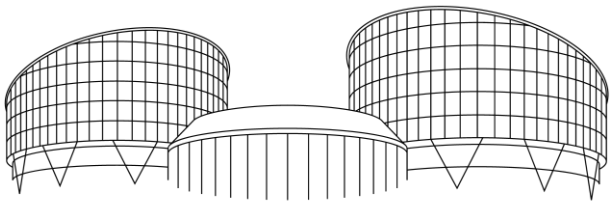

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF AL-TAYYAR ABDELHAKIM v. HUNGARY

(Application no. 13058/11)

JUDGMENT

STRASBOURG

23 October 2012

FINAL

23/01/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Al-Tayyar Abdelhakim v. Hungary,

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

Ineta Ziemele, *President,*
Danutė Jočienė,
Isabelle Berro-Lefèvre,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

and Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 2 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 13058/11) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Palestinian national, Mr Alaa Al-Tayyar Abdelhakim ("the applicant"), on 21 February 2011.

2. The applicant was represented by Ms B. Pohárnok, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicant alleged, in particular, that his detention had not been lawful or justified, in breach of Article 5 § 1 of the Convention.

4. On 4 November 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. On 14 February 2012 the AIRE Centre and UNHCR were granted leave to intervene in the proceedings as third parties (Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1985 and lives in Debrecen.

7. On 10 July 2010 the applicant arrived at Záhony border crossing point – situated on the Ukrainian-Hungarian border – and attempted to cross the border to Hungary in possession of a travel document issued by the Lebanese government for Palestinian refugees which he presented to the officials of the Border Policing Field Unit. In the course of border control, the Hungarian authorities found that a Greek residence permit in the travel document was blank and the exit stamp forged. He was placed under short term arrest and interviewed with the assistance of a translator. In the interview, apart from presenting his personal particulars, the applicant told the authority that he had come from a refugee camp in Tripoli, Lebanon, explained his travel route, and stated that he was not aware of the fact that his passport had been forged.

8. On the same date he submitted an asylum application. He referred to the security problems he had to face in Lebanon, requested the examination of his situation and relied on the fact that he was a stateless person, a Palestinian from a refugee camp.

9. The case was subsequently taken over by the Alien Policing Department of the Szabolcs-Szatmár-Bereg County Police Headquarters. On 13 July 2010 this department forwarded the applicant's asylum request to the Asylum Authority of the Office of Immigration and Nationality ("OIN").

10. Meanwhile, still on 10 July 2010 the Border Policing Field Unit sent an enquiry to the OIN to find out whether the principle of "*non-refoulement*" was applicable in the applicant's case and his expulsion to Ukraine should be halted. OIN replied in the negative. Subsequently the applicant's expulsion to Ukraine was ordered together with the imposition of a two-year entry ban, as sanction for illegal border crossing. The expulsion order was in essence based on the Readmission Agreement between Hungary and Ukraine and the non-applicability of the "*non-refoulement*" principle. Simultaneously, the execution of the expulsion was however suspended until the necessary means and conditions were secured, but for not longer than six months. The applicant's alien policing detention was then ordered for 72 hours on the ground that the police had initiated his deportation and that it was necessary to keep him under the authorities' supervision, as a measure to secure the intended expulsion, pending the Ukrainian authorities' reply to the Hungarian return initiative. Section 54(1) (b) of the Third Country Nationals Act (see below) was referred to in the decision as the legal ground for the detention, but without substantiating any relevant factual element. The applicant was committed to the Nyírbátor alien policing facility.

11. On 12 July 2010 the police filed a motion based on section 54(3) of the Third Country Nationals Act (see below) with the Nyírbátor District Court for an extension of the duration of the alien policing detention beyond the 72-hour time-limit. According to the motion, the reason for prolongation

was the fact that the applicant had applied for asylum, which rendered unenforceable his readmission to Ukraine and thus his expulsion. His detention was argued to be necessary until the requirements for his expulsion could be secured.

12. On the same day the court granted the extension until the execution of expulsion was possible or until 8 August 2010. It found that it was necessary to extend the alien policing detention, which, in the court's view, had lawfully been ordered under section 55 of the Third Country Nationals Act (see below) although the police had in fact never relied on this provision. It took into account the circumstances of the applicant's interception, his forged travel documents and the fact that the Ukrainian authorities had agreed to his readmission, although due to the pending asylum application it could not be implemented. Sections 54(1)(b), 54(3) and 58(2) of the Third Country Nationals Act constituted the legal ground for the decision, which was final.

13. The applicant renewed his application for asylum on 14 July 2010.

14. On 23 July, 31 August, 4 and 29 October 2010 the District Court further prolonged the applicant's detention, without hearing him. On each occasion, it held that the initial reasons for detention given in the first court ruling were still in place, without giving any further elements.

