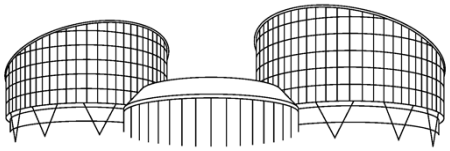

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF S.H. v. MALTA

(Application no. 37241/21)

JUDGMENT

Art 13 (+ Art 3) • Art 3 (Expulsion) • Refusal of applicant's asylum requests without an assessment of his claim as to the risk faced on his return to Bangladesh given his reporting as a journalist of electoral irregularities in the 2018 general elections • Failings in domestic asylum procedure • Lack of access to an effective remedy • Removal without a fresh assessment of applicant's claim would entail a breach

STRASBOURG

20 December 2022

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 S.H. v. Malta,

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

Arnfinn Bårdsen,
Jovan Ilievski,
Egidijus Kūris,
Pauliine Koskelo,
Lorraine Schembri Orland,
Diana Sârcu,
Davor Derenčinović, *judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 37241/21) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bangladeshi national, Mr S.H. ("the applicant"), on 28 July 2021;

the decision to give notice to the Maltese Government ("the Government") of the application;

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

the decision to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court;

the parties' observations;

Having deliberated in private on 29 November 2022,

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

INTRODUCTION

1. The application concerns the procedure leading to the refusal of the applicant's asylum requests and the alleged violation of Article 13 in conjunction with Article 3 of the Convention and Article 3 taken alone. The applicant claimed to be a journalist in Bangladesh, who had been the subject of persecution after he observed electoral irregularities in the 2018 elections.

THE FACTS

2. The applicant was born in 1999 and lives in Msida. He was represented by Dr N. Falzon, a lawyer practising in Ħamrun.

3. The Government were represented by their Agents, Dr C. Soler, State Advocate, and Dr J. Vella, Advocate at the Office of the State Advocate.

4. The facts of the case as appear from the documents submitted and the relevant submissions may be summarised as follows.

I. BACKGROUND TO THE CASE

5. The applicant comes from the Kishorganji District in the Dhaka Division of Bangladesh. He submitted that he was working for the local Kishoreganj branch of Vairab KTV Bangla, a popular news TV channel in Bangladesh and that he received training from the Bangladesh Press Institute and from the Bangladesh Media Institute. He explained that during his career he reported on several news items and interviewed political leaders such as Nazmul Hassan Papon, a member of the Bangladesh Awami League (AL - the governing party). He submitted that he was well known in the region as a reporter that received several regional prizes for the quality of his work. As such, his assignment to the 30 December 2018 general election was the highlight of his career and his most important to date. He considered that during these elections he had made the bold choice to report against the corruption and fraud committed by the AL. This had brought the anger of the AL upon him which attacked him while he was taking pictures of the events. After their victory, the AL vandalized his house and supporters of the AL threatened to kill him. No action was taken by the local authorities in fear of the ruling party. In these circumstances the applicant had no other choice than to leave the country on 2 February 2019.

6. The applicant arrived in Malta by boat on 17 September 2019 and was immediately placed in detention.

II. THE ASYLUM PROCESSES

A. The first asylum proceedings

7. On 14 November 2019 the applicant lodged an application for international protection, without legal assistance.

8. In substantiation of his asylum claim, he submitted forty pictures and documents, including first-hand accounts of the events that led him to flee his country of origin. The material included the applicant's press cards, photos of the applicant receiving several journalistic prizes and awards, and newspaper articles. His file included, in particular, copies of:

- A photo of the applicant interviewing a candidate;
- A photo of the applicant receiving a cultural award;
- A photo of the applicant receiving the best annual journalism certificate of KTV Bangla, Pride of Bhairab;
- A discharge note from a hospital stating that the applicant had been admitted on 30 December 2018 for burns and was being discharged on 3 January 2019;
- A news item, dated March 2018, about the applicant, a journalist, saving a student;

- An article showing a picture of the applicant and relating the attack on him after the elections;
- An article again showing the applicant and relating the attack on him as a journalist;
- A certificate of training from the Bangladeshi Press Institute;
- The applicant's Bangladeshi identity card and passport.

9. In consideration of his application for international protection, the applicant was asked to submit to a personal interview, which took place on 28 May 2020. The applicant was not legally assisted but he was assisted by an interpreter throughout the interview. The case worker explained to the applicant the purpose of the interview and informed him that, since Bangladesh is a safe country, his asylum application will be assessed with the accelerated procedure.

10. The claims which were explored in the interview were mainly two: first that the applicant had been a journalist in Bangladesh, and second, that the applicant, as a journalist, took photos of the irregularities committed by the AL during the election period and for this reason, he had been targeted by them.

11. According to the applicant, in the period between his arrival and his rejection, due to various administrative and logistical restrictions on access to detention by service-providers and due to increased limitations following the outbreak of the Covid-19 pandemic, detained asylum-seekers were unable to access any form of support relating to their asylum claims, including legal services provided by private or NGO lawyers or legal aid. The first time he could finally reach out to a lawyer was only, late in the process, in October 2020.

1. The first-instance decision

12. On 10 December 2020, following an assessment of the credibility of the narrative of the applicant during the interview, the Refugee Commissioner, later known as the International Protection Agency (hereinafter 'the Agency'), rejected his claim as manifestly unfounded. The decision was based on Article 2 of Chapter 420 of the Laws of Malta, the International Protection Act) (see paragraph 30 below), namely that "the applicant had made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict sufficiently verified country of origin information, thus making his claim clearly unconvincing in relation to whether he qualified as a beneficiary of international protection"; and the applicant was from a safe country of origin.

13. According to the assessment report, attached to the decision, it was noted that the authenticity of the documents submitted by the applicant could not be established since they were only copies of the original documents. In particular, it was considered that his claim that he was a journalist was not sufficiently credible, as the applicant did not provide sufficiently specific and

detailed replies to the questions posed, as would be expected of a journalist involved in political reporting. His explanation of his articles did not reach the expected level of detail and many of them did not cover political issues. In regard to the reporting on the Bangladeshi national elections of 2018 (in respect of which he had claimed that he was beaten up and threats ensued, after he had seen members of the winning party casting ballots on behalf of others) it was considered that the applicant did not provide a sufficient level of detail regarding the irregularities and the issues which affected the election, as reported by the country of origin information (COI) consulted. He had recounted only two irregularities while there had been many more. He was unable to provide information about the electoral code of conduct, describing instead the political system. When asked about the constraints on journalists, he had vaguely referred to "Article 56" without specifying the exact law, and he provided insufficient detail about its content. It had been considered that the applicant should have known more about a law that led to the imprisonment of several journalists. His replies about the Digital Security Act (DSA) adopted in 2018, affecting journalists, were also not sufficiently elaborate, as would be expected. The applicant had also been vague in his answer relating to internet surveillance by the State aimed at restricting freedom of speech during the election. It was thus considered that he lacked the expected level of knowledge and details in the light of the effects of these laws on journalists.

14. Since his claim that he was a journalist had not been considered credible, the alleged targeting by AL was also not credible as there was then no motive. Moreover, it was considered that the recapitulation of the events of 29 and 30 December (election day) had been vague and inconsistent. It would be expected of a journalist to give a detailed account of the irregularities witnessed. It was also considered that his explanation about the death threats to his family and friends, and the attack on the former had not been sufficiently detailed. He had not given the aggressors identity but merely indicated that AL members had been involved (based on an assumption, since AL members were on that day celebrating victory), as well as its president and secretary, and that threats had been made on Facebook as well as in a direct manner. As to their content, they had been limited to threats of his disappearance or killing, such as "if your son stays in the country, your son will be disappeared and killed, you even cannot see his dead body" and "your son will be killed liked this" (in reference to Sagar-Runi Murder case, a journalist killed in 2012), with no further detail. Further, while on the day of the alleged beating he had been taken to hospital (as shown by a medical certificate), he had failed to file an official police report, claiming that the police had told him that they depended on the Government. Yet he failed to give the police names, the circumstances of this encounter and how the police were connected to AL.

15. Based on the above, it was considered that there was no reasonable degree or likelihood that the applicant would be subjected to serious harm on his return. Bangladesh being a safe country of origin there was no need for further assessment.

2. The second-instance decision

16. On the same day (10 December 2020) the first decision was automatically submitted to the International Protection Appeals Tribunal (hereinafter 'the Tribunal') for review in terms of the accelerated procedure under Article 23 of the International Protection Act (see paragraph 30 below).

17. The Tribunal confirmed the decision the following day. While the applicant had not been notified of the decision, his, by then, appointed lawyer was informed of the rejection by means of an email of 14 January 2021.

18. In the meantime, the Principal Immigration Officer (PIO) had issued a return decision and a removal order against the applicant, who was again detained on 16 December 2020 (after he had been released three days earlier, his detention having exceeded the nine months period provided in law).

19. The Tribunal's final decision of 11 December 2020 was only issued on 5 May 2021, however, the applicant refused to sign it as he did not understand its content. A request to call his lawyer remained unsuccessful. Thus, the decision was only notified to the applicant on 21 June 2021 during proceedings before the Immigration Appeals Board (hereinafter 'the Board') (see paragraph 27 below) and a full (undated) decision was only communicated to him on 29 July 2021 after several reminders by the lawyer.

B. The second asylum proceedings

20. On 23 February 2021 the applicant submitted a further application for international protection in line with Article 7A of the International Protection Act. On 23 March 2021, the applicant was given the status of an asylum seeker and the Agency informed the applicant's legal counsel that it would proceed with a preliminary examination on the subsequent application, in order to assess whether new elements or findings had arisen or had been present which would significantly add to the likelihood of the applicant qualifying for international protection, in line with Article 7A of the International Protection Act (see paragraph 30 below).

21. The documentary evidence presented in support of the subsequent application consisted of two videos in which he was seen acting as a journalist, covering the 2018 elections and corruption in Bangladesh, and eight online newspaper articles.

22. Upon a preliminary examination on the admissibility of the subsequent application, by means of an undated decision, the Agency declared it inadmissible in accordance with Article 24(1) (d) of the International Protection Act (see paragraph 30 below). According to the

Agency's Chief Executive Officer's report, the latter accepted that the videos which had been submitted showed the applicant working as a journalist reporting on the election, but he had been unable to substantiate his statements that he had been targeted and beaten by AL for reporting irregularities. It largely referred to the first assessment made by the Agency (which had found that the applicant had not proved that he was a journalist) and noted that even assuming that he was a journalist, he had not proved that he had been attacked. Accepting that the applicant had recently received this information and being satisfied that he had presented new elements and findings of which he could not have been aware of in his first application, it nonetheless considered that his claims had already been assessed in the first application, thus they could not be considered as new elements justifying a further examination. It thus concluded that no new elements or findings relating to the examination of whether the applicant qualified as a beneficiary of international protection had arisen or had been presented in accordance with Article 7A (4) and (5) of the International Protection Act.

23. The decision was confirmed by the Tribunal on 5 May 2021 under the accelerated procedure.

C. The third asylum proceedings

24. On 3 September 2021, following the granting by the European Court of Human Rights (ECtHR) of the applicant's request for an interim measure staying his removal (see paragraph 29 below), the applicant filed a further application for protection. On 6 September 2021, the Agency notified the applicant, once again, that it would proceed with a preliminary examination of the application and shortly after he was issued with an asylum seeker document.

25. The application was declared inadmissible on 28 September 2021 as 'no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection had arisen or had been presented'. The Agency noted that the interim measure issued by the ECtHR was not related to the examination of whether the applicant qualified as a beneficiary of international protection under EU and Maltese law. Reference was made to the basis of the rejection of the previous requests.

26. In terms of the accelerated procedure the decision was notified to the Tribunal. On 22 October 2021 the Tribunal rejected it as inadmissible, for the same reasons given by the Agency (referring however to a first instance decision of 19 October 2021 not 28 September 2021). The decision was notified to the applicant on 24 November 2021.

III. OTHER PROCEEDINGS

A. The challenge against the removal order

27. In the meantime, the applicant had filed an appeal against the return decision and removal order in front of the Immigration Appeals Board (hereinafter 'the Board'). The appeal was rejected on 26 July 2021. The Board noting that it had no reason to doubt the findings of the Agency which was a separate entity in respect of whose decisions and findings the Board had no say. Furthermore, the applicant had not brought new evidence to substantiate his arguments concerning non-refoulement.

