention by the domestic court whenever they choose to assess that national security and terrorism are involved (*Chahal v the United Kingdom*). The Court further adds that there are

means which can be employed to both accommodate legitimate national security concerns and yet accord the individual a substantial measure of procedural justice. In this case, Mr Al-Nashif was not provided with any elementary safeguards and was not protected by Article 5 § 4 of the Convention.

The court went on to assess the applicants' complaints under Article 8 of the Convention that there had been an arbitrary interference with their right to respect for their family life. The court found that the applicants' family situation fell within the meaning of 'family life' of Article 8. By the very fact of the birth of applicants two and three, there exists a bond between father and child amounting to 'family life' which subsequent events cannot break save in exceptional circumstances. It was also determined that a bond of marriage exists between Mr Al-Nashif and Mrs Saleh which amounts to 'family life'. It was added that Mr Al-Nashif and Ms M.'s marriage had no legal effect in Bulgaria and that there was no decisive evidence supporting the Government's allegation that Ms M. and the first applicant lived together in Smolyan. The first applicant and his family had continued living together until his arrest in 1999. The court therefore concludes that there had been no interference with the applicants' family life.

The court then identifies whether the interference was in accordance with the law. It does so by stating that Orders nos. 503 and 504 (for the first applicants deportation, detention and exclusion from Bulgarian territory), although undisputedly relevant domestic law, lacked the clarity and foreseeability required by the concept of lawfulness as enshrined by the Convention. The Ministry of the Interior authorised the deportation of a person who had never been convicted or investigated on the basis of orders issued without examination of evidence, without the possibility of adversarial proceedings and without disclosing reasons to the applicants, to their lawyer or 'to any independent body competent to examine the matter'. The Court also stated that the Government had not submitted information of any independent inquiry having been conducted. Furthermore, the Court found that the first applicant's deportation was ordered pursuant to 'a legal regime that does not provide the necessary safeguards against arbitrariness'. Therefore, the court concluded that the interference with the applicant's family life was not based on legal provisions meeting the 'Convention requirement of lawfulness'. It was decided that there was a breach of Article 8 but that the court was not required to determine whether this interference pursued a legitimate aim and whether or not it was proportionate.

The court then considered the applicants' complaint under Article 13 of the Convention, that they did not have an effective remedy against the interference of their right to respect for their family life. The Court reiterates that Article 13 of the Convention 'guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order.' Therefore, Article 13 read in conjunction with Article 8 of the Convention requires that States must make available 'to the individual concerned the effective possibility of challenging the deportation or refusal-of-residence order and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality'.

Whilst it was stated that with regards to national security considerations, the limitation on the type of remedies available may be justified, a minimum is still required. The Court found that a minimum requirement of an effective remedy (even where there is an allegation of a threat to national security) is that the competent independent appeals authority must be informed of the reasons grounding the deportation decisions even if those decisions are not publicly available. The authority must be allowed to reject the executive's assertion that there is a threat to national security where it finds it arbitrary or unreasonable. The Court concludes that no remedy offering such guarantees of effectiveness was available to the applicants therefore, there has been a

violation of Article 13 of the Convention.

The Court examined the applicant's complaint under Article 9; that his deportation had been a reaction to and a punishment for his lawful religious activities?. The applicant's complaint under Article 13 read in conjunction with Article 9 of the Convention, the lack of an effective remedy in that regard, was also examined. The Court decides that as there had been a violation of article 8 read in conjunction with article 13, it was unnecessary to establish whether or not there was a violation of Article 13 in conjunction with Article 9.

Outcome:

The Court finds that there has been a violation of Article 5(4), Article 8 and Article 13 of the Convention.

The Court finds it unnecessary to decide whether or not there has been a violation of Article 13 in conjunction with Article 9. The Court finds that the first applicant is to be awarded EUR 7,000 and the two remaining applicants, EUR 5,000 each.

Observations/Comments:

This case summary was written by Elinor Gibson, GDL student at BPP University.

Case Law Cited:

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

ECtHR- Berrehab v. the Netherlands, Application no. 10730/84

ECtHR - Chapman v The United Kingdom (Application no. 27238/95)

ECtHR - Boultif v Switzerland, Application No. 54273/00

ECtHR - Kudla v Poland [GC], Application No. 30210/96

ECtHR - Rotaru v Romania [GC], Application No. 28341/95

ECtHR - X, Y and Z v United Kingdom, 22 April 1997, Reports 1997-II

ECtHR - K. and T. v Finland [GC], Application No. 25702/94

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

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

ECtHR - Hokkanen v. Finland, Application No. 19823/92

ECtHR - Nikolova v. Bulgaria [GC], Application No. 31195/96

ECtHR- Jasper v. the United Kingdom [GC], Application no. 27052/95

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

ECtHR - T.P. and K.M. v. the United Kingdom [GC], no. 28945/95

ECtHR - Kurt v Turkey, Application no. 24276/94

ECtHR - Gül v. Switzerland, Application no. 23218/94

ECtHR - Klass and Others v. Germany, Appl. No. 5029/71, 6 September 1978

[ECtHR - Chahal v. The United Kingdom, Application No. 22414/93, 15 November 1996](#) [12]

ECtHR - Amann v Switzerland [GC], no. 27798/95, ECHR 2000-II

ECtHR - Varbanov v. Bulgaria, no. 31365/96

ECtHR - Tinnelly v. the United Kingdom 10 July 1998

ECtHR - Ciliz v. the Netherlands, no.29192/95

ECtHR - Kroon and Others v. the Netherlands Judgment of 27 October 1994

ECtHR - Hasan and Chaush v. Bulgaria [GC], no. 30985/96

ECtHR - Hasan and Chaush v. Bulgaria [GC], no. 30985/96

ECtHR - P.G. and J.H. v. the United Kingdom, no. 44787/98

ECtHR - Conka v Belgium (Application no. 51564/99)

Attachment(s):



[Al-nashif v Bulgaria.pdf](#)[13]

Authentic Language:

English

State Party:

Bulgaria

National / Other Legislative Provisions:

Bulgaria - Section 40 (1)(2) and Section 10 (1)(1) of the Aliens Ac

Bulgaria - Section 47 (1) of the Aliens Act

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A11

[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A27

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2490

[5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A198

[6] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[7] https://www.asylumlawdatabase.eu/node/195#toc_12

- [8] https://www.asylumlawdatabase.eu/node/195#toc_22
- [9] https://www.asylumlawdatabase.eu/node/195#toc_46
- [10] https://www.asylumlawdatabase.eu/node/195#toc_49
- [11] https://www.asylumlawdatabase.eu/node/195#toc_60
- [12] <https://www.asylumlawdatabase.eu/en/content/ecthr-chahal-v-united-kingdom-application-no-2241493-15-november-1996>
- [13] <https://www.asylumlawdatabase.eu/sites/default/files/alfiles/Al-nashif%20v%20Bulgaria.pdf>