The applicant submitted that during his incarceration he had challenged his detention on several occasions, requesting that he be relocated to an open reception centre.

15. The preliminary interview of the applicant in the asylum procedure was conducted on 21 July 2010. On 26 July 2010 the OIN's Asylum Authority referred the application to the in-merit procedure, establishing its admissibility for the purposes of section 55(1) of the Asylum Act (see below). Despite this fact, he remained in alien policing detention, although under section 56(1) of the Asylum Act, meritorious asylum seekers are in principle entitled to accommodation in an open refugee reception centre.

16. According to section 55(3) of the Asylum Act, once the asylum application has been referred to the in-merit procedure, the alien policing authority shall, at the initiative of the asylum authority, terminate the detention of the asylum seeker's detention. In the applicant's case, however, no such initiative was put in place until 23 November 2010.

17. On 25 October 2010 the Asylum Authority dismissed the applicant's asylum claim, while establishing that the principle of "*non-refoulement*" was applicable. When the application was introduced to the Court, judicial review of this decision was still under way.

18. On 29 October 2010 the District Court again extended the applicant's detention until the implementation of his expulsion or until 6 December 2010, confirming that the initial reasons for the alien policing detention were still in place.

19. On 18 November 2010 the applicant's lawyer requested the court to terminate the applicant's detention. He referred to the Asylum Authority's decision entailing "*non-refoulement*". No ruling has been given by the court on this request.

20. On 23 November 2010 the Asylum Authority finally initiated the termination of the applicant's detention. It referred to its decision of 25 October 2010 in which it had established that the principle of "*non-refoulement*" was applicable. It relied on section 55(3) of the Asylum Act. On the same day the police desisted from expelling the applicant and released him.

II. RELEVANT DOMESTIC LAW

A. Act no. II of 2007 on the Admission and Right of Residence of Third Country Nationals (Third Country Nationals Act)

Section 51

"(2) Any third country national whose application for refugee status is pending may be turned back or expelled only if his or her application has been refused by a final and enforceable decision of the refugee authority."

Section 54

"(1) In order to secure the expulsion of a third-country national, the immigration authority is entitled to detain a person if: ...

b) he/she has refused to leave the country, or, based on other substantiated reasons, is allegedly delaying or preventing the enforcement of expulsion; ...

(3) Detention under the immigration laws may be ordered for a maximum duration of 72 hours and extended by the court of jurisdiction by reference to the place of detention until the third-country national's departure, or for a maximum of 30 days.

(4) Detention ordered under the immigration laws shall be terminated immediately:

a) if the conditions for carrying out expulsion are secured;

b) if it becomes evident that expulsion cannot be executed; or

c) after six months from the date when the detention was ordered."

Section 55

"(1) The immigration authority may order the detention of a third-country national prior to expulsion in order to secure the conclusion of the immigration proceedings pending, if his/her identity or the legal grounds of his/her residence has not been conclusively established."

B. Act no. LXXX of 2007 on Asylum (Asylum Act)

Section 51

"(1) Where the Dublin Regulations cannot be applied, the decision to determine as to whether an application is considered inadmissible lies with the refugee authority.

(2) An application shall be considered inadmissible if:

a) the applicant is a national of any Member State of the European Union;

b) the applicant was granted refugee status in another Member State;

c) the applicant was granted refugee status in a third country, where this protection also applies at the time of examination of the application, and the country in question is liable to re-admit the applicant;

d) the applicant has lodged an identical application after a final refusal."

Section 55

"(1) If the refugee authority finds an application admissible, it shall proceed to the substantive examination of the application ...

(3) If the refugee authority proceeds to the substantive examination of the application and the applicant is detained by order of the immigration authority, the immigration authority shall release the applicant at the initiative of the refugee authority."

Section 56 (The in-merit procedure)

"(1) In the order admitting the request to the in-merit phase, the refugee authority shall assign the asylum seeker – upon the latter's request – to a private accommodation or, in the absence of such, to a dedicated facility or another accommodation, unless the asylum-seeker is subjected to a ... measure restraining personal liberty. ...

(2) During the in-merit examination and the eventual judicial review of the decision adopted therein, the asylum seeker is obliged to stay at the designated accommodation.

(3) The in-merit procedure shall be completed within two months from the adoption of the decision ordering it."

C. Government Decree no. 301/2007 (XI.9.) on the Implementation of the Asylum Act

Section 64(2)

"If the foreign national expresses his/her intention to file an application for recognition as a refugee during the alien policing procedure ... his/her statement shall be recorded by the proceeding authority, which shall then inform without delay the refugee authority and the reception centre responsible for accommodating those being in the preliminary asylum procedure, forwarding the minutes and the fingerprint recording sheet at the same time."