28. Various challenges to the applicant's prolonged detention were rejected on the basis that his removal was imminent.

B. The request to the European Court of Human Rights

29. On 28 July 2021 the applicant instituted proceedings before the ECtHR, including a request for an interim measure to stay his removal. On 10 August 2021, the Court (the duty judge) decided that, in the absence of an adequate assessment, by the domestic authorities, of the applicant's claim that he would risk ill-treatment if returned to Bangladesh based on his activity as a journalist, it was in the interests of the parties and the proper conduct of the proceedings before it to indicate to the Government of the Malta, under Rule 39 of the Rules of Court, that he should not be removed to Bangladesh.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. The International Protection Act

30. In so far as relevant the International Protection Act, Chapter 420 of the Laws of Malta, reads as follows:

Article 2

> ""manifestly unfounded" application means an application in relation to which:
>
> [...]
>
> (b) the applicant is from a safe country of origin; or
>
> [...]
>
> (e) the applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict sufficiently verified country-of-origin information, thus making his claim clearly unconvincing in relation to whether he qualifies as a beneficiary of international protection; [...]

"person eligible for subsidiary protection" means a third country national who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his country of origin, would face a real risk of suffering serious harm, and is unable or, owing to such risk, unwilling to avail himself of the protection of that country, and has not been excluded from being eligible for such protection under article 17(1);

"refugee" means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events is unable or, owing to such fear, is unwilling to return to it, but does not include a person excluded in terms of article 12:

Provided that in the case where a person has more than one nationality, the term "country", mentioned above, shall refer to each country of which he is a national, and such a person shall not be considered as not having the protection of his country if, without any founded fear of persecution, he has not sought the protection of one of the countries of which such a person is a national:

Provided further that:

(a) acts of persecution within the meaning of Article 1Aof the Convention must be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the right from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) be an accumulation of various measures, including violations of human rights, which is sufficiently severe as to affect an individual in a similar manner as in paragraph (a).

For the purpose of paragraph (a),

"acts of persecution" means:

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

(c) prosecution or punishment which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory manner;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in article 12(2);

(f) acts of a gender-specific or child-specific nature:

Provided that refugee status on the grounds of fear of persecution shall only be granted if there is a connection between the reasons for persecution mentioned in regulation 18 of the Procedural Standards in Examining Applications for International Protection Regulations and the acts of persecution referred to in this definition;

"safe country of origin" means a country of which the applicant, for the purpose of international protection:(a) is a national; or (b) being a stateless person, was formerly

habitually resident in that country; and he has not submitted any serious grounds for considering the country not to be a safe country of origin in his particular circumstances;

"subsequent application" means a further application for international protection made after a final decision has been taken on a previous application."

Article 7

"(1) The [International Protection Appeals] Tribunal shall have power to hear and determine appeals against a decision of the International Protection Agency including appeals from decisions for the transfer of a third country national from Malta to another Member State in accordance with the provisions of Council Regulation 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or stateless person.

(1A) For the purpose of this article, an appeal on both facts and points of law shall lie against:

(a) a decision taken on an application for international protection:

(i) considering an application to be unfounded in relation to refugee status and, or subsidiary protection status;

(ii) considering an application to be inadmissible pursuant to article 24;

Provided that for the purpose of this provision, the review conducted by the Chairperson of the International Protection Appeals Tribunal shall be deemed to constitute an appeal.

[...]

(10) Notwithstanding the provisions of any other law, but without prejudice to article 46 of the Constitution of Malta and without prejudice to the provisions of article 4 of the European Convention Act the decision of the Tribunal shall be final and conclusive and may not be challenged and no appeal may lie therefrom, before any court of law, saving the provisions of article 7A.

(11) Where the Tribunal finds in favour of the applicant the International Protection Agency shall issue a declaration accordingly."

Article 7A

"(1) A person who has applied for international protection may make a subsequent application after a final decision to the International Protection Agency:

Provided that such application shall only be considered on the presentation of new elements or findings, relating to the examination of whether the person making the subsequent application qualifies as a beneficiary of international protection, and of which the applicant could not have been aware or which he could not have submitted.

(2) The person submitting a subsequent application shall:

(a) indicate facts and provide evidence which justify this procedure; and

(b) submit such new information within fifteen days from the day on which the person making the subsequent application obtained such information.

(3) The examination may be conducted on the sole basis of written submissions and the person making the subsequent application is to be informed of the outcome of the examination and of his right for an appeal.

(4) For the purpose of taking a decision on the admissibility of an application pursuant to article 24, a subsequent application shall be subject to a preliminary examination as to whether new elements or findings have arisen or have been presented since the lodging of the first application.

(5) If the preliminary examination referred to in sub-article (4) concludes that new elements or findings have arisen or have been presented by the applicant which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection, a further examination of the application shall be carried out:

Provided that an application shall only be further examined if the applicant concerned was, through no fault of his own, incapable of concluding that new elements or findings have arisen.

(6) When a subsequent application is not further examined pursuant to this article, it shall be considered inadmissible, in accordance with article 24(1)(d). [...]"

Article 8

"(1) A person may apply to the International Protection Agency, in the prescribed form, and shall be granted refugee protection, where it is established that he faces a well-founded fear of persecution in his country of origin or habitual residence in terms of the Convention.

(2) A well-founded fear of persecution may be based on events which have taken place after applicant has left his country of origin or activities engaged in by applicant since leaving the country of origin, except when based on circumstances which the applicant has created by his own decision since leaving the country of origin.

(3) For the purpose of this article, a previous persecution or serious harm or a direct threat of such persecution or harm shall be considered as a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or previous harm will not be repeated.

(4) Where the Chief Executive Officer decides that the applicant is eligible for refugee status, he shall make a declaration to this effect."

Article 23

"(1) A person seeking international protection in Malta in terms of article 8 shall be examined under accelerated procedures in accordance with this article when his application appears to be manifestly unfounded.

(2) Where the International Protection Agency is of the opinion, at whichever stage, that the application is manifestly unfounded, the Chief Executive Officer shall examine the application within three working days and shall, where applicable, decide that the application is manifestly unfounded.

(3) The decision shall immediately be referred to the Chairperson of the International Protection Appeals Tribunal who shall examine and review the decision of the International Protection Agency within three working days.

(4) The decision of the Chairperson of the International Protection Appeals Tribunal on whether the application is manifestly unfounded shall be final and conclusive and, notwithstanding the provisions of any other law, no appeal or form of judicial review shall lie before the Tribunal or before any other court of law.

(5) Where, following the procedures outlined in the previous provisions of this article, an application is rejected, the Chairperson of the International Protection Appeals Tribunal shall send a copy of the decision with the grounds therefor to the Minister and the International Protection Agency.

(6) Any interview with the applicant under the foregoing provisions of this article shall, where necessary, be conducted in private and with the assistance of an interpreter. The applicant shall also be informed of his right to obtain the services of a legal adviser to assist him during accelerated proceedings and to consult the High Commissioner.

(7) Where the application is considered not to be manifestly unfounded such application shall be examined under normal procedures as provided under this Act. [...]"

Article 24

"(1) The application of any person in Malta seeking international protection and who falls under any one of the following conditions, shall be inadmissible if:

[...]

(c) a country which is not a Member State is considered as a safe third country for the applicant;

(d) the applicant made a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection have arisen or have been presented by the applicant in accordance with the provisions of sub-articles (4) and (5) of article 7A;

(2) The provisions of article 23(2), (3), (4) and (5) shall apply *mutatis mutandis* to inadmissible applications.

(3) The International Protection Agency shall allow applicants to present their views, with regard to the application, of the grounds referred to in this article before a decision on the admissibility of an application has been taken. A personal interview on the admissibility of the application shall also be conducted.

(4) The Minister may by regulations amend the list of countries specified in the Schedule, provided that only countries which in his opinion are countries of safe origin may be listed in the said Schedule, so however that the Minister shall remove from the said Schedule any country which in his opinion is no longer a safe country of origin."

31. In so far as relevant, the International Protection Appeals Tribunal (Procedures) Regulations, Subsidiary Legislation 420.01 of the Laws of Malta, read as follows:

Regulation 3

"It shall be the function of the International Protection Appeals Tribunal to hear and determine appeals against a recommendation of the Chief Executive Officer in accordance with articles 5 to 7 of the Act."

32. In so far as relevant, the Procedural Standards for Granting and Withdrawing International Protection Regulations, Subsidiary Legislation 420.07 of the Laws of Malta, read as follows:

Regulation 5

"(1) A person who wishes to apply for international protection shall make an application to the International Protection Agency, or to any authority likely to receive such applications. For the purpose of this regulation, when a person indicates that he wishes to make an application for international protection to an authority likely to receive such applications, then that authority shall inform the International Protection Agency of the applicant's intention to apply for international protection and refer such applicant to the International Protection Agency. [...]"

Regulation 6

"(1) The International Protection Agency shall ensure that the examination procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

(2) The International Protection Agency shall also ensure that the examination procedure is concluded within six months of the lodging of the application.

[...]

(4) The International Protection Agency may extend the time limit of six months for a period not exceeding a further nine months, where:

(a) complex issues of fact and, or law are involved;

(b) a large number of third-country nationals or stateless persons simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month time limit;

(c) where the delay can clearly be attributed to the failure of the applicant to comply with his obligations under regulation 4:

Provided that the International Protection Agency may extend the time limit referred to in this regulation by a maximum period of three months, to ensure an adequate and complete examination of the application for international protection.

[...]

(6) The International Protection Agency shall ensure that the examination procedure shall not exceed the maximum time limit of twenty-one months from the lodging of the application. [...]"

Regulation 8

"[...] (2) When examining applications for international protection, the International Protection Agency shall first determine whether the applicants qualify as refugees and if such applicants do not qualify, determine whether the applicants are eligible for subsidiary protection.

(3) The International Protection Agency shall ensure that decisions on applications for international protection are taken after an appropriate examination and that –

(a) applications are examined and decisions are taken individually, objectively, and impartially;

(b) precise and up-to-date information is obtained from EASO and UNHCR as well as other relevant international human rights organisations as to the general situation prevailing in the countries of origin of the applicants and, where necessary, in countries through which they have transited and that such information is made available to the personnel responsible for examining applications and taking decisions:

Provided that the information referred to in this paragraph shall be accessible to the International Protection Appeals Tribunal for the purpose of taking decision on an application for international protection;

(c) the personnel examining applications and taking decisions have acquired the appropriate knowledge in the field of asylum and refugee law;

(d) the International Protection Agency has the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.

(4) The International Protection Agency shall provide for rules concerning the translation of documents relevant for the examination of applications."

Regulation 9

"(1) The International Protection Agency may, from time to time, lay down the rules and guidelines applicable to the procedure for the determination of an application.

(2) The International Protection Agency shall examine the application as soon as possible and shall, in the assessment of the credibility of an applicant's claim, endeavour to gather all relevant information that will enable him to make a recommendation taking due account of the applicant's cooperation in the proceedings.

(3) The applicant shall submit as soon as possible all elements needed to substantiate the application for international protection. Such elements shall consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality, country and place of previous residence, previous applications for international protection, travel routes, travel documents and the reasons for applying for international protection.

(4) For the purpose of this regulation, the International Protection Agency or its representative shall retain all such elements for as long as necessary.

(5) The International Protection Agency shall assess the relevance of the elements referred to in sub-regulation (4). When aspects of the applicant's statements are not supported by documentary or other evidence, such aspects shall not need confirmation if:

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation has been given regarding any lack of other relevant elements;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to specific and general information available and relevant to the applicant's case;

(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and

(e) the general credibility of the applicant has been established.

(6) The assessment of the application for international protection shall be carried out on an individual basis taking into account:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documents presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

(d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;

(e) whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship."

Regulation 10

"(1) Before a decision is taken by the International Protection Agency, the applicant shall be given the opportunity of a personal interview with a person competent to conduct an interview.

(2) The International Protection Agency may initially provide that a personal interview on the admissibility of the application for international protection be conducted in accordance with article 24 of the Act.

(3) For the purpose of this regulation, the personal interviews on the substance of the claim shall be conducted by personnel from the International Protection Agency:

Provided that when simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it impossible for the International Protection Agency to conduct timely interviews on the substance of each application, the International Protection Agency may provide that trained personnel of another authority be temporarily involved in conducting such interviews.

(4) A legal adviser shall be allowed to assist the applicant in accordance with procedures laid down by the International Protection Agency and, where entitled to, free legal aid shall be provided to the applicant.

[...]

(9) The personal interview shall take place under conditions which ensure appropriate confidentiality.

