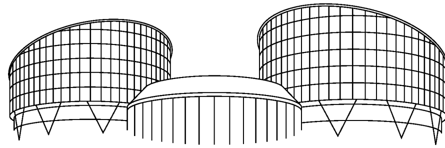

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FORMER SECOND SECTION

CASE OF NABIL AND OTHERS v. HUNGARY

(Application no. 62116/12)

JUDGMENT

STRASBOURG

22 September 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

In the case of Nabil and Others v. Hungary,

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

Işıl Karakaş, *President,*
András Sajó,
Nebojša Vučinić,
Paul Lemmens,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Abel Campos, *Deputy Section Registrar,*

Having deliberated in private on 7 July and 8 September 2015,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 62116/12) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Somali nationals, Mr Ahmad Mohamed Nabil, Mr Saleh Ali Isse and Mr Mohamud Addow Shini ("the applicants"), on 11 September 2012.

2. The applicants were represented by Ms B. Pohárnok, a lawyer practising in Budapest and acting on behalf of the Hungarian Helsinki Committee. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Justice.

3. The applicants alleged that their detention had been unjustified, a situation not remedied by adequate judicial supervision. They relied on Articles 5 §§ 1 (f) and 4 of the Convention.

4. On 28 August 2014 the application was communicated to the respondent Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1984, 1974 and 1985 respectively and currently reside in Bicske, Hungary.

6. Originally coming through Greece, the applicants entered Hungary via Serbia and were intercepted and arrested by the border police on

5 (Mr Nabil) and 6 (the other two applicants) November 2011. They were transferred to the border station in Röszke, Hungary, since they could not prove either their identities or their legal residence in Hungary.

7. On 6 November 2011 the applicants were interviewed with the assistance of an interpreter.

On the same day the Csongrád County Police Department ordered the applicants' expulsion to Serbia and a ban on entry to the territory of Hungary for three years, pursuant to section 43 (2) (a) of Act no. II of 2007 on the Admission and Right of Residence of Third Country Nationals (the "Immigration Act"). With regard to the requirement of *non-refoulement*, it was considered that there was no such obstacle to the expulsion.

The execution of the expulsion order was simultaneously suspended for a maximum period of six months or until the expulsion became feasible, noting that "the Serbian party failed to reply before the expiry of the "retention time" (*visszatartási idő*)".

At the same time, that is, on 6 November 2011, the applicants' detention was ordered by the Csongrád County Police Department until 9 November 2011 under section 54(1)(b) of the Immigration Act, on the ground that "[they] refused to leave the country, or for other substantiated reasons it can be assumed that [they] are delaying or preventing the enforcement of expulsion or transfer". In the findings of fact it was noted that the applicants were not in possession of any travel documents; that they had crossed the border illegally via Serbia; that they said that their travel destination was [Western] Europe, Germany in particular; and that they had not applied for asylum.

8. The applicants were first detained at Bács-Kiskun County Police Department's guarded accommodation (*őrzött szállás*).

9. On 9 November 2011 the applicants applied for asylum, claiming that they were persecuted in their home country by the terrorist organisation Al-Shabaab.

On 10 November 2011 the applicants were transferred to the guarded accommodation of Szabolcs-Szatmár-Bereg County Police Department in Nyírbátor.

10. Preliminary asylum proceedings were put in place on 10 November 2011, and the immigration authorities were notified thereof. On 9 December 2011 the applicants were interviewed by the Citizenship and Immigration Authority (hereinafter: "asylum authority")

On 12 December 2011 their case was admitted to the "in-merit phase" by a decision of the asylum authority, in view of the fact, among other things, that there existed no "safe third country" in their respect.

11. Meanwhile, on 8 November 2011 the Kiskunhalas District Court had heard the applicants, assisted by a guardian *ad litem* and an interpreter, and had extended their detention until 5 December 2011. Relying on section 54(1) b) of the Immigration Act, it endorsed in essence the decision

of 6 November 2011 of the Csongrád County Police Department, saying that the applicants, in a state of illegal entry, were likely to frustrate their deportation.

On 29 November and 30 December 2011 the detention was extended again by summary decisions of the Nyírbátor District Court, referring to the immigration authority's renewed requests to have the applicants detained for the same reasons as before and stating that the circumstances had not changed. These latter decisions made no reference to the on-going asylum proceedings.