THE LAW

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

21. The applicant complained that he had been unlawfully detained from 10 July to 23 November 2010 and had been denied an effective judicial review of that detention. He relied on Article 5 §§ 1 and 4 of the Convention. The Government contested that argument.

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

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

22. The Government argued that the application should be declared inadmissible because the applicant had failed to bring his claim concerning the alleged unlawfulness of his detention before any of the Hungarian authorities either prior to or after the termination of his detention. In particular, he had not requested judicial review of the lawfulness of his detention or the termination of his detention until 23 November 2010, when such a request was already devoid of any purpose, the applicant having already been released. Moreover, he had not raised his claims concerning the lawfulness of his detention after the referral of his asylum application to the in-merit proceedings. Furthermore, he had failed to avail himself of a remedy under section 20 of the Administrative Procedure Act, by virtue of which it could have been clarified whether the asylum authority's failure to initiate his release had indeed been contrary to the law. Lastly, the applicant could have sought the determination of the unlawfulness of his detention and the payment of compensation for it in an official liability action under section 349 of the Civil Code, but he had not done so.

23. The applicant submitted that he had challenged his detention on several occasions and requested to be placed in an open reception centre; he had also lodged a request for termination of his detention with the District Court on 18 November 2010. In any event, since the competent court had performed *ex officio* monthly judicial reviews of his detention on five occasions, and had had the obligation to examine all aspects of the

lawfulness of the detention, it would have been superfluous for him to request judicial review on his own motion, or to expressly refer to all relevant legal arguments in the requests he had submitted.

24. Moreover, in the applicant's position a motion under section 20 of the Administrative Procedures Act would not have been an effective remedy, as this procedure – lengthy in any case – was only applicable to an alleged failure of an administrative authority to proceed (that is, to an alleged administrative omission), which was not the case. Moreover, neither the supervisory administrative body nor the court acting in its stead had the competence to determine the unlawfulness of the detention or order his release.

25. Lastly, the applicant asserted that he had not been obliged to embark on a cumbersome official liability case, since – according to the civil courts' jurisprudence – tort liability could have only been established if the unlawfulness of the impugned administrative action or omission had already been determined.

26. The Court notes that the applicant requested release, that is, relocation to an open reception centre, on several occasions (see paragraph 14 above). His situation was subjected to periodic judicial reviews at the statutory intervals. Furthermore, on 18 November 2010 his lawyer requested the review of the applicant's detention, making specific reference to his status under asylum law. In these circumstances, the Court is not persuaded by the Government's arguments reproaching the applicant for not raising the substance of his complaints before the domestic courts, especially in view of the fact that the impugned detention was in any event susceptible to a fully-fledged periodic judicial review.

27. As regards the Government's reference to section 20 of the Administrative Procedure Act, the Court recalls that it has already found that the non-pursuit of the remedy available under this provision did not amount to a failure to exhaust domestic remedies in this context (see *Lokpo and Touré*, cited above, § 13). Lastly, the Court would emphasise that an *a posteriori* official liability cannot be considered an effective remedy to be exhausted in respect of the right to secure release from detention.

28. It follows that the application cannot be rejected for non-exhaustion of domestic remedies. Moreover, it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

(a) The applicant

29. The applicant argued that his detention under section 54(1)(b) of the Third Country Nationals Act had been unlawful in that it could not serve the purpose of securing his expulsion, since he had submitted an asylum application on arrival and these pending proceedings had constituted a legal obstacle to his expulsion. In any event, his detention could not possibly be longer than six months (cf. section 54(4) of the Third Country Nationals Act) whereas those pending proceedings had been very unlikely to finish in this time frame, given the statistics.

30. Moreover, he added that had section 55(3) of the Asylum Act been applied properly, his release should have been initiated by the refugee authority once his asylum application had been referred to in-merit proceedings on 26 July 2010. Its failure to do so had rendered his detention unlawful in any case. However, even if one accepted that under section 55(3) there was no formal obligation for the refugee authority to initiate the termination of detention, the fact remained that the law was ambiguous and resulted in legal uncertainty.

31. The applicant also submitted that the initial grounds, if any, for his detention had ceased to exist at the latest when the refugee authority had established the applicability of the *non-refoulement* principle in the in-merit proceedings, whereby his expulsion became excluded as such.

32. Lastly, the applicant maintained that he had no effective right to have the lawfulness of his detention reviewed, in breach of Article 5 § 4, because the court had ignored the facts that he had applied for asylum, that his application had reached the in-merit phase, and that a prohibition on his *refoulement* was in place – that is, they did not perform an effective review and repeatedly gave only stereotypical reasoning.

(b) The Government

33. The Government submitted at the outset that no asylum seekers were systematically or indiscriminately subjected to alien policing detention without genuine grounds for their expulsion.