(10) A personal interview shall be conducted under conditions which allow the applicant to present the grounds for his application in a comprehensive manner and must:

(a) ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability;

(b) ensure that the person who conducts the personal interview is properly trained and has the acquired knowledge of problems which might affect the applicant's ability to be interviewed. For the purposes of this paragraph, the determining authority has to ensure that all the persons conducting the interviews have been provided with relevant training in accordance with Article 6(4)(a) to (e) of Regulation (EU) No 439/2010 as well as with relevant training established and developed by the European Asylum Support Office;

(c) ensure the presence of an interpreter who is able to give appropriate communication between the applicant and the person who conducts the interview. The communication shall take place in the language preferred by the applicant unless there is another language which he or she understands and in which he is able to communicate clearly;

[...]

(11) When conducting a personal interview on the substance of an application for international protection, the determining authority shall ensure that the applicant is given an adequate opportunity to present elements needed to substantiate the application as completely as possible, including the opportunity to give an explanation regarding elements which may be missing and, or any inconsistencies or contradictions in the applicant's statements."

Regulation 11

"(1) The International Protection Agency shall ensure that either a thorough and factual report containing all substantive elements or a transcript is made of every personal interview.

(2) The International Protection Agency may provide for audio or audio-visual recording of the personal interview:

Provided that where such recording has been made, the International Protection Agency shall ensure that the recording or a transcript thereof is available in connection with the applicant's file.

(3) The International Protection Agency shall ensure that the applicant has the opportunity to make comments and, or provide clarification, orally and, or in writing, with regard to any mistranslations or misconceptions appearing in the report or in the transcript, at the end of the personal interview or within a specified time limit before the International Protection Agency takes a decision, containing all substantive elements of the personal interview.

(4) For the purpose of this regulation, the International Protection Agency shall ensure that the applicant is fully informed of the content of the report or the transcript containing all substantive elements and where necessary with the assistance of an interpreter.

(5) The International Protection Agency shall request the applicant to confirm that the content of the report or the transcript correctly reflects the interview:

Provided that when the personal interview is recorded in accordance with sub-regulation (2) and the recording is admissible as evidence in the appeals procedure, the

International Protection Agency need not request the applicant to confirm that the content of the report or the transcript correctly reflects the interview or to make comments on and, or provide clarification of the transcript.

[...]

(8) The applicant and his legal adviser shall have timely access to the report or the transcript and where applicable, the recording of the personal interview, before a decision on the application is taken by the International Protection Agency.

(9) When both a transcript and a recording of the personal interview has been provided, the International Protection Agency need not provide access to the recording in the procedures at first instance, but shall nevertheless provide access to the recording in the appeals procedures.

(10) Where the application is examined under accelerated procedures in accordance with article 23 of the Act, access to the report or the transcript, and where applicable, the recording may be granted at the same time as the decision is made."

Regulation 12

"(1) An applicant shall be allowed to consult, at his own expense, in an effective manner, a legal adviser in relation to his application for international protection at all stages of the procedure:

Provided that in case of an appeal, free legal assistance shall be granted under the same conditions applicable to Maltese nationals. Free legal assistance shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant:

Provided also that legal assistance and representation shall not be arbitrarily restricted thus hindering the applicant's effective access to justice.

(2) A legal adviser assisting and representing an applicant shall enjoy access to the information in the applicant's file, upon the basis of which a decision is or will be made and as is liable to be examined by the International Protection Appeals Tribunal insofar as the information is relevant to the examination of the application:

Provided that the legal adviser shall also enjoy access to information regarding the general situation prevailing in the countries of origin of the applicant and, where necessary, in countries through which the applicant may have transited as well as other information in relation to particular issues such as medical, cultural, religious and child-related or gender issues:

[...]

(3) The legal adviser who assists an applicant for international protection shall have access to closed areas such as detention facilities for the purpose of consulting the applicant, subject to applicable rules concerning security, public order or administrative management of the area.

(4) The International Protection Agency shall allow an applicant to bring with him to the personal interview a legal adviser. The legal adviser may only intervene at the end of the personal interview:

Provided that the International Protection Agency may, for the purpose of this regulation, provide rules covering the presence of legal advisers at all interviews in the first instance procedure:

Provided further that the absence of a legal adviser shall not prevent the International Protection Agency from conducting or continuing the personal interview with the applicant."

Regulation 14

"(1) The decision on the eligibility for refugee status or subsidiary protection status shall be made in writing following the determination of the application.

(2) The decision referred to in sub-regulation (1) shall indicate the reasons in fact and in law and in case of a negative decision, it shall also include information clarifying the reasons for such decision as well as an explanation on how such a negative decision can be challenged: [...]"

Regulation 16

"(1) Applicants shall be allowed to remain on the Maltese territory, for the sole purpose of the procedure, until the International Protection Agency has made a decision. This right to remain shall not constitute an entitlement to a residence permit.

(2) Notwithstanding the provisions of any other law to the contrary, and except where a subsequent application will not be further examined pursuant to article 7A of the Act, or where an applicant is to be surrendered or extradited as appropriate to another Member State pursuant to obligations in accordance with a European Arrest Warrant or otherwise, or to a third country or to international criminal courts or tribunals, an applicant shall not be removed from Malta before his application is finally determined and such applicant shall be allowed to enter or remain in Malta pending a final decision of his application. [...]"

Regulation 23 (as amended by L.N. 488 of 2021)

"(1) A third country may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if:

(a) he or she has the nationality of that country; or

(b) he or she is a stateless person and was formerly habitually resident in that country, and he or she has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection in accordance with articles 8 and 17 of the Act.

(2) For the purpose of these regulations, the concept of safe country of origin can only be applied to those countries which have been designated as safe countries by the International Protection Agency and included in the Schedule to the Act."

B. The Immigration Act

33. In so far as relevant, the Immigration Act, Chapter 217 of the Laws of Malta, reads as follows:

Article 14

"(1) If any person is considered by the Principal Immigration Officer to be liable to return as a prohibited immigrant under any of the provisions of article 5, the said Officer

may issue a return decision against such person who shall have a right to appeal against such decision in accordance with the provisions of article 25A.

(8) The Principal Immigration Officer shall not execute any return decision or removal order if appeal proceedings before the Immigration Appeals Board are pending. [...]"

Article 17

"Notwithstanding any other law to the contrary, no return decision or removal order shall be obstructed nor shall the implementation of any such return decision or removal order be delayed by means of any warrant issued under the Code of Organization and Civil Procedure:

Provided that this article shall not apply to orders issued by the Constitutional Court."

Article 25A

"(1) (a)There shall be a board, to be known as the Immigration Appeals Board, hereinafter referred to as the Board [...]

(c) The Board shall have jurisdiction to hear and determine appeals or applications in virtue of the provisions of this Act or regulations made thereunder or in virtue of any other law. [...]"

34. The Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, Subsidiary Legislation 217.12 of the Laws of Malta, in so far as relevant, read as follows:

Regulation 12

"(1) The [Immigration Appeals] Board shall have the power to review decisions related to return and the possibility of temporarily suspending their enforcement:

Provided that where the third-country national is informed about the removal an order postponing such removal shall take place.

(2) The Board shall review any removal postponed for an appropriate period in accordance with regulation 6(2)."

II. EUROPEAN UNION LAW

35. Article 37 and Annex I of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) ("the Asylum Procedures Directive"), read as follows:

Article 37 - National designation of third countries as safe countries of origin

"1. Member States may retain or introduce legislation that allows, in accordance with Annex I, for the national designation of safe countries of origin for the purposes of examining applications for international protection.

2. Member States shall regularly review the situation in third countries designated as safe countries of origin in accordance with this Article.

3. The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations.

4. Member States shall notify to the Commission the countries that are designated as safe countries of origin in accordance with this Article."

Annex 1 - Designation of safe countries of origin for the purposes of Article 37(1)

"A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

In making this assessment, account shall be taken, inter alia, of the extent to which protection is provided against persecution or mistreatment by:

(a) the relevant laws and regulations of the country and the manner in which they are applied;

(b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;

(c) respect for the *non-refoulement* principle in accordance with the Geneva Convention;

(d) provision for a system of effective remedies against violations of those rights and freedoms."

RELEVANT MATERIAL

I. COUNTRY OF ORIGIN INFORMATION - BANGLADESH

36. Some information on the earlier political history and human rights situation of Bangladesh is set out in *S.R. v France* ((dec.), no. 31283/11, §§ 28-30, 7 October 2014). According to the European Asylum Support Office (EASO) Country Overview Report of 2017[1]:

"Bangladesh is a multi-party democracy and the political culture is characterised by violence and confrontation. According to the legal aid and human rights NGO Ain o Salish Kendra (ASK), during the period January-August 2017 there were 234 incidents of political violence, resulting in 39 deaths and 3,129 people injured. The Bangladeshi human rights organisation Odhikar has characterised the political situation as 'extremely violent' since 2013.

[1] https://coi.euaa.europa.eu/administration/easo/PLib/Bangladesh_Country_Overview_December_2017.pdf with further references therein (last accessed 2022)

...

The Awami League (AL), led by the current Prime Minister Sheikh Hasina, has been in power since the general election (parliamentary elections) of 2008.

...

During 2015, 197 people were killed in political violence, followed by 215 deaths in 2016, according to Odhikar. In 2016 there were 9,053 injuries in politically-motivated violence. Much of this violence took place in clashes involving the student organisations of political parties. Note that there are large variances in the number of casualties of politically-motivated violence as reported by different NGOs. Figures quoted by ASK, as legal aid and human rights NGO, differ substantially from those of Odhikar. Union Parisad (rural council) elections in 2016 were marked by widespread chaos and violence. According to ASK, a total of 147 people lost their lives in clashes associated with these elections.

...

Freedom House stated in their Freedom of the Press 2016 report, 'Bangladesh's media environment suffered major setbacks in 2015. The year was marked by deadly attacks against bloggers [carried out by Islamist militants] and a spate of politically motivated legal cases against journalists. Growing concerns over state censorship – including of internet-based content – also had a chilling effect on freedom of expression.

...

According to the NGO Ain o Salish Kendra (ASK), there were a total of 117 incidents of harassment against journalists during 2016, of which there were '9 threats from ruling party members or its affiliates' and 9 incidents of harassment by law enforcement agencies.

...

Although public criticism of the government is reportedly common and vocal, journalists have stated that they engage in self-censorship due to fear of harassment and retribution by the authorities.

...

The weak independence of the judiciary is among the main problems facing Bangladesh. Formally, the law provides for an independent judiciary, but in practice, as recorded by US DoS a number of problems undermine the Bangladeshi court system - most notably, corruption, political interference, and a substantial backlog of cases."

37. According to the later Country Information Report Bangladesh of August 2019 of the Australian Government Department of Foreign Affairs on Trade, both the 2014 and the 2018 election won by AL were marred by violence, boycotts, and allegations of fraud.

38. Various more recent reports indicate that the situation has not ameliorated since then. According to Freedom House, Bangladesh[2]:

"Amid the COVID-19 pandemic, the government ramped up its efforts to restrict the online space and suppress those criticizing the government's response. Authorities blocked critical websites, enhanced targeted violence, and arrested journalists and users

[2] https://freedomhouse.org/country/bangladesh
and https://freedomhouse.org/country/bangladesh/freedom-net/2020 (last accessed 2022)

alike. New investigative reporting also shed light on the government's capacity to manipulate content and deploy technical attacks.

The ruling Awami League (AL) has consolidated political power through sustained harassment of the opposition and those perceived to be allied with it, as well as of critical media and voices in civil society. Corruption is a serious problem, and anticorruption efforts have been weakened by politicised enforcement. Due process guarantees are poorly upheld and security forces carry out a range of human right abuses with near impunity."