On 1 February 2012 the same court again extended the applicants' detention on the same basis, mentioning that their expulsion was suspended due to their pending asylum applications.

12. On 17 January 2012 the applicants' lawyer requested their release, but in vain. (The date as of which they obtained legal representation is not known.) A subsequent request for judicial review of their detention under sections 54(6)(b) of the Immigration Act was to no avail either.

13. On 3 March 2012 the Nyírbátor District Court again prolonged the applicants' detention, holding that there were substantial grounds for believing that the applicants would hinder or delay the implementation of the expulsion order. Having heard the applicants, the court held as follows:

> "The expulsion order cannot be considered unenforceable on the ground that the asylum procedure has not been concluded. Under section 51(2) of the Immigration Act, a first asylum application has suspensive effect on the enforcement of the expulsion order, although this does not mean that the expulsion order is not enforceable. Unenforceability refers to a permanent state and not to a temporary period such as the term of the asylum procedure.
>
> ...
>
> Under section 54(6) of the Immigration Act (Act no. II of 2007), detention ordered under the immigration laws shall be terminated if (a) the expulsion or transfer has become viable; (b) when it becomes evident that the expulsion or transfer cannot be executed; or (c) the detention has exceeded six ... months.
>
> None of the reasons for the termination [of the detention] listed in the above-cited paragraph exists. The expulsion or transfer is [actually] not viable because of the pending asylum application; furthermore, there will be [at last] no reason preventing the execution of the expulsion or transfer if the foreign national [eventually] receives no protection in the asylum procedure, since the procedure has failed to prove that Serbia is no safe third country, [and Serbia], according to the information provided by the immigration authority, is ready to re-admit the foreign national pursuant to the Agreement between Serbia and the European Union. Lastly, the time that has elapsed since the beginning of the detention is less than six or twelve months ...
>
> On the basis of the information available to the court, the foreign national, according to his statement made during the first interview, intended to travel to Western Europe to find employment. He did not admit to this during the hearing but the court has no information which would support the foreign national's [statement departing from the earlier one].

In view of this, it is reasonable to assume that the foreign national would delay or prevent the enforcement of the expulsion order. He is unwilling to comply with the expulsion order voluntarily, therefore it can be established that the expulsion order cannot be enforced by way of applying sections 48 (2) or 62 (1) of the Immigration Act [that is, seizure of travel document or designated residence].

The court has found that the conditions for the continuation of the detention lawfully ordered under section 54 of Act no. II of 2007 continue to be met."

14. After interviews on the merits of their applications on 28 February 2012, on 19 March 2012 the applicants' asylum applications were dismissed, but they were granted subsidiary protection ("*oltalmazott*") under section 12 (1) of Act no. LXXX of 2007 (the "Asylum Act"). This decision was delivered and became final on 23 March 2012.

The applicants' detention ended on 24 March 2012.

II. RELEVANT DOMESTIC LAW

15. The Immigration Act, as in force at the material time, provided as follows:

Section 43

"(2) The immigration authority – with the exceptions set out in this law – may order the expulsion of a third-country national under the immigration laws ... [if the person]

a) has crossed the frontier of Hungary illegally ..."

Section 46

"(1) The expulsion order shall specify:

a) the criteria to be considered for a decision based on section 45 (1) – (6)

...

(2) Expulsion orders may not be appealed; however, a petition for judicial review may be lodged within eight days of the date when the resolution was delivered. The court shall adopt a decision within fifteen days counted from receipt of the petition.

..."

Section 51

"(1) The *refoulement* or expulsion shall not be ordered or executed to the territory of a country that fails to satisfy the criteria of a safe country of origin or a safe third country regarding the person in question, in particular where the third-country national is likely to be subjected to persecution on the grounds of his or her race, religion, nationality, social affiliation or political conviction, or to the territory of a country or to the frontier of a territory where there is substantial reason to believe that the *refouled* or expelled third-country national is likely to be subjected to the death penalty, torture or any other form of cruel, inhuman or degrading treatment or punishment (*non-refoulement*).

(2) The *refoulement* or expulsion of a third-country national whose application for refugee status is pending may only be executed if his or her application has been refused by a final and binding decision of the asylum authority."

