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

Press Release
issued by the Registrar of the Court

ECHR 228 (2024)
08.10.2024

Preventing refugees from disembarking in Cyprus to claim asylum violated the Convention

Today's **Chamber** judgment[1] in the case of M.A. and Z.R. v. Cyprus (application no. 39090/20) concerned the interception of Syrian nationals at sea by the Cypriot authorities and their immediate return to Lebanon, where they had already spent four years in a refugee camp after they had fled Syria because of the civil war there, the targeting of civilians and the destruction of their homes. The applicants maintained that they were asylum-seekers and had stated that they wished to seek asylum in Cyprus, whereas the Cypriot Government had treated them as economic migrants.

In today's judgment the European Court of Human Rights held, unanimously, that there had been, on account of the applicants' return to Lebanon:

– **a violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights,

– **a violation of Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens)**,

– **a violation of Article 13 (right to an effective remedy)** read in conjunction with Article 3 and Article 4 of Protocol No. 4;

and, on account of the applicants' treatment by the Cypriot authorities:

– **a violation of Article 3** of the European Convention.

The Court found that the Cypriot authorities had essentially returned M.A. and Z.R. to Lebanon without processing their asylum claims and without all the steps required under the Refugee Law. It was evident from the Government's submissions that the national authorities had not conducted any assessment of the risk of lack of access to an effective asylum process in Lebanon or the living conditions of asylum-seekers there, and had not assessed the risk of *refoulement* – the forcible return of refugees to a country where they might be subjected to persecution. Nor had they examined the specific situation of the individuals concerned.

Principal facts

The applicants, M.A. and Z.R., are Syrian nationals who were born in 1983 in Idlib, Syrian, and live in Lebanon. They are cousins.

According to M.A. and Z.R., on 1 January 2016 they fled Idlib, Syria, because of the war, the targeting of civilians and the destruction of their homes, and went to Lebanon, where they stayed in camps run by the Office of the United Nations High Commissioner for Refugees (UNHCR). They allege that they had no access to healthcare there, no prospect of obtaining employment and no entitlement to basic rights. Throughout their stay, they were afraid they would be sent back to Syria, as Lebanon had started removing Syrians following a popular outcry against refugees. The situation worsened following an explosion in Beirut on 4 August 2020. Therefore, they decided to seek asylum in Cyprus.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

They paid 2,500 United States dollars (USD) each to a smuggler to take them there by boat. In early September 2020, they set sail, along with a group of approximately 30 Syrian and Lebanese people including unaccompanied minors. There is some discrepancy between the information provided by the applicants and that provided by the Government as to how events unfolded.

According to M.A. and Z.R., on arrival in the territorial waters of the Republic of Cyprus, their boat was intercepted by the Cypriot coastguard or, according to the Government, by the port and marine police. An interpreter was present. They were not allowed to continue their journey but were provided with food. The interpreter told them that no one would be allowed to enter Cyprus and that they should return to Lebanon, or the police would escort them back. The applicants told the interpreter that they wished to apply for asylum, explaining that they were Syrians, their house had been destroyed in the war and that they had children and families to take care of. Their explanations were ignored, the interpreter stating that there was a new law in Cyprus under which refugees were not allowed to disembark. Their identity cards were taken from them.

On the evening of 7 September 2020, the Court received a request under Rule 39 of the Rules of Court from the lawyer currently representing the applicants, asking the Court to apply interim measures to stop the Government from returning the applicants to Lebanon as that would be contrary to international refugee law because of the risk of chain *refoulement* to Syria, and asking for them to be allowed to enter Cyprus in order to claim asylum. The next morning, the Court replied that it needed more information on the applicants' identities and personal circumstances in order to examine the request. By the time the lawyer replied, the applicants had boarded a boat which had already left the Cypriot port. The following day, the Government asserted that the applicants had entered the territorial waters of Cyprus without permission, that they had not requested international protection, that they had been returned to Lebanon, and that they had not been eligible to apply for international protection at the embassy and consulates of Cyprus in Lebanon.

According to M.A. and Z.R., on 8 September 2020, they were tricked into thinking that they would be led ashore. Instead, they were forced to board another boat, which contained police officers and other migrants who had also tried to enter Cyprus by boat and were also being returned to Lebanon. On their arrival in Lebanon, they were handed over to the Lebanese police, who arrested and questioned them before letting them go.

M.A. And Z.R. are still in Lebanon, where they are both registered with the UNHCR. Their residence permits have expired, but they have not been able to renew them as their documents were withheld by the General Security Office when they returned to Lebanon. They also have no sponsor (such as an employer or college), and no means to pay for their renewal.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security) and 13 (right to an effective remedy) of the Convention and of Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) to the Convention, the applicants complained that the Cypriot authorities had refused to allow them access to an asylum procedure and had returned them to Lebanon as part of a collective measure without examining their asylum claims or their individual circumstances. They also complained that they had not had access to an effective domestic remedy.

The application was lodged with the European Court of Human Rights on 7 September 2020.

Judgment was given by a Chamber of seven judges, composed as follows:

Pere **Pastor Vilanova** (Andorra), *President*,
Georgios A. **Serghides** (Cyprus),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),

Ioannis **Ktistakis** (Greece),
Andreas **Zünd** (Switzerland),
Oddný Mjöll **Arnardóttir** (Iceland),

and also Milan **Blaško**, *Section Registrar.*

Decision of the Court

Article 3

Even though M.A. and Z.R. could not prove by direct evidence that they had expressed a wish to seek asylum in Cyprus, the Court could not ignore that they had been stranded at sea for two days under the control of the Cypriot Marine Police and had not been allowed to disembark to claim asylum. UNHCR Cyprus had not been given access to boats that were "pushed back" during the relevant period and was therefore not in a position to verify that the passengers had asked for asylum.