39. The Human Rights NGO Odhikar, in its annual human rights report, 2020, reported that:

"In 2020, the government severely curtailed freedoms of speech, thought, conscience and expression of citizens. During this period, the government brought social media under scrutiny. People from different walks of life, including dissenters, writers, bloggers, opposition leaders-activists, teachers, lawyers, journalists, cartoonist, imam of a mosque and many others have been arrested and jailed under the repressive Digital Security Act, 2018 for criticising the government's failure to deal with the Coronavirus outbreak, insulting 'religious sentiments' and 'liking / sharing' any post on social media about high-ranking members of the ruling party or their family members, ruling party MPs, ministers and even the Indian Prime Minister Narendra Modi. During this period, the government has issued the Rules5 of this law with the aim of enforcing the Digital Security Act 2018 more strictly. Law enforcement officials and ruling party members have filed lawsuits, and the courts refused to grant bail to those arrested under the Digital Security Act. [pg.6]

In 2020, the right to freedom of assembly of the opposition and dissidents continued to be curtailed. During this period, the government continued to crack down on opposition leaders and activists, including filing cases and making arrests. There were incidents of obstructions and attacks on the rallies of the opposition political parties and organisations gathered with various demands to the government. Cases were also filed against those holding indoor meetings held by the opposition leaders and activists for allegedly planning to carry out so-called 'sabotage'. Many opposition leaders and activists were forced to seek political asylum abroad as a result of widespread repression on politics and freedom of expression. Relatives of Bangladeshi human rights activists Pinaki Bhattacharya, AKM Wahiduzzaman, journalist Tasneem Khalil and blogger Asad Noor, who took political asylum abroad, have been allegedly harassed by law enforcement officials in the name of questioning. [pg.8]

In 2020, freedoms of speech, thought, conscience and expression of the citizens have been severely violated. During this period, interference of the government and the ruling party leaders and activists in citizens' freedom of expression became very visible. Journalists were subjected to various forms of harassment, including lawsuits and arrests, for their independent expression. [pg.31]

In 2020, 74 journalists were injured, 31 were assaulted, 28 were attacked, 17 were threatened, seven were arrested, one was tortured, three were abducted, four were harassed and 70 journalists were sued while carrying out their professional duty. [pg.37]

In 2020, at least 73 people were killed and 2,883 were injured due to political violence. [pg. 43]"

40. According to the NGO Reporter Without Borders, in 2020, one journalist was killed and three were currently in prison. They noted[3]:

> "Ever since the country's independence in 1971, Bangladesh's successive governments have treated the media as a communication tool. The current government led by Sheikh Hasina, who has been prime minister since 2009, is no exception. Members and supporters of her party, the Awami League, often subject the journalists they dislike to targeted physical violence, while judicial harassment campaigns are carried out to silence certain journalists or force media outlets to close. In such a hostile environment, editors take care not to challenge anything the government says.
>
> The Digitial Security Act (DSA) is one of the world's most draconian laws for journalists. It permits searches and arrests without any form of warrant, violation of the confidentiality of journalists' sources for arbitrary reasons, and a sentence of up to 14 years in prison for any journalist who posts content deemed to be "negative propaganda against (...) the Father of the Nation," namely the current prime minister's father. In this legislative environment, editors routinely censor themselves.
>
> ...
>
> Exposed to police violence, attacks by political activists and murders orchestrated by Jihadist or criminal organisations, Bangladeshi journalists are all the more vulnerable because this violence goes unpunished. The DSA is often used to keep journalists and bloggers in prison, in appalling conditions."

41. According to Human Rights Watch, World Report 2022[4]:

> "The ruling Awami League government made clear in 2021 it has no intention of addressing a pattern of grave abuses, including extrajudicial killings, torture, and enforced disappearances by its security forces. Authorities cracked down on critics, journalists, and even children who criticised the government or dared to question its response to the Covid-19 pandemic."

42. On World Freedom Day (2021) nine non-Governmental organisations called on the United Nations (UN) High Commissioner for Human Rights and relevant UN experts to publicly and vigorously express concerns over continuing attacks on the media including arbitrary arrests, torture, and extrajudicial killings, and use all possible means to urge the Bangladeshi authorities to protect and respect freedom of expression. Human Rights Watch reports that:

> "At least 247 journalists were reportedly subjected to attacks, harassment, and intimidation by state officials and others affiliated with the Bangladesh government in 2020. More than 900 cases were filed under the draconian Digital Security Act with nearly 1,000 people charged and 353 detained – many of them journalists.
>
> ....
>
> In recent months, a number of Bangladeshi journalists have been targeted for their work. Those who expose government corruption or express dissent are particularly at risk. At least 17 journalists, a majority of them photographers, were injured covering protests over the visit by Indian Prime Minister Narendra Modi in March. Demonstrators and

[3] https://rsf.org/en/country/bangladesh (last accessed 2022)
[4] https://www.hrw.org/world-report/2022/country-chapters/bangladesh (last accessed 2022)

police officers hit journalists with pistol butts, sticks, iron rods, stones, and bricks. Journalists shot by rubber bullets sustained bruises, swelling, bleeding, broken bones, a dislocated shoulder, and a cracked skull.

...

With widespread repression of the media and the harassment of editors who publish reports critical of the government, journalists have taken to self-censoring at unprecedented levels given the risks of imprisonment or closure of media outlets.

The authorities continue to use the Digital Security Act (DSA) to harass and indefinitely detain journalists, activists, and others critical of the government, resulting in a chilling effect on expression of dissent. Bangladesh authorities are poised to undertake even more prosecutions of DSA cases, as the Law Ministry has approved a proposal to expand the number of special tribunals specifically for these types of cyber "crimes".”[5]

43. According to Amnesty International, International Report 2021-22[6]:

“Freedom of expression continued to be heavily curtailed by draconian laws. The authorities carried out serious human rights violations including enforced disappearances, unlawful detention, torture and extrajudicial executions.”

44. The International Federation of Journalists also reports that the crackdown has increased, the government using Covid-19 regulation to arrest journalists, censor free speech and target its critics[7].

45. A recapitulation of legislation affecting the media and other pertinent material from various sources is set out in the United Kingdom’s Home Office “Country Policy and Information Note Bangladesh: Journalists, the press and social media” of January 2021[8] and in so far as widely relevant reads as follows:

“4.2 Legislation affecting the media

...

4.2.1 Media Landscapes reported ‘Old laws that exert influence upon the working of the media in one way or the other are Special Powers Act of 1974, Official Secrets Act of 1923, Contempt of Court Act 1926, Copyright Act 2000 and the Code of Criminal Procedure (CrPC).’ Section 499 of the Penal Code criminalises defamation.

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[5] UN: Stand with Bangladeshi Journalists on Press Freedom Day | Human Rights Watch (hrw.org) (last accessed 2022)

[6] https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/bangladesh/ (last accessed 2022)

[7] IFJ, *Bangladesh: Government crackdown on media has increased during pandemic*, 17 February 2021 - https://www.ifj.org/media-centre/news/detail/category/health-and-safety/article/bangladesh-government-crackdown-on-media-has-increased-during-pandemic.html (last accessed 2022)

[8] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/949892/Bangladesh-Journalists-CPIN-v2.0-_January_2021_.pdf (last accessed 2022)

4.2.2 Considering the Code of Criminal Procedure (CrPC), Media Landscapes noted that it:

'... has a provision [Article 99A] for issuing direct arrest warrants against anybody including journalists, writers and publishers of any books or newspapers if they wrote or said anything considered defamatory. Journalists have long been demanding the scrapping of the provision, only to be ignored by the successive governments. However, in 2011 the Bangladesh Parliament passed a bill, scrapping the provision of issuing direct arrest warrants against journalists, writers and others for writing or saying anything defamatory. But it did not bring any relief to the media as more stringent laws were promulgated later.'

...

4.2.4 Freedom House referred to the Information and Communication Technology (ICT) Act, noting '... Section 57 of the 2006 ICT Act outlines prohibitions on the electronic dissemination of defamatory, obscene, or false information, with violations punishable by a minimum of seven years imprisonment and fines of up to 10 million takas ($125,000) [approximately £88,000]. In 2013, the ICT Act was amended, increasing the maximum prison term for those convicted from 10 to 14 years.'

4.2.5 Media Landscapes noted the ICT Act '... has a provision to sue journalists on charges of defamation and hurting religious sentiment, and a jail term for 10 years. The law was amended in 2013 only to make it harsher, extending the jail term to 14 years and scraping the provision of bail. The law has, in fact, no safeguard for journalists and the result is that two dozen journalists were sued under its Section 57 of the Act alone in 2017.'

4.2.6 The Digital Security Act (DSA) 2018 came into force in October 2018. Section 61 of the DSA has repealed sections 54, 55, 56, 57 and 66 of the ICT Act, but imposed similar restrictions ...

4.2.7 Media Landscapes reported 'In 2014, the government passed the National Broadcast Policy for television and radio stations, drawing widespread debates and criticism from rights activists, civil society and media personalities, who expressed concern about a possible misuse of some of its provisions and the scope of undermining the constitutional right to free media, access to information and freedom of expression.'

4.2.8 The National Broadcast Policy recommended a new broadcast law. In December 2018 Reuters noted:

'The proposed new Broadcast Act that is under consideration would apply to print, broadcast and digital media, and it would give a government-appointed Broadcast Commission wide powers to levy fines of up to 50 million taka ($596,018) [approximately £443,000] and withdraw the operating licenses of outlets it deems to be in violation of the law.

The commission could also recommend prosecution of anyone it deems guilty, and courts will be allowed to imprison those found guilty under the law for up to 7 years.

Offences under the proposed new law include the telecasting, broadcasting or publishing of any statement deemed to be against the country, or against public interest; sharing any misleading or untrue information or data on a talk show; broadcasting any show, or ad contrary to national culture, heritage and spirits; telecasting any show or advertisement with scenes of aggression or indecent language.'

4.3 Digital Security Act (DSA)

4.3.1 Reuters noted that the DSA '... melds the colonial-era Official Secrets Act with tough new provisions', adding 'The law allows police to arrest anyone without a warrant if they believe that an offense under the law has been, or is being committed, or they believe there is a possibility of a crime and risk of evidence being destroyed. The law carries prison sentences of up to 14 years for any person trying to secretly record information inside government buildings. Critics say this makes investigative journalism into any government corruption almost impossible.'

4.3.2 Freedom House noted in its 2020 Freedom on the Net report:

'While Section 57 of the ICT Act was repealed by the legislation, the [DSA] imposes similarly restrictive provisions. Section 21 provides for sentences of up to 14 years in prison for anyone who uses digital devices to spread negative propaganda regarding the Liberation War or the "father of the nation." Section 25 introduces sentences of up to three years in prison for deliberately publishing intimidating or distorted information against an individual online. Section 28 mandates up to 10 years in prison for harming someone's religious sentiments. Section 29 provides for up to three years in prison for publishing information intended to defame someone. Section 31 provides for sentences of up to seven years in prison for deliberately publishing information that can spread hatred among communities. Section 32 has been criticized by rights groups for potentially stifling investigative journalism by imposing sentences of up to 14 years for recording or accessing information digitally without prior consent.

Under the DSA, no warrant is required before making ICT-related arrests, and some crimes are "nonbailable," meaning suspects must apply for bail at a court.

In January 2020, a group of professors, journalists, and lawyers from Dhaka Supreme Court filed a writ petition with the High Court requesting that it declares certain sections of DSA illegal for being too broad and infringing on free expression. In February 2020, the High Court asked the government to explain why sections 25 and 31 of DSA are constitutional, and should not be repealed. There were no reports on the petition by the end of the coverage period.'

4.3.3 Bertelsmann Stiftung's Transformation Index (BTI), a think-tank, which assesses the transformation toward democracy and a market economy as well as the quality of governance in 137 countries, noted in its BTI 2020 Country Report for Bangladesh, covering the period 1 February 2017 to 31 January 2019, 'Section 43 of the new [Digital Security] Act allows police to arrest and imprison a person for up to 10 years for using digital devices to spread propaganda against Bangladesh's Liberation War, the national anthem or national flag. Sections 21, 25, 28, 29, 31, 32 and 43 also undermine and criminalize the freedom of expression.'

4.3.4 The DFAT report noted that 'The DSA gives authorities the power to review digital communications, including on social media and closed-source platforms, and criminalises various types of online speech, ranging from defamatory messages to speech that "injures religious values or sentiments".'

4.3.5 Writing in the Observer Research Foundation (ORF), a think-tank based in India, Rahul Krishna, noted in October 2019 that the DSA: '... also places strict timelines for completion of investigations and trials. There is a 60-day window for investigations afforded to police officers beyond which lengthy reports have to be filed with the Tribunal for any extension, even after which the investigation can be extended to 105 days. Supporters of these timelines claim that it will help improve conviction rates and bring quick justice to the victims of cybercrime. However, with the range of powers at the disposal of investigating authorities, these stringent timelines encourage

the police to aggressively pursue arrests and then convictions while disregarding due process enshrined under various procedural codes.'

...

5. Freedom of expression

5.1 Freedom of speech and the press

...