Section 52

"(1) The immigration authority shall take into account the principle of *non-refoulement* in the proceedings relating to the ordering and enforcement of expulsion."

Section 54

"(1) In order to secure the enforcement of the expulsion, or transfer or *refoulement* under the Dublin Regulation (hereinafter: transfer), the immigration authority is entitled to detain a third-country national if

...

b) he or she refuses to leave the country, or for other substantiated reasons it can be assumed that he or she is delaying or preventing the enforcement of expulsion (risk of absconding);

...

(2) Before ordering detention under section (1) a) or b), the immigration authority shall consider whether the expulsion or transfer may be enforced by applying the provisions of section 48 (2) [confiscation of travel document] or section 62 (1) [confinement at a designated residence].

...

(4) Detention under immigration laws may be ordered for a maximum of seventy-two hours, and may be extended until the expulsion or transfer of the third-country national for a maximum of thirty days in each case by the court having jurisdiction at the place of detention.

...

(6) The detention ordered under immigration laws shall be terminated:

a) when the conditions for carrying out the expulsion or transfer are secured;

b) when it becomes evident that the expulsion or transfer cannot be executed;

c) when six months or, if the conditions in paragraph (5) are met, twelve months have elapsed after it was ordered."

Section 62

"(1) The immigration authority shall order the confinement of a third-country national at a designated residence, if

a) the return or expulsion of the third-country national concerned cannot be ordered and executed due to commitments of Hungary imposed upon it in international treaties and conventions;

b) the third-country national is a minor who should be detained;

c) the third-country national should be detained, in consequence of which his or her minor child residing in Hungary would be left unattended;

d) the maximum statutory period of detention has passed, but there are still grounds for his or her detention;

e) the third-country national has a residence permit granted on humanitarian grounds;

f) has been expelled and does not have the financial resources to support himself and/or does not have adequate dwelling.”

16. The Asylum Act, as in force at the material time, provides as follows:

Section 2

“For the purposes of this Act

i) “safe third country” means a country in respect of which the asylum authority is satisfied that the applicant is treated according to the following principles:

...

id) the possibility exists to apply for recognition as refugee; and persons recognised as refugees receive protection in accordance with the Geneva Convention...”

Section 12

“(1) Hungary shall grant subsidiary protection to a foreigner who does not satisfy the criteria for recognition as a refugee but there is a risk that, in the event of his or her return to his or her country of origin, he or she would be exposed to serious harm and is unable or, owing to fear of such risk, unwilling to avail himself or herself of the protection of his or her country of origin.”

Section 51

“(1) If the conditions for the application of the Dublin Regulations are not present, the asylum authority shall decide on the admissibility of the application for refugee status...

(2) An application is not admissible if

a) the applicant is a national of one of the member states of the European Union;

b) the applicant was recognised by another member state as a refugee;

c) the applicant was recognised as a refugee by a third country, provided that this protection exists at the time of the assessment of the application and the third country concerned admits the applicant;

d) following a final decision of refusal, the same person submits an application on the same factual grounds;

e) there is a country that shall be considered a safe third country with respect to the applicant.”

Section 56

“(1) The asylum authority in its ruling to admit an application to the in-merit phase shall specify the applicant’s designated place of accommodation, in a private lodging – upon request – or, in the absence thereof, a reception centre or some other place of

> accommodation maintained under contract, except if the applicant is subject to a coercive measure restricting personal freedom ... or a measure restricting personal freedom ordered earlier in aliens administration procedure."

THE LAW

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

17. The applicants complained that their detention had been arbitrary and not remedied by appropriate judicial review, in breach of Article 5 §§ 1 and 4 of the Convention.

The Government contested those arguments.

18. The Court considers that the application falls to be examined under Article 5 § 1 (f) of the Convention alone (see *Lokpo and Touré v. Hungary*, no. 10816/10, § 10, 20 September 2011), which reads as relevant:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

19. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties

(a) The applicants

20. The applicants were of the view that their detention after the asylum proceedings began (i.e. 10 November 2011) and, at the latest, from the asylum authority's decision to admit the case to the "in-merit phase" (i.e. after 12 December 2012) had been unlawful. In particular, they submitted that their detention with a view to ensuring the enforcement of the expulsion order (section 54 (1) of the Immigration Act) had no longer been justified under the domestic law once they had filed an asylum request, since from

then on the expulsion could only take place after a decision by the asylum authority rejecting the request (section 51 (2) of the Immigration Act), and certainly no longer justified once the asylum authority had determined that there was no safe third country (since from then on it was no longer possible for the immigration authority to take steps with a view to the applicants' expulsion to Serbia in the light of section 51 (1) of the Immigration Act). In these circumstances, the detention should have been terminated (as per section 54 (6) b) of the Immigration Act). In other words, their continued detention notwithstanding the suspension of the deportation process amounted to an arbitrary deprivation of liberty.