The Court observed inconsistencies between the arrival and interception dates given by the Government and those in the interim measures request. It observed that the tables provided by the Government refuted their submission that passengers on all boats arriving in Cyprus in 2020 and 2021 had been allowed to disembark in Cyprus and claim asylum. Moreover, those tables contained no record of the boat that the applicants had arrived on. Furthermore, the Government had not provided any records or direct evidence of any interactions with M.A. and Z.R.

The Court took note of the various reports by civil society, international organisations and other bodies concerning "pushbacks" and summary returns to Lebanon of individuals who had entered Cyprus illegally, without having access to a procedure for claiming asylum. Particular note was taken of the Human Rights Watch report referred to in M.A. and Z.R.'s' application and the third-party interveners' observations. The Government had not commented on the accuracy or content of that report.

In these circumstances, the Court gave credibility to the applicants' version of events. The Government had provided no evidence that refuted the applicants' allegations. In that light, the Court found that the Cypriot authorities had essentially returned M.A. and Z.R. to Lebanon without processing their asylum claims and without all the steps required under the Refugee Law.

The Government argued that M.A. and Z.R. had been returned to Lebanon on the basis of a bilateral agreement between Cyprus and Lebanon, which provided for the readmission without any formality of individuals who had entered Cyprus unlawfully. They further claimed that Lebanon was a safe third country because of the good relations between the two countries, the presence of UNHCR in Lebanon, and Lebanon's submissions to UN bodies. In this respect the Court reiterated that States could not evade their own responsibility by relying on obligations arising out of bilateral agreements with other countries.

The Court considered that the information available at the time highlighted various shortcomings in the Lebanese asylum system and its general protection of asylum-seekers which the Cypriot authorities knew or ought to have known about. It was evident from the Government's submissions that the national authorities had not conducted any assessment of the risk of lack of access to an effective asylum process in Lebanon and had not assessed the risk of *refoulement* or the living conditions of asylum seekers there. Therefore, Cyprus had failed to discharge its procedural obligation under Article 3 of the Convention prior to removing the applicants from Cyprus.

Article 4 of Protocol No. 4

According to the Court's case-law, expulsion of migrants and asylum-seekers is "collective" if it compels aliens, as a group, to leave a country, "except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group". The purpose of Article 4 of Protocol No. 4 is thus to prevent States from removing foreign nationals without examining their personal circumstances and without enabling them to put forward their arguments against expulsion.

The Court reiterated that, as a matter of international law, and subject to their treaty obligations including those arising from the Convention, Contracting States had the right to control the entry, residence and removal of aliens. The Court also reiterated that States had the right to establish their own immigration policies, including under bilateral cooperation arrangements or the obligations stemming from membership of the European Union. Nevertheless, the problems that States encountered in managing migration flows or in the reception of asylum-seekers could not justify recourse to practices which were not compatible with the Convention or its Protocols.

There was no doubt that the applicants' removal from Cypriot territorial waters and their forced return to Lebanon had constituted "expulsion" within the meaning of Article 4 of Protocol No. 4. It remained to be established whether that expulsion had been "collective" in nature or whether the removal decisions had taken into consideration the specific situation of the individuals concerned.

The Court observed that, other than personal details (names, date of birth, nationality, identity card number) which could have been retrieved from the applicants' identity cards, the Government had not provided the Court with any other records specific to each migrant, transcripts of interviews with the applicants, or even copies of the forms which Cyprus would have been required to complete under the terms of the Bilateral Agreement before returning M.A. and Z.R. to Lebanon. There was no record of the applicants' having been informed of their rights or told how to challenge the decision to remove them. It was however clear that M.A. and Z.R., who had been kept on the boat with the intention of preventing their disembarkation onto Cypriot soil, had not been given access to legal advisers, and that contact with their relatives, through whom they had attempted to obtain legal assistance, had been extremely difficult while at sea. The Court also observed the absence of any written decision, whether a refusal of entry or a deportation direction under section 14 or any other provision of the Aliens and Immigration Law informing them of the reasons for their return to Lebanon. The Court therefore concluded that the applicants' expulsion had been of a collective nature, in breach of Article 4 of Protocol No. 4 to the Convention.

Article 13

In response to the Government's argument that M.A. and Z.R. had not claimed asylum and had not applied to the domestic courts, the Court found that they had expressed their wish to apply for asylum in Cyprus and that the remedies suggested by the Government would not have been effective, given their immediate return to Lebanon. There had therefore been a violation of Article 13 read in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4.

Just satisfaction (Article 41)

The Court held that Cyprus was to pay 22,000 euros (EUR) for each applicant in respect of non-pecuniary damage and EUR 4,700 jointly in respect of costs and expenses.

The judgment is available only in English.

---

https://www.echr.coe.int/home. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on X (Twitter) @ECHR_CEDH.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

We are happy to receive journalists' enquiries via either email or telephone.

Jane Swift (tel: + 33 3 88 41 29 04)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Denis Lambert (tel: + 33 3 90 21 41 09)
Inci Ertekin (tel: + 33 3 90 21 55 30)
Neil Connolly (tel: + 33 3 90 21 48 05)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.