5.1.3 The Freedom House Freedom in the World 2020 report rated Bangladesh's media 'Not Free'. Reporters Without Borders (RSF) ranked Bangladesh 151 out of 180 countries in its 2020 World Press Freedom Index, the country's lowest ranking since RSF's index was introduced in 2013. With a global score of 49.3759 (0 being the best possible score and 100 the worst), RSF categorised the country's press freedom as bad.

...

5.1.5 As noted by Rahul Krishna in the ORF [Observer Research Foundation]:

'It would be unfair to attribute clamping down on free speech to the Awami League government alone, but in their second term this administration has virtually removed all protections given to the freedom of expression in the country. The chilling effect that such policy decisions will have on free speech and dissent in Bangladesh will be severe and likely irreversible in the near future. Dhaka has progressively become more brazen in attempting to stifle political dissent and protest which has faced little criticism from inside Bangladesh itself. The broad definitions of criminal activities online, powers given to the police under law and the resources that investigating authorities are being granted are enough to ensure that the administration can suppress discontent with impunity.'

...

5.3.9 The DFAT [Country Information] report [Bangladesh] noted:

'In-country sources report that the threat of legal action and/or physical attack has led many Bangladeshi journalists to practise self-censorship in their reporting, particularly when covering sensitive topics. Government officials have reportedly encouraged this practice. This self-censorship was particularly evident in the lead-up to and in the period following the December 2018 election. DFAT understands that self-censorship is particularly prevalent amongst the few remaining Bangladesh-based bloggers.'

....

5.4 Arrest, detention and charges brought under media laws

5.4.1 The DFAT report stated, 'Defamation charges are commonly brought against journalists and others who criticise the government.'. The same source added 'Sedition laws can also be applied broadly, and penalties range from fines to life in prison or even the death penalty if the accused is found to have undermined the Constitution.'94 Similarly Freedom House noted that 'Online activists, journalists, and other users regularly face civil and criminal penalties for online expression. ... During the COVID-19 pandemic, arrests for online speech alarmingly increased.'

5.4.2 There have been hundreds of arrests under the ICT Act and DSA although the exact number in any given time varies from source to source.

5.4.3 The USSD HR Report 2019 noted that:

‘Libel, slander, defamation, and blasphemy are treated as criminal offenses, most commonly employed against individuals speaking against the government, the prime minister, or other government officials. The DSA provides for sentences of up to 10 years’ imprisonment for spreading “propaganda” against the Bangladesh Liberation War, the national anthem, or the national flag. As of July [2019] a total of 420 petitions requesting an investigation had been filed under the act with more than 80 individuals arrested.’

5.4.4 Amnesty International reported on 8 October 2020 that:

‘Nearly 2000 cases have been filed under the DSA since its enactment on 8 October 2018, according to data from the Bangladeshi government’s Cyber Crime Tribunal. This includes more than 800 cases filed in the first nine months of 2020 alone, with many of the country’s most prominent editors and senior journalists being increasingly targeted... In 2020, at least 10 editors of national and regional dailies and online news platforms have faced legal charges under the DSA, following critical reporting on leaders of the ruling Awami League party.’

5.4.5 According to data collected by the human rights NGO, Odhikar, in 2019, 42 people were arrested under the DSA and 6 under the ICT Act.

5.4.6 Reporting on the number of arrests in 2019 into 2020, Prothom Alo, a major daily newspaper, noted in September 2020 that according to police data, ‘A total of 1,135 people were arrested in 732 cases filed under the DSA across the country in the last year... In the first two months of 2020, another 339 people were arrested in 165 cases filed under the act...’

5.4.7 According to data collated by Odhikar, between January and September 2020, a total of 111 people, including ordinary citizens, teachers and imams, were arrested under the DSA, for criticising individuals or leaders of the government and the ruling party. Freedom House recorded that ‘During the first six months of 2020, authorities recorded 113 cases impacting a total of 208 people, including 53 journalists. They arrested 114 people, the majority of whom were still in detention awaiting bail as of June 2020. Sixty cases had already been filed against over 100 people, including 22 journalists. Such numbers are a significant increase from 63 cases in 2019 and 34 in 2018, when the act came into force.’ Odhikar also reported that, whilst working in a professional capacity, 5 journalists were arrested during the same period and 55 were prosecuted under the DSA.

5.4.8 DFAT noted some prominent cases in recent years:

‘There have been a number of legal cases against individual journalists in recent years, notably against those at mainstream outlets:

In February 2016, the editor of the Daily Star was served with 67 defamation and 16 sedition lawsuits, mostly lodged by AL members, after he admitted to publishing unsubstantiated information about the Prime Minister. The lawsuits were lodged in districts nationwide, thus requiring the editor to spend weeks travelling across the country to make bail applications. While the High Court dismissed two of the cases, the remainder are unresolved and could be reactivated at any time.

In August 2018, a prominent photojournalist was arrested under the provisions of the DSA for making “false” and “provocative” statements on Al-Jazeera and on Facebook about the Road Safety Protests...

Authorities charged a reporter for the Dhaka Tribune newspaper and the Bangla Tribune news website with offences under the DSA for calling the legitimacy of the December 2018 election into question by pointing out irregularities in the vote count.

Another journalist who reported the same irregularity went into hiding after the same charge was brought against him. If convicted, the two journalists face up to 14 years' imprisonment.'

5.4.9 The photojournalist, Shahidul Alam, cited above, said he was beaten and tortured whilst in police custody. He was released on bail in November 2018, after spending more than 100 days in jail.

5.4.10 In January 2019, the Committee to Protect Journalists (CPJ) reported on the arrest of journalist Hedait Hossain Molla after he was accused of violating the DSA after reporting that the number of votes cast from a constituency in Khulna district was higher than the number of voters. Although the figure was later corrected by election officials, Molla was arrested for reporting 'false information' as the story was already published. According to the USSD HR Report 2019, 'Although Molla was released on bail, he was obliged to appear regularly before the court, since the case remained active.

...

Deutsche Welle (DW) reported on Bangladeshi journalist, Shafiqul Islam Kajol, who disappeared in March 2020 the day after being charged under the DSA for making defamatory comments against an Awami League MP. Nearly 2 months after his disappearance Kajol was 'found' in a field with his arms and legs bound and taken into custody. Civil society groups believe Kajol was a victim of enforced disappearance by the security forces and, in August 2020, called for his immediate release1. As at October 2020, Kajol remained in pre-trial detention."

II. CPT REPORT

46. The Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 22 September 2020, March 2021, in so far as relevant, reads as follows:

"**c. safeguards: access to lawyers, doctors, consular assistance and means of communication**

53. Maltese law contains a range of safeguards designed to protect detained migrants from harm and to prevent ill-treatment. However, during the visit, the CPT's delegation found that many of these safeguards were not operating properly in practice.

To begin with, meaningful access to *communication with the outside world* was problematic. At the detention centres of Hermes (Lyster Barracks), Safi and China House, mobile phones had been systematically confiscated upon arrival in Malta. For some migrants, telephone cards had been provided, however, the cards were insufficient for regular communication. For others, no cards had allegedly been provided and they had spent many months (some reportedly six months) without being able to contact their families to inform them of their detention and their whereabouts. Other detained migrants interviewed by the delegation underlined that other than a single phone call upon arrival, they had only been given one 5 EUR phone card every two to three months, which could permit, on average, a few minutes' call to their country of origin. Moreover, many migrants underlined that even if they had access to a phone card, effective communication was still hampered by the fact that they did not know and could not access the telephone numbers needed, which were stored on their mobile phones.

At Marsa IRC, migrants deprived of their liberty either on public health orders or awaiting medical clearance (including some who had been held since early January 2020) stated that they had not been afforded a phone call upon their arrival at the centre to inform their family of their whereabouts. Equally, in Safi Detention Centre's new C Block, no public phone existed, rendering the 80 migrants locked inside a large dormitory for 24 hours a day, *de facto* incommunicado.

54. The migrants met by the CPT's delegation also stated that they were provided with no *information on the contact details* of NGOs, consular assistance, lawyers or the UNHCR, and an examination of the Unit logbooks showed that visits were extremely rare. For example, at Safi Detention Centre, there had only been one visit recorded from a lawyer to Warehouse 2 (which housed over 360 migrants in mass dormitories held under long-term RD detention orders), between early June and September 2020 and none during the period from March to June when the Centre had been closed to visits. Further, between May and September 2020, there had only been a total of 15 visits from any external person or institution to Warehouse Block 2 (360 migrants), including the immigration authorities.

Indeed, few of the migrants with whom the CPT's delegation spoke had benefitted from any *access to a lawyer* or legal NGO, while NGOs confirmed that they had been afforded only very limited contact with detained migrants.

55. The CPT considers that detained migrants and asylum seekers should, from the very outset of their deprivation of liberty, enjoy three basic rights, in the same way as other categories of detained persons. These rights include access to a lawyer and to a medical doctor (see *Health care* section), and the right to be able to inform a relative or third party of one's choice, about the detention measure. In addition, because of the nature of their deprivation of liberty, detained migrants should have access to consular assistance if they so desire.

The right of access to a lawyer should include the right to talk with a lawyer in private, as well as to have access to legal advice for issues related to residence, detention and deportation. This implies that when migrants in an irregular situation are not in a position to appoint and pay for a lawyer themselves, they should benefit from access to free legal aid.

Equally, meaningful contact with the outside world and notifying a relative or third party of one's choice about the detention measure and the opportunity for regular consultation are crucial for detained migrants not to be held incommunicado, and for many of the safeguards to operate effectively. As such, detained migrants should have ready and regular access to the telephone. The CPT considers that this is greatly facilitated if migrants in an irregular situation are allowed to keep their mobile phones during detention, or at least have regular access to them.

In short, migrants deprived of their liberty need ready and regular access to means of communication to remain in contact with the outside world.

56. At the end of the visit, the CPT's delegation made an immediate observation under Article 8, paragraph 5, of the Convention governing the Committee, and requested that migrants deprived of their liberty are offered the possibility to regularly communicate with the outside world and that the Maltese authorities should take measures to increase the provision of phone cards and access to the telephone. In addition, the CPT considers that all migrants should be offered a free phone call upon their arrival at Marsa IRC and also when they are transferred to other places of deprivation of liberty.

By communication of 2 November 2020, the Maltese authorities responded that telephone lines and TV systems were being installed in Block-C at Safi. The only other

centre without access to a telephone is HIRC ("China House"). Until such time as fixed telephone sets are put in place, the local telephone company offered the Detention Service a considerable number of sim cards with 10 EUR credit on them. Existent telephones in other areas can receive unlimited calls. Action has been taken to ensure that a phone card will be provided to each migrant on a monthly basis.

The CPT notes positively these developments. Nonetheless, the CPT recommends that access to the telephone be increased through both the ongoing increased provision of phone cards and, preferably, by permitting migrants to keep, or at least have regular access to, their own mobile phones. In addition, it recommends that several pay phones be installed in Safi Detention Centre, C Block and China House (where no phones exist), and that phone cards be provided, at all reception and detention facilities, every month ongoing, and confirmation provided to the CPT that this is indeed the case.

Further, it recommends that the Maltese authorities ensure that all immigration detainees are provided with access to Voice over Internet Protocol facilities and basic internet to facilitate virtual visits.

As prescribed in Malta's own 2015 Reception Strategy and relevant legislation, the CPT recommends that all migrants should be offered access to a lawyer and, if necessary, legal aid as from the outset of their deprivation of liberty (including, *inter alia*, the possibility for detained migrants to have their detention procedures and legality reviewed).

Further, the CPT recommends that the Maltese authorities establish a system of duty lawyers to ensure the right of access to a lawyer for immigration detainees is rendered more effective in practice. Ideally an "in-person duty lawyer scheme", where lawyers and or legal NGOs come to the immigration detention centres on a rotational basis, or at the very least are available by telephone at set times. This is all the more necessary given the number of migrants who do not have sufficient financial means to pay for a lawyer, and who are unaware how to instruct a lawyer in a foreign country, as well as lacking regular access to communication means (including telephone). In addition, support is required to ensure that the large numbers of migrants held in detention who do not speak either Maltese or English are able to exercise their rights.

The CPT also recommends that the right of access to a lawyer be subject to external oversight, ideally incorporating the involvement of legal non-governmental organisations and the Malta Chamber of Advocates."

THE LAW

I. PRELIMINARY OBJECTION

A. The parties' submissions

1. The Government

47. The Government submitted that the application was inadmissible as the applicant had failed to exhaust domestic remedies, namely constitutional redress proceeding, in particular, an application before the Civil Court (First Hall) in its constitutional competence (hereinafter 'FHCC').