21. Moreover, their detention was in any event unlawful, because there had been no risk of absconding on their side (see section 54 (1) b of the Immigration Act), or at least no assessment of such a risk had taken place.

22. Furthermore, their detention fell short of being "lawful" also because no test of necessity (that is, an examination if less restrictive measures would have sufficed) had been performed by the authorities (see section 54 (2) of the Immigration Act).

(b) The Government

23. The Government pointed out at the outset that it was not true that Serbia had refused the applicants' readmission. Under international law, the Serbian authorities were to respond to the Hungarian immigration authorities' request within two days. However, once the statutory retention time had expired, the immigration authority had to decide on the applicants' expulsion and the measures securing the enforceability of the expulsion (that is, the applicants' detention under the immigration rule). Serbia had eventually recognised its obligation of readmission. The applicants were not transferred only because meanwhile they had applied for asylum.

24. Furthermore, the applicants' expulsion had not become unenforceable as such when they applied for asylum. Unenforceability would have been a permanent, rather than temporary, hindrance of enforcement.

In the circumstances, the asylum procedure should be considered as encompassing the adjudication of whether the conditions for expulsion were met. In other words, it had a function akin to that of the judicial review of the expulsion order itself (which legal remedy was not used by the applicants). This means that the asylum procedure formed, in that sense, part of the series of measures aimed at the enforcement of expulsion.

25. Lastly, the Government pointed out that the applicants had incorrectly argued that by ordering the "in-merit" examination of their case, the asylum authority had admitted on 12 December 2011 that Serbia was not a safe third country and therefore their expulsion had become unenforceable as such. The notion of "safe third country" was not the same when considering the enforceability of an expulsion order and when

assessing an application for asylum. In the immigration procedure, a country was qualified as a safe third country, in particular if the person concerned was not threatened by persecution, torture, or cruel, inhuman or degrading treatment or punishment. By contrast, for a country to be a safe third country in an asylum procedure, it was to have, additionally, a proper asylum administration system in place. Therefore, when admitting their asylum applications into the "in-merit" phase, the asylum authority had applied a more restrictive definition – which did not necessarily mean that there was no safe third country from an immigration perspective. On the contrary, the Nyírbátor District Court established that Serbia might have been a safe third country from the immigration perspective.

2. *The Court's assessment*

(a) General principles

26. Article 5 enshrines a fundamental human right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty and no deprivation of liberty will be lawful unless it falls within one of those grounds (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, ECHR 2008). One of the exceptions, contained in subparagraph (f), permits the State to detain aliens "to prevent [their] effecting an unauthorised entry into the country" or "against whom action is being taken with a view to deportation".

27. As regards the first limb of Article 5 § 1 (f), the Court has held in *Saadi* (cited above) as follows:

> "65. [... U]ntil a State has "authorised" entry to the country, any entry is "unauthorised" and the detention of a person who wishes to effect entry and who needs but does not yet have authorisation to do so can be, without any distortion of language, to "prevent his effecting an unauthorised entry". It does not accept that as soon as an asylum-seeker has surrendered himself to the immigration authorities, he is seeking to effect an "authorised" entry, with the result that detention cannot be justified under the first limb of Article 5 § 1 (f). To interpret the first limb of Article 5 § 1 (f) as permitting detention only of a person who is shown to be trying to evade entry restrictions would be to place too narrow a construction on the terms of the provision and on the power of the State to exercise its undeniable right of control referred to above. Such an interpretation would, moreover, be inconsistent with Conclusion no. 44 of the Executive Committee of the United Nations High Commissioner for Refugees' Programme, the UNHCR's Guidelines and the Committee of Ministers' Recommendation (see paragraphs 34-35 and 37 above), all of which envisage the detention of asylum-seekers in certain circumstances, for example while identity checks are taking place or when elements on which the asylum claim is based have to be determined.
>
> 66. While holding, however, that the first limb of Article 5 § 1 (f) permits the detention of an asylum-seeker or other immigrant prior to the State's grant of

authorisation to enter, the Court emphasises that such detention must be compatible with the overall purpose of Article 5, which is to safeguard the right to liberty and ensure that no one should be dispossessed of his or her liberty in an arbitrary fashion.”