48. The Government submitted that the FHCC was empowered to issue an interim measure at any stage of proceedings in order to stop the plaintiff from being deported, pending the outcome of the proceedings before it, and in practice, in recent years, this had been done. They referred to the case of *Shokhur Eleonora pro et noe v. L-Avukat tal-Istat et* (513/2021) where the plaintiffs had complained that their temporary humanitarian protection had been withdrawn in violation of Article 6 of the Convention and thus had asked the FHCC to issue an interim measure. As a result, at the first sitting, the FHCC received the assurances of the immigration police that until there would be a *res judicata* judgment on the constitutional complaints raised by the plaintiffs, the immigration police would not seek the removal of the plaintiffs. They further relied on the case of *Mitrovic Sanja v. L-Uffiċjal Principali Tal-Immigrazzjoni et* (118/2018) where the plaintiff had filed proceedings against the PIO who had issued a deportation order in her regard and the FHCC had immediately ordered the defendants not to execute the deportation order until further evidence was heard by the same court. In *Mariama Ngady Parsons v. L-Aġenzija għall-Protezzjoni Internazzjonali et.,* (318/20/1) no interim measure was granted because no removal order had been issued. The Government further referred to a number of interim measures issued outside the context of immigration proceedings. In reply to the applicant's reliance on the case of *Millicent Botwe v. the Commissioner for Police et.* (95/2022), the Government noted that any delay was explained by the fact that no urgency existed in that case, the ECtHR having already issued a Rule 39 measure staying removal. Moreover, eventually the domestic court had not applied the interim measure because the applicant had absconded, similarly the ECtHR had lifted the measure and struck out the case on the same basis. In, the Government's view, it was therefore likely that the FHCC would have applied an interim measure staying removal.

49. They explained that the FHCC has wide ranging powers to review the procedures adopted before all boards, tribunals and courts under the domestic legal order. It has the power to assess the effect that the application of any law has had, or could have had, on a person and has the necessary flexibility to take all such decisions to ensure respect for fundamental human rights, including ordering the Agency and/or the Tribunal to re-assess any application for international protection. These proceedings were still available to the applicant, since they were not subject to any time-limit. Despite the lack of examples, the Government considered that there should be a presumption that the domestic courts are willing to provide an effective remedy, unless evidence is shown to the contrary. Lastly, they considered that the proceedings could be considered sufficiently speedy given that different considerations applied to constitutional proceedings.

2. The applicant

50. The applicant submitted that constitutional redress proceedings did not have automatic suspensive effect, and there was therefore no guarantee that an interim measure would be granted. They relied on the cases of *Ohanebo Vitus Chibuie v. the Commissioner of Police as POI* (1935/2009/1) and *Walid Ahmad Mohammed El-Haddid v. POI* (1165/2008), wherein the applicants were returned to their country of origin pending constitutional proceedings on facts identical in substance to those presented by the present application. In the more recent case of *Millicent Botwe* (cited above), concerning circumstances similar to the present case, the court, in rejecting the request for interim measures, emphasized that "it is constant jurisprudence that the granting of interim measures in the ambit of constitutional proceedings is the exception and not the rule". Similarly, in *Mariama Ngady Parsons* (cited above) where the request for an interim measure was rejected as no removal order had been issued, the court stated that "the [removal] order in itself does not give an automatic right for the request to be granted. The element of risk must be proved". However, the applicant noted that as shown in *Millicent Botwe* (cited above), the constitutional jurisdictions did not themselves asses the risk but solely relied on the previous decisions by the domestic authorities. The latter case, where it took the CCFH more than five weeks to reject the request, also showed that such decisions were not taken in a timely manner. The applicant also considered that the cases cited by the Government were irrelevant. In particular, in the case of *Shokhur Eleonora pro* (cited above) the FHCC had not applied an interim measure but simply relied on the police' testimony that they would not remove the plaintiff, and the case of *Mitrovic Sanja* (cited above) was not comparable to the present case as it concerned an issue with Identity Malta, the entity responsible for issuing residence permits. The other cases did not relate to the immigration context. Thus, the Government had not substantiated the effectiveness of such a remedy and since there was no obligation to exhaust remedies that had no prospect of success the application could not be considered inadmissible for non-exhaustion.

B. The Court's assessment

51. The Court reiterates that the rule on exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering for their acts before an international body until they have had an opportunity to put matters right through their own legal system. The 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 to deal with the substance of an "arguable complaint" under the Convention and to grant

appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

52. In view of the importance which the Court attaches to Article 3 of the Convention and the irreversible nature of the damage which may result if the risk of torture or ill-treatment materialises, the effectiveness of a remedy within the meaning of Article 13 imperatively requires close scrutiny by a national authority, independent and rigorous scrutiny of any claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3, as well as a particularly prompt response, it also requires that the person concerned should have access to a remedy with automatic suspensive effect (see, *inter alia*, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 293, ECHR 2011, and *De Souza Ribeiro v. France* [GC], no. 22689/07, § 82, ECHR 2012). The same applies when considering the question of effectiveness of remedies for the purposes of Article 35 § 1 of the Convention in asylum cases (see *A.M. v. the Netherlands*, no. 29094/09, § 66, 5 July 2016).

53. The Court does not consider it necessary to join this objection to the merits, as it is amply clear from the submissions of the parties that the procedure before the FHCC does not have automatic suspensive effect. The Court therefore cannot but find that this remedy falls short of this effectiveness requirement. This finding is not altered by the fact that it is possible to seek a provisional measure, as such a request does not itself have an automatic suspensive effect either, and the relevant decision depends on an assessment on a case-by-case basis (see, *mutatis mutandis*, *A.M. v. the Netherlands*, cited above, §§ 63 and 67).

54. Consequently, the Court dismisses the Government's objection on the admissibility of the application on the basis of non-exhaustion of domestic remedies.

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

55. The applicant complained that the Maltese authorities failed to properly assess his claims, in particular, the risk that he, as a journalist, would face upon being returned to Bangladesh, in violation of Article 3 of the Convention. He further considered that he had no effective remedy under Article 13 of the Convention, taken in conjunction with Article 3, in so far as the asylum procedure was lacking in various respects. The provision reads 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."

A. Admissibility

56. Article 13 requires the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, *M.S.S. v. Belgium and Greece*, cited above, §§ 288-89, and *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 53, ECHR 2007-II). From the materials submitted, it appears that the applicant received training from the Bangladesh press institute and the Bangladesh Media institution and received various media prizes. The Court observes that the claim that the applicant was a journalist had been accepted by the Agency, upon relevant video evidence coming to their attention. The Agency also accepted that the applicant had been reporting on the 2018 election (see paragraph 22 above). Bearing in mind the relevant country of origin material available (see paragraph 36 *et sequi* above) it appears clear that certain journalists remain the target of AL by formal or informal means. The Court thus considers that the applicant had an arguable claim for the purposes of Article 3, and therefore was entitled to effective guarantees protecting him from an arbitrary removal. Article 13 is therefore also applicable.

57. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

58. The applicant submitted that the national authorities did not carry out an individual, objective and impartial assessment taking into account all relevant facts and documentation submitted and clearly aimed at rejecting him from the outset due to his nationality. Indeed, during his interview he presented the following material facts: he used to be a journalist in Bangladesh; he reported on the frauds of the AL party in the 2018 elections; he was attacked and threatened by members of the AL and consequently decided to flee the country. Despite providing sufficient evidence of his international protection needs (forty items of relevant documentary evidence at first instance) and a clear account of events that match the readily available country of origin information, including past ill-treatments, the applicant's case was never appropriately assessed. The evidence was ignored and none

of the claims were deemed credible by the Agency. The latter, referring to the concept of safe country of origin, did not see fit to conduct a risk assessment. Furthermore, there had been no specific discrepancy which would call his overall credibility into serious doubt, and he could not fathom why the national authorities continued to deny that he was a journalist when all the documents he provided substantiated this fact beyond any doubt and no one had challenged the authenticity of such documents.

59. Thus, the applicant considered that he had sufficiently established that he was a known journalist who used to be in contact with the ruling party's leadership, local leaders and police and could be seen regularly on TV and on newspapers, and that he was persecuted by the AL following his work on the elections in 2018.

60. The applicant, thus, complained of a lack of an effective remedy at the domestic level capable of assessing the risks he faced upon return and avert the imminent violation of his rights under the Convention.

61. Globally the applicant complained about a series of deficiencies in his asylum procedure namely i) a complete lack of access to relevant information and to legal services, effectively depriving him of legal counsel at all stages of his first instance asylum procedure, ii) excessively lengthy delays in receiving a decision - he noted that the Agency took seven months to interview him, and a further seven months to determine his application, iii) critical deficiencies in the examination of his asylum request and subsequent applications, without any serious examination of the merits of his applications, iv) the failure to notify him properly of his first instance decision in his first and second proceedings, in particular, due to him being kept in detention with no contact with the outside and the lack of interpretation (during which time removal procedures had been initiated by the PIO), and v) the lack of access to an appeal procedure, effectively depriving him of his right to an effective remedy in asylum proceedings.

62. The applicant noted that his claim had been rejected on the basis that Bangladesh was a safe country despite him providing a large amount of evidence to dispel the presumption that Bangladesh was a safe place for him, as a journalist, coupled with his specific situation. This, he argued, taken together with the arbitrary decision of the Home Affairs Minister to designate Bangladesh as a safe country of origin, effectively, deprived him of any chance to access a fair asylum procedure from the outset. The applicant noted that both France and the Netherlands had removed Bangladesh from the list of safe countries, and according to the UNHCR, in 2020 around 17% of Bangladeshi asylum applicants received a form of protection[9]. While referring to European Union (EU) legislation in theory (see paragraph 72 below) the Government had failed to show that the procedural obligations in

[9] UNHCR Refugee Statistics
https://www.unhcr.org/refugee-statistics/download/?url=Kp2Ial (last accessed 2022)

determining the safe country list had been complied with. Moreover, the requirement under Regulation 23 of S.L. 420.07 to include an assessment made by the International Protection Agency, relied on by the Government in their observations (see paragraph 72 below), had come to be *via* an amendment introduced in December 2021, after the applicant had lodged his case. The decision at the relevant time had therefore been taken only by the Minister allowing for considerations not envisaged in the Procedures Directive.

63. Additionally, the presumption that a country was safe could not be rebutted in practice, and in terms of Article 23(1) read in conjunction with Article 2 of the International Protection Act (a higher legal source than the Regulations), a person seeking international protection in Malta "*shall*" be examined under accelerated procedures when the application appears to be manifestly unfounded. Thus, the Agency automatically channeled applicants from countries of origin listed as safe through the accelerated procedure with no individual assessment of their claim. In support of this argument, the applicant referred to the statistics provided by the Agency itself. In 2021, it had rejected 97% of all applications made by individuals from countries listed as safe on the basis of this concept (265 applicants on 272). These numbers included 98% of all applicants from Bangladesh (127 applications out of 130). In 2021, the tribunal carried out 368 reviews of manifestly unfounded applications, confirming 366 of them[10].

64. In cases of accelerated procedures, the domestic system only allowed for an automatic review and - in the absence of any full and *ex-nunc* examination of both facts and points of law, as evidenced by the fact that such criterion was only being added *via* new amendments to the law which are to be put in place - appeared to simply confirm the first decision.

65. This 'review' procedure was characterised by the impossibility to file any submissions or be heard by the Tribunal. Although not explicitly excluded in law, the absence of proper notification of the decisions made it practically impossible for the asylum seeker to do so. This was coupled with an excessively short-time limit for the review, where a decision is reached within a maximum of three days by one person (the Chairperson) who 'reviews' the entirety of an applicant's case behind closed doors. In reply to the Government, and referring to his own case, the applicant questioned how one person could rigorously examine the entire copious file and submit a decision in one day. He further questioned why despite the Court's interim measure the domestic authorities did not consider that his case merited further assessment, thus rejecting his third request for an assessment.

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[10] Asylum and Information Database, Country Report: Malta, May 2022, p. 41. https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-MT_2021update.pdf (last accessed 2022) - This report was jointly researched and written by aditus foundation (a Non-Governmental organisation directed by the applicant's legal representative) and was edited by the European Council on Refugees and Exiles (ECRE).

66. The difficulties encountered were exacerbated in those cases where an applicant was detained, as in the present case, without real access to information or advice on the asylum procedure. He noted that detainees had only sporadic access to a single phone in each block [of the detention centre] to call their families for a few minutes, every two or three months, and that they were not provided with any information on the contact details of NGOs, consular assistance, lawyers or the UNHCR at any stage of the procedure. They referred to reports which indicated that detained individuals did not benefit from early legal assistance (see, for example, paragraph 46 above) and were generally issued with a rejection decision before having seen a lawyer.