28. As to the second limb of Article 5 § 1 (f), the Convention does not require that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary, for example to prevent his committing an offence or fleeing. In this respect Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c) (see *Čonka v. Belgium*, no. 51564/99, § 38, 5 February 2002). Once the action is being taken with a view to deportation, it is immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see *Chahal v. the United Kingdom*, 15 November 1996, § 112, *Reports of Judgments and Decisions* 1996-V).

29. Nevertheless, any deprivation of liberty will be justified only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (see *Chahal*, cited above, § 113; *Auad v. Bulgaria*, no. 46390/10, § 128, 11 October 2011).

30. Moreover, where the “lawfulness” of detention is at issue, including the question whether “a procedure prescribed by law” has been followed, the Convention refers first to national law and lays down the obligation to conform to the substantive and procedural rules of national law. A detention is lawful if it was ordered in compliance with the substantive and procedural rules of national law and it is not arbitrary (see *Suso Musa v. Malta*, no. 42337/12, § 92, 23 July 2013).

31. Where the Convention refers directly back to domestic law, as in Article 5, compliance with such law is an integral part of the obligations of the Contracting States. The Court is accordingly competent to satisfy itself of such compliance in cases where this analysis is relevant. The scope of its task in this connection, however, is subject to limits inherent in the logic of the European system of protection. Here, the Court reiterates that although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should review whether this law has been complied with (see *Włoch v. Poland*, no. 27785/95, § 110, ECHR 2000-XI; *Galliani v. Romania*, no. 69273/01, § 45, 10 June 2008; *Eminbeyli v. Russia*, no. 42443/02, § 44, 26 February 2009; and *Longa Yonkeu v. Latvia*, no. 57229/09, § 121, 15 November 2011). In essence, the Court will limit its examination to whether the interpretation of the legal provisions relied on by the domestic authorities was not arbitrary or unreasonable (see *Włoch*, cited above, § 116; *Rusu v. Austria*, no. 34082/02, § 55, 2 October 2008).

32. Compliance with national law is not, however, sufficient: Article 5 § 1 additionally requires that any deprivation of liberty should be

in keeping with the purpose of protecting the individual from arbitrariness. No detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in that context extends beyond lack of conformity with national law: a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi*, cited above, § 67).

33. While the Court has not previously formulated a global definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis (see *Saadi*, cited above, §§ 67-68; *Mooren v. Germany* [GC], no. 11364/03, § § 77, 9 July 2009).

34. To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate, bearing in mind that "the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country"; and the length of the detention should not exceed that reasonably required for the purpose pursued (see *Saadi*, cited above § 74; *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009; and *Louled Massoud v. Malta*, no. 24340/08, § 62, 27 July 2010).

35. Lastly, the Court recalls that it has found violations of Article 5 § 1 (f) under its second limb on the basis that the applicants' detention pending asylum proceedings could not have been undertaken for the purposes of deportation, given that national law did not allow for deportation pending a decision on asylum (see *R.U. v. Greece*, no. 2237/08, §§ 88-96, 7 June 2011; *Ahmade v. Greece*, no. 50520/09, §§ 142-144, 25 September 2012).

(b) Application of those principles to the present case

36. The Court observes that the applicants' expulsion was ordered on 6 November 2011. Simultaneously, the execution of this measure was suspended, and the applicants' detention was ordered with a view to their eventual deportation, that is, the execution of the expulsion order.

37. Regarding the first three days of the applicants' detention (that is, up until 8 November 2011), the Court is satisfied that the measure served the purpose of detaining a person "against whom action is being taken with a view to deportation", within the meaning of the second limb of Article 5 § 1 (f) (cf. the order of 6 November 2011 (see paragraph 7 above), making reference to section 54(1)(b) of the Immigration Act, quoted in paragraph 15 above). Indeed, at that point in time the applicants had not yet requested asylum and were no more than illegal border-crossers without identity documents. For the Court, this phase of the applicants' detention discloses no appearance of any arbitrariness (see *Saadi*, cited above, §§ 65-66).