67. Furthermore, the Tribunal decisions lacked any reasoning on points of fact and of law, as they issued repeated template-style decisions merely confirming the Agency's decision. In 2021, the Tribunal carried out a total of 482 reviews (of manifestly ill-founded and inadmissible applications combined) and confirmed 478 of them[11]. The applicant also questioned whether the Tribunal satisfied the Convention's requirement of a "court", for the purposes of Article 5 § 4 (see *Baş v. Turkey*, no. 66448/17, §§ 266-67, 3 March 2020). Indeed, concerns had been publicly expressed on the Tribunal's ability to be and to be perceived as being independent and impartial (see Venice Commission, opinion 993/2020[12], 2021 EC Rule of Law Report[13]), in particular due to the: manner of appointment of its Members; lack of procedural transparency; absence of any positive decision in 2021[14]; and excessive length of proceedings, reported to reach up to 4 years[15]. Referring to the example submitted by the Government (see paragraph 73 below), the applicant noted that those three decisions concerned a one and only case, where lawyers had managed to intervene in the procedure.

68. As to his second application for asylum, the applicant submitted that the Agency again failed to conduct a thorough assessment of the new evidence, making incoherent conclusions (see paragraph 22 above), and neither the applicant, nor his representative, had been properly notified of the rejection before the removal order was reinstated. Similarly, the Tribunal's assessment had again been an automatic confirmation of the first.

69. The challenge to his removal before the Board had also been ineffective, as they had made no assessment of their own, despite having the

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[11] Ibid. p. 56.

[12] EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), opinion 993/2020, 8 October 2020, available at https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)019-e (last accessed 2022)

[13] EC, 2021 Rule of Law Report Country Chapter on the rule of law situation in Malta, p. 4-5, available at https://bit.ly/3vBtXN9 (last accessed 2022)

[14] Asylum and Information Database, Country Report: Malta, May 2022, p. 11 (cited above)

[15] Ibidem.

required scope under domestic law (Article 25A(1)(c) of the Immigration Act and Regulation 12(2) of S.L 217.12, see paragraph 33 and 34 above).

(b) The Government

70. The Government submitted that in asylum procedures, the personal interview was an important part of the assessment. In the present case, the applicant had been interviewed at length on 28 May 2020. Referring to the transcript of the personal interview, the Government averred that the applicant had been given all the opportunity to explain and substantiate his fear of persecution in Bangladesh. However, the account which the applicant had provided was replete with inaccuracies on even basic details, and thus he had been unable to provide a credible picture of the threat he faced. The Government considered that neither the fact that he was a journalist, nor the fact that he was targeted by the AL were sufficiently substantiated. As an example, the Government pointed to the fact that the applicant had claimed that his father had been attacked by the AL and that his mother was no longer able to live in her home because of the threats which she received, yet no documentation had been submitted to substantiate either claim. Similarly, the applicant had stressed that the AL had published his photo on Facebook, yet he never provided evidence of these threats. The Government pointed out that in the eight months between the alleged attack and the applicant's arrival in Malta, he had retained his mobile phone, which he admitted was the only thing that the traffickers in Libya had not taken away from him. Thus, he had had every reasonable opportunity to gather further information and documentation to submit a substantiated asylum application to the national authorities.

71. It was this lack of credibility which had played a major role in the rejection of his application and not that Bangladesh was a safe country. In any event, even if the Court and the national authorities had to be satisfied that the applicant had suffered an attack in the past, this did not necessarily mean that the applicant would be subjected to harm in the future. Indeed, he had not proved, to the satisfaction of the national authorities, that his return could result in ill-treatment or persecution. As a result, in his second claim for protection, the Agency had found that there was no risk for the applicant if he were to be returned to the country of origin.

72. The Government submitted that, according to Article 31(8) of the EU Asylum Procedures Directive, the Member States were given the right to introduce accelerated procedures where an applicant's country of origin was a safe country of origin and where the applicant made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradicted sufficiently verified country of origin information, thus making his or her claim clearly unconvincing. Those were the reasons why the applicant's asylum claim had been rejected. They considered that the decision to list Bangladesh as a safe country had been taken in line with Annex I of

the EU Asylum Procedures Directive (see paragraph 35 above). Moreover, the Minister's decision had to be taken on an assessment by the Agency, according to Regulation 23 of S.L. 420.07 (see paragraph 32 above). The Government submitted that Cyprus, Greece and Slovenia also designated Bangladesh as a safe country of origin. In any event, as per Regulation 23 of S.L. 420.07, it was only after finding the applicant's statements to be unsubstantiated and that he lacked credibility, that the Agency relied on the fact that Bangladesh was a safe country of origin. Further, the statistics supplied by the applicant showed that it was not impossible to be given protection even when coming from a safe country.

73. According to the Government, as a result of the manifestly ill-founded nature of his claim, the case had been processed *via* the accelerated procedure. They refuted the applicant's claim that the Tribunal would only automatically confirm the first instance decision, noting that all the documentation which had been submitted by the applicant together with all the documentation at the Agency's disposal was transferred to the Tribunal, allowing them to examine whether the decision taken at first instance was factually and legally correct. However, in the present case, the Tribunal found no reasons to overturn the decision taken by the Agency. The Government submitted that new amendments to the law (referred to by the applicant, see paragraph 64 above), did not mean that in practice such an *ex nunc* assessment had not happened in the applicant's case. The Government relied on three decisions by the Tribunal, whereby the Agency's decisions had been overturned, showing that the tribunal was not only rubber-stamping decisions. In the Government's view the inconsistencies in the applicant's statements during the interview, which had been detailed in the first assessment, lacked credibility in a way that could not be restored in later proceedings. The Government was of the view that the tribunal acted in an independent and impartial manner even though such proceedings did not fall within the ambit of Article 6 of the Convention and that the latter's requirements did not apply.

74. The Government submitted that there had been no indication that the applicant had requested legal assistance at any time prior to his communication with his current legal representatives and was refused access to legal counsel. As to the length of the asylum proceedings, they had been within domestic time-limits. Moreover, the applicant's asylum was carried out in the height of the Covid-19 pandemic which had placed major strains on the asylum processes in Malta. As to any delay in the notification, the Government submitted that the authorities had tried to contact the applicant by phone to notify him of the decisions, to no avail.

75. Lastly, according to the Government, the decision of the Tribunal accepting or rejecting an application was final and could not be reviewed by the Board. While the latter had the power to revoke the return decision and removal order, it had no power to review the decisions of the Agency or Tribunal.

2. The Court's assessment

(a) General principles

76. The Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, for example, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 113, ECHR 2012, and *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII). However, the removal of an alien 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 in question would face a real risk of being subjected to treatment contrary to Article 3 in the destination country; in these circumstances, Article 3 implies an obligation not to remove the person in question to that country (see, among other authorities, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-25, ECHR 2008, and *Khasanov and Rakhmanov v. Russia* [GC], nos. 28492/15 and 49975/15, § 93, 29 April 2022).

77. The Court has on many occasions acknowledged the importance of the principle of *non-refoulement* (see, for example, *M.S.S. v. Belgium and Greece*, cited above, § 286, and *M.A. v. Cyprus*, no. 41872/10, § 133, ECHR 2013 (extracts)) and the related general principles under Article 3 were summarised by the Court in *J.K. and Others v. Sweden* ([GC], no. 59166/12, § 77-105, 23 August 2016) and *F.G. v. Sweden* ([GC], no. 43611/11, § 110-127, 23 March 2016).

78. Whether examined under Article 3 or Article 13 in conjunction with the latter, the Court's main concern in cases concerning the expulsion of asylum-seekers is "whether effective guarantees exist that protect the applicant against arbitrary *refoulement*, be it direct or indirect, to the country from which he or she has fled" (see, for example, *M.S.S. v. Belgium and Greece*, cited above, § 286, and *J.K. and Others*, cited above, § 78).

79. Indeed, the Court has found that States have a procedural obligation under Article 3 of the Convention to assess the risks of treatment contrary to that provision before removing an applicant (see, for example, *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 163, 21 November 2019, and *Shenturk and Others v. Azerbaijan,* nos. 41326/17 and 3 others, § 116, 10 April 2022) and the assessment of whether there are substantial grounds for believing that the applicant faces a real risk of being subjected to treatment in breach of Article 3 must necessarily be a rigorous one (ibid. § 127, and *F.G. v. Sweden*, cited above, § 113). Similarly, the Court has held that the effectiveness of a remedy within the meaning of Article 13 imperatively requires independent and rigorous scrutiny of any claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3, as well as a particularly prompt response; it also requires that the person

concerned should have access to a remedy with automatic suspensive effect (see, *inter alia*, *M.S.S. v. Belgium and Greece*, cited above, § 293).

(b) Application of the general principles to the present case

(i) Article 13

80. It transpires from the Court's case-law that, individuals wishing to seek asylum need to have adequate information about the asylum procedure, and their entitlements, in a language they understand, as well as access to a reliable communication system with the authorities. The Court has also had regard to the availability of interpreters, whether the interviews were conducted by trained staff, and whether asylum-seekers had access to legal aid or legal assistance, as well as whether asylum seekers were given reasons for the decision or stereotype rejections (see, by implication, *M.S.S. v. Belgium and Greece*, cited above, §§ 300-10; *Hirsi Jamaa and Others v. Italy*, cited above, § 204; and *D v. Bulgaria*, no. 29447/17, §§ 125, 132-33, 20 July 2021). Particular attention should be paid to the speediness of the remedial action itself, it not being excluded that the adequate nature of the remedy can be undermined by its excessive duration (see *M.S.S. v. Belgium and Greece*, cited above, § 292).

81. Turning to the circumstances of the present case, the Court notes that while the applicant complained that he had not had access to relevant information, he did not explain why he had had no such access or why any information provided had not been relevant, nor did he point out to any specific deficiencies in the information provided. Indeed, the Court notes that, he nonetheless managed to seek asylum without any help from a legal representative. The Court further notes that interpretation was provided to the applicant during the interview.

82. Conversely, the Court observes that despite the availability in domestic law (see Article 23 of the International Protection Act and Regulation 12 of the International Protection Appeals Tribunal (Procedures) Regulations at paragraph 30 and 32 above), the applicant had not had the benefit of any legal assistance in the preparation of his asylum application, during his interview and all throughout the process until a few days before the first decision. The Government submitted that the applicant had not claimed that he had asked for such assistance and had been denied. However, the Court notes that, during the processing of his first asylum claim the applicant had been in detention (between September 2019 until December 2020) and the Court has repeatedly expressed its concerns in the Maltese context about concrete access to legal aid for persons in detention (see, *inter alia*, *Aden Ahmed v. Malta*, no. 55352/12, § 66, 23 July 2013; *Mahamed Jama v. Malta*, no. 10290/13, § 65, 26 November 2015; and *Abdi Mahamud v. Malta*, no. 56796/13, § 46, 3 May 2016, in the immigration detention context, and *Yanez Pinon and Others v. Malta*, nos. 71645/13 and 2 others,

§ 6, 19 December 2017, in the prison context). While the situation might generally have improved since then (see, for example, *Feilazoo v. Malta*, no. 6865/19, § 58, 11 March 2021), the Court cannot but note that the procedures in the present case were ongoing during the Covid-19 pandemic, in particular the applicant's interview took place in May 2020. In that light the Court has no reason to doubt the applicant's submission, supported by the CPT report (see paragraph 46 above) that, due to increased limitations following the outbreak, detained asylum-seekers were even less likely to obtain any form of access to legal aid, or of NGO lawyers, or any other lawyer of choice.

83. Besides the lack of legal assistance, and despite having informed the applicant, already at the start of the interview, that being from a safe country his application would be processed *via* the accelerated procedure (see paragraph 9 above), it cannot be said that the asylum interview was in any way rushed or otherwise conducted in a superficial manner (see *N. v. Finland*, no. 38885/02, § 157, 26 July 2005).