38. As regards the applicants' further detention, the Court emphasises that detention "with a view to deportation" can only be justified as long as the deportation is in progress and there is a true prospect of executing it (see paragraph 29 above). It notes that the applicants applied for asylum on 9 November 2011, formal asylum proceedings started on 10 November 2011, and the case was admitted to the "in-merit" phase on 12 December 2011. For the Court, the pending asylum case does not as such imply that the detention was no longer "with a view to deportation" – since an eventual dismissal of the asylum applications could have opened the way to the execution of the deportation orders. The detention nevertheless had to be in compliance with the national law and free of arbitrariness.

39. As regards compliance with the domestic law, the Court notes that on 8 November, 29 November and 30 December 2011, 1 February and 3 March 2012 the Kiskunhalas and the Nyírbátor District Courts reviewed the lawfulness of the applicants' deprivation of liberty. However, all the decisions up to, and including, the one of 1 February 2012 were only concerned with the endorsement of the Csongrád County Police department's original decision of 6 November 2011. According to this latter, the applicants were to be detained because they had entered the country illegally and without documents, and were deemed to be potentially frustrating their expulsion. Moreover, the decisions of 29 November and 30 December 2011 did not mention the on-going asylum case at all, and the one of 1 February 2012 only made a factual reference to it.

40. For the Court, the period until the prolongation of 3 March 2012 raises a serious question of lawfulness in terms of compliance with the relevant rules of the domestic law. Under sections 54(1)(b), 54(2) and 54(6)(b) of the Immigration Act (see paragraph 15 above) – read in conjunction and in the light of the circumstances of the case – to validly prolong the applicants' detention, the domestic authorities had to verify that they were indeed frustrating the enforcement of the expulsion; that alternative, less stringent measures were not applicable, and whether or not the expulsion could eventually be enforced.

41. Instead of these criteria having been addressed, the applicants' continuing detention was in essence based on the reasons contained in the first detention order by the Csongrád County Police Department, that is, the risk that they might frustrate their expulsion. However, very little reasons, if any, were adduced to show that the applicants were actually a flight risk. Moreover, none of these decisions dealt with the possibility of alternative measures or the impact of the on-going asylum procedure. The extension decision of 1 February 2012 was indeed the first one to state that the expulsion had been suspended due to the asylum application, but the court drew no inference from this fact as to the chances to enforce, at one point in time, the expulsion.

42. For the Court, it does not transpire from the reasoning of the decisions given between 8 November 2011 and 1 February 2012 that the domestic courts duly assessed whether the conditions under the national law for the prolongation of the applicants' detention were met, with regard to the specific circumstances of the case and the applicants' situation.

43. Since the requisite scrutiny as prescribed by the law was not carried out on these occasions of prolonging the applicants' detention, the Court considers that it is not warranted to examine the applicants' other arguments or whether the detention could otherwise be characterised as arbitrary, for example, because the actual progress of the expulsion process was not demonstrated.

44. The above considerations enable the Court to conclude that there has been a violation of Article 5 § 1 of the Convention in the period between 8 November 2011 and 3 March 2012.

In view of this finding, it is not necessary to address the additional question whether the subsequent period of detention was justified under that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

46. Each applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

47. The Government contested this claim.

48. The Court considers that the applicants must have sustained some non-pecuniary damage on account of the distress suffered and, on the basis of equity, it awards them each EUR 7,500 under this head.

B. Costs and expenses

49. The applicants, jointly, also claimed altogether EUR 3,395 for the costs and expenses incurred before the Court. This sum corresponds to 25.5 hours of legal work billable by their lawyer at an hourly rate of EUR 130, plus EUR 80 in clerical costs.

50. The Government contested this claim.

51. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown

that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the full sum claimed.

C. Default interest

52. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention concerning the period from 8 November 2011 to 3 March 2012;

3. *Holds* that it is not necessary to examine the period from 3 to 24 March 2012;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) to each applicant, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) to the applicants jointly, EUR 3,395 (three thousand three hundred and ninety-five euros), plus any tax that may be chargeable to the applicants, 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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 September 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Işıl Karakaş
Deputy Registrar	President