84. However, the Court considers that the considerations made in the assessment report which provided the reasons behind the decision in the applicant's case, are nonetheless disconcerting. From an examination of the interview of the applicant, during which he was unrepresented, it is apparent that the inconsistencies and lack of detail highlighted in the report are not flagrant, as claimed by the Government. For example, it would appear that the authorities expected the applicant, a 20-year-old Bangladeshi who claimed to be a journalist and whose journalistic academic studies consisted of two trainings of three days and three months respectively, to cite the titles of relevant laws, as the reference to the relevant provisions and their content had been deemed insufficient. Also, the authorities seem to have expected the applicant to narrate election irregularities which were mentioned in COI documents, despite the applicant not having witnessed them (see paragraphs 12 and 13 above). Normally detailed descriptions were repeatedly considered brief and superficial and even the applicant's replies about his very own articles (concerning other matters of little interest) were deemed insufficient. Clearly spelled out threats were also considered not to be detailed enough (see paragraph 14 above).

85. In the Court's view, bearing in mind that the applicant was unrepresented and that he had been in detention in the prior months, it stands to reason that his answers had not been more prepared, nor excessively technical in relation to the laws in place and their wording as seems to have been expected by the authorities (see paragraph 13 above). The Court has repeatedly held 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 assessing the credibility of their statements and the documents submitted in support thereof (see *F.G. v. Sweden*, cited above, § 113) and even if the applicant's account of some details may appear

somewhat implausible, the Court has considered that this does not necessarily detract from the overall general credibility of the applicant's claim (see *J. K. and Others v. Sweden*, cited above, § 93).

86. The Court notes that, no reasoning was provided as to why the evidence presented by the applicant (press card, copies of articles, and other evidence of the applicant performing as a journalist, see paragraph 8 above) had not been taken into account. Importantly, at no point did the authorities express the view that the material was false, they limited themselves to noting that their authenticity had not been established as they were only copies (see paragraph 13 above). The Court also notes that the authorities did not proceed to a further verification of the materials or give the applicant the possibility of dispelling any doubts about the authenticity of such material (compare, *Singh and Others v. Belgium*, no. 33210/11, § 104, 2 October 2012, and *M.A. v. Switzerland*, cited above, § 68). Indeed, they had not questioned the applicant's identity or nationality (which had also been based on copies of identity documents), or the fact that the applicant, who was present before them, was the person in the pictures.

87. It follows from the above that the authorities had no apparent strong reasons to question the veracity of his claim in respect of which he would have been required to provide a satisfactory explanation for the alleged discrepancies (see *F.G. v. Sweden*, cited above, § 113). In such circumstances it was particularly relevant to take the necessary steps and to give detailed reasons as to why such relevant material (presented by the applicant in support of his claim that he was a journalist who had suffered an attack at the hands of AL after elections) had not been taken into account to establish the veracity of his claim. Such reasoning would have enabled him to effectively challenge this credibility assessment, which according to the Government had irremediably prejudiced his claim (see paragraph 73 above).

88. In this connection, the Court reiterates that, in relation to asylum claims based on an individual risk, it must be for the person seeking asylum to rely on and to substantiate such a risk. However, if a Contracting State is made aware of facts relating to a specific individual that could expose him to a risk of ill-treatment in breach of the said provisions upon returning to the country in question, the obligations incumbent on the States Parties under Articles 2 and 3 of the Convention entail that the authorities carry out an assessment of that risk of their own motion. This applies in particular to situations where the national authorities have been made aware of the fact that the asylum-seeker may plausibly be a member of a group systematically exposed to practice of ill-treatment and there are serious reasons to believe in the existence of the practice in question and in his or her membership of the group concerned (see *F.G. v. Sweden*, cited above, § 127).

89. Having established that the applicant was not a journalist and Bangladesh being listed as a safe country (by ministerial decision), in line with the accelerated procedure (announced to the applicant prior to any

assessment of his individual claim, see paragraph 9 above), the first-instance rejection decision was automatically sent to the Tribunal for review on the same day. The Tribunal confirmed it within twenty-four hours. Even assuming that the applicant, or his lawyer, had been informed about the first-instance decision at the time (which does not seem to be the case), the Court considers that it would have been nearly impossible for the applicant, who was in detention, to prepare and make any useful submissions before the Tribunal gave its decision one day later (compare *I.M. v. France*, no. 9152/09, §§ 144, 150 and 154, 2 February 2012) rendering such a review devoid of any useful effect.

90. Furthermore, the Court notes that, it took seven months for the authorities to render a first-instance decision following his interview, but a mere twenty-four hours for the Tribunal to reassess the claim (the law providing for a maximum three days, see Article 23 (3) of the International Protection Act, at paragraph 30 above). While the Court reiterates that there exists a legitimate interest in maintaining a system of accelerated procedures in respect of abusive or clearly ill-founded applications (see *R.D. v. France*, no. 34648/14, § 56, 16 June 2016, and *E.H. v. France*, no. 39126/18, § 201, 22 July 2021), contrary to that argued by the Government (see paragraph 73 above), the Court finds it hard to believe that anything but a superficial assessment of all the documentation presented could have been undertaken by the Tribunal within such a time-frame. The brief stereotype decision, confirming the incongruous conclusions reached at first instance and providing no further reasoning, support such a conclusion.

91. In this connection, the Court also observes that the Government was able to rely on only one situation (three decisions in respect of different family members affected by the same situation) whereby the Tribunal overturned the Agency's decision. Furthermore, the applicant explained that in those three cases a lawyer had managed to intervene before the Tribunal – a situation which no doubt was rare given the restrictive time-limit referred to above and possible notification problems. In the remaining 478 reviews undertaken in 2021 the Tribunal confirmed the first-instance decision (see paragraph 67 above). While legislative initiatives aimed at improving the procedure (scope of the assessment) before the Tribunal might be welcome, it is reasonable to conclude that, at the time relevant to the present case, the Tribunal tended to automatically confirm the Agency's decision within a short timeframe (maximum three days), as happened in the instant case (one day). Moreover, while the Court need not enter into the ministerial decision designating Bangladesh as a safe country, the above exceptions go to show that a full individual assessment is nonetheless called for in certain circumstances, despite such designation.

92. The Court further notes that the applicant was only informed of the Tribunal's decision of 11 December 2020 several months later, despite a removal order having been issued on 16 December 2020 (see paragraphs 18

and 19 above). Given that the applicant was in detention until 13 December 2020 and again after 16 December 2020, and that according to the CPT report (see paragraph 46 above) mobile phones are confiscated on arrival to Malta, it is difficult for the Court to give weight to the Government's allegation that notification was repeatedly attempted by the authorities calling on the applicant's mobile phone (see paragraph 74 above). While the Government considered that the applicant had retained his mobile phone after his stay in Libya (see paragraph 70 above), the Court notes that according to the interview transcript submitted to the Court the applicant had stated that his mobile phone was held in Marsa (the initial reception centre). The Court reiterates that for an asylum process to be effective, asylum seekers must have a reliable communication system with the authorities. The latter was clearly deficient in the present case.

93. In the light of all the above, the Court considers that the first asylum procedure undertaken by the applicant and examined under the accelerated procedure, *ab initio*, did not offer effective guarantees protecting him from an arbitrary removal.

94. The Court observes that the applicant lodged a further application seeking asylum, on the receipt of further evidence, under Article 7A of the International Protection Act (see paragraph 30 below). Once again, the Court cannot but note the incongruent conclusions reached, namely while the Agency was satisfied that the applicant had presented new elements and findings of which he could not have been aware of in his first application, and that these elements had shown that he was indeed a journalist who reported on the elections (a fact which had been dismissed in the first asylum assessment), it nonetheless considered that his claims had already been assessed in the first application, thus those elements could not justify a further examination (see paragraph 22 above). In consequence, no individualised risk assessment ensued. Despite the rampant incongruence, the Tribunal's review confirmed the decision, without any reasoning.

95. A third attempt at having his asylum claim examined – following the indication of an interim measure by the ECtHR which had precisely referred to the absence of an adequate assessment (see paragraph 29) – was also rejected by the Agency without any further assessment, and, with no surprise, the decision was confirmed by the Tribunal.

96. Thus, despite his further attempts, the applicant remained deprived of a rigorous individual assessment of his asylum claim, in particular at no stage did the authorities conduct a risk assessment in relation to his individual situation (as a journalist, reporting on election irregularities – facts established by Agency – and who possibly had already suffered at least one aggression related to his work, according to the documents he submitted the veracity of which had not been looked into), if he were to be returned to Bangladesh.

97. The Court notes that the parties gave different interpretations of the domestic law concerning the Board's jurisdiction (see paragraphs 69 and 73 above), however, the Government did not rely on the procedure before the Board, accepting that the latter had no power to alter the Agency's assessment. In that light, the Court need not examine that instance, even more so given that in the present case the Board claimed it could not interfere with the decisions on the applicant's asylum claim.

98. Lastly, the Court observes that, as already examined and concluded above (see paragraph 53), constitutional redress proceedings do not have automatic suspensive effect and are therefore not an appropriate remedy under Article 13, for the purposes of Article 3, at issue in the present case.

99. It follows from the above that the applicant did not have access to an effective remedy under Article 13 for the purposes of his claim under Article 3. There has therefore been a violation of Article 13 in conjunction with Article 3.

(ii) Article 3

100. 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 Refugee Convention. Its main concern is whether effective guarantees exist that protect the applicant against arbitrary *refoulement*, be it direct or indirect, to the country from which he or she has fled. By virtue of Article 1 of the Convention, the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Articles 13 and 35 § 1 of the Convention (see, *inter alia*, *M.S.S. v. Belgium and Greece*, cited above, §§ 286-87, and *F.G. v. Sweden*, cited above, § 127). The Court must be satisfied, however, 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 third States, agencies of the United Nations and reputable non-governmental organisations (ibid. and *Khasanov and Rakhmanov*, cited above, § 103).

101. The Court has already found above that the applicant did not have an effective remedy under Article 13 for the purposes of his arguable complaint under Article 3 and has identified various shortcomings in the examination of the applicant's own asylum claim, in particular, in so far as, at no point was a risk assessment exercise undertaken in respect of his particular situation, namely that of a journalist who reported on the 2018 election irregularities.

102. Thus, the Court finds that there would be a violation of Article 3 if the applicant were to be removed to Bangladesh without a fresh assessment of his claim that, as a journalist who reported on the 2018 election

irregularities, he would be at risk of treatment contrary to Article 3 if returned (see for a similar approach *T.K. and Others v. Lithuania*, no. 55978/20, § 90, 22 March 2022, and *M.A.M. v. Switzerland*, no. 29836/20, § 80, 26 April 2022).

III. RULE 39 OF THE RULES OF COURT

103. The Court reiterates that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if referral of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

104. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 29 above) should remain in force until the present judgment becomes final or until the Court takes a further decision in this connection (see operative part).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. He asked the Court to 'urge Malta to amend the International Protection Act in order to provide for an effective remedy against all rejections of the International Protection Agency in full compliance with the Convention.'

107. The Government considered the claim excessive and was of the view that the State had a right to decide for itself what individual and general measures should be adopted for each case individually.

108. The Court considers that the present case has identified various failures in the domestic procedures, in particular in relation to the failures in the communication system, the provision of legal assistance and particularly the procedure and scope of the Tribunal's review in accelerated procedures, in the light of which general measures could be called for. However, bearing in mind that this is the first of such cases and that the parties have referred to legislative amendments in process, which may improve the system and ensure the existence and effectiveness, in practice, of a remedy for the purposes of

Article 13 in conjunction with Article 3 in the context of asylum requests, the Court will stop short of indicating general measures at this stage.

109. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

110. The applicant also claimed EUR 3,833.38 for the costs and expenses incurred before the domestic court and the Court.

111. The Government submitted that the applicant failed to submit a fiscal receipt which would confirm that the sum demanded in the invoice attached to the submissions has been, indeed, paid by him to his legal counsel.

112. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 291, 14 September 2022).

113. In the present case, the Court notes that the applicant has signed a power of attorney mandating the legal representative to bring proceedings before the Court, and thus has entered into a contractual relationship with the legal representative who is entitled to recover his dues as per invoice issued on 16 June 2022 (just before the filing of the last submissions), even assuming that these have not yet been paid (compare *Valant v. Slovenia*, no. 23912/12, § 76, 24 January 2017). In view of the foregoing and, regard being had to the documents in its possession and the above criteria, the Court awards the sum of EUR 2,000 for the proceedings before the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 13 in conjunction with Article 3 of the Convention;

3. *Holds* that returning the applicant to Bangladesh without a fresh assessment of his claim that, as a journalist who reported on the election irregularities, he would be at risk of treatment contrary to Article 3 if returned, would breach Article 3 of the Convention;

4. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable, in the interests of the proper conduct of the proceedings, not to expel the applicant until such time as the present judgment becomes final or until further notice;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 20 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President