They argued that the applicant's detention had had a clear legal basis under Hungarian law and been justified for the purposes of Article 5 § 1 (f). Section 54(1)(b) of the Third Country Nationals Act did not include a "necessity test", but only a "purpose test", which was however in accordance with the requirements of Article 5 § 1 (f). Under Hungarian law, an alien could be detained "in order to" secure his expulsion. The purpose of the applicant's detention had been to secure the enforcement of his expulsion, ordered on account of his illegal entry with falsified travel

documents, and to prevent his illegal stay in, or unauthorised entry into, other countries of the Schengen Area. This purpose had remained valid notwithstanding his request for asylum and even after the asylum proceedings had reached the in-merit stage.

34. As to the legal basis for the applicant's continued detention during the in-merit proceedings, the Government argued that it was clearly not the intention of the legislature to impose an unconditional obligation on the asylum authority to initiate the release of all applicants for asylum upon the admission of their application to the in-merit procedure. Should that be the case, it would have opened a wide avenue for abuse of the asylum proceedings, as practically every illegal immigrant could have put an end to his or her detention (and thus to the enforcement of expulsion) simply by filing a manifestly ill-founded request for asylum.

35. Finally, the Government submitted that the immigration authority had not been able to enforce the asylum authority's decision of 25 October 2010 establishing the applicability of the *non-refoulement* principle, since the applicant had lodged an appeal against the decision. The immigration authority had released him as soon as he had been assigned an accommodation at the Debrecen Refugee Reception Centre.

(c) The third parties

(i) The AIRE Centre

36. The AIRE Centre observed that the detention of asylum seekers in Europe had become routine, although asylum seekers in the European Union had a right under the EU law to remain on the territory pending the determination of their claims. It pointed out that, in relation to EU Member States, the procedure for detaining an individual must be in accordance with EU law. However, as a part of the EU *Asylum Acquis*, Article 18 of Directive 2005/85/EC ("the Procedures Directive") stipulates that no individual should be held in detention on the sole basis that he is seeking asylum and that all asylum seekers have the right to judicial review of their detention. In addition, Article 7 § of Directive 2003/9/EC ("the Reception Conditions Directive") recognises the right of asylum seekers to move freely within the territory of the host Member State; they may be confined only when it proves necessary. In the AIRE Centre's view, these provisions taken together indicate that the detention of asylum seekers is to be avoided and that any detention is subject to an examination of its necessity to achieve its given purpose. Moreover, the AIRE Centre emphasised the relevance of Article 15 § 4 of Directive 2008/115/EC ("the Returns Directive"), as it states that a detention will no longer be permitted when there is no "reasonable prospect of removal" or the legal or other considerations justifying the detention no longer exist.

(ii) UNHCR

37. UNHCR expressed its concern that Hungary imposed prolonged periods of administrative detention upon asylum-seekers without providing avenues to effectively challenge the detention once ordered or considering alternatives to detention. UNHCR stressed that under international human rights and refugee law (in particular Articles 31 to 33 of the 1951 Convention Relating to the Status of Refugees) as well as Hungarian national law, asylum seekers could not be deported or expelled until a final decision was rendered on their claims, determining that they were not in need of international protection. Moreover, Hungarian law only permitted detention with a view to deportation where that deportation could be executed, which was not the case during the asylum proceedings. Therefore, UNHCR shared the applicant's view that the Hungarian practice of detaining asylum seekers for the purposes of expulsion was not in line with the relevant national and international law.

2. The Court's assessment

38. The Court observes that the subject matter of the present application is very similar to that of the above-mentioned *Lokpo and Touré* case. In that judgment, the Court held as follows:

> "19. In the present case, the Court notes that there is dispute between the parties as to the exact meaning and correct interpretation of section 55(3) of the Asylum Act, which was the legal basis of the applicants' continued detention, and reiterates that it is primarily for the national authorities to interpret and apply national law.
>
> 20. Should the applicants' interpretation of that provision be right, the Court would observe that the applicants' detention was in all likelihood devoid of a legal basis and thus in breach of Article 5 § 1 of the Convention. However, even assuming that it is the Government's interpretation of that provision that is correct – i.e. that there is no obligation on the refugee authority to initiate the release of those asylum-seekers whose cases have reached the in-merit phase – the Court considers that the applicants' detention was not compatible with the requirement of "lawfulness" inherent in Article 5 of the Convention.
>
> 21. The Court reiterates that the formal "lawfulness" of detention under domestic law is the primary but not always the decisive element in assessing the justification of deprivation of liberty. It must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1, which is – as mentioned before – to prevent persons from being deprived of their liberty in an arbitrary fashion (see *Khudoyorov*, cited above, § 137).
>
> 22. In regard to the notion of arbitrariness in this field, the Court refers to the principles enounced in its case-law (see in particular *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 67 to 73, ECHR 2008-...) and emphasises that "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 purpose of preventing unauthorised entry of the person to the country; 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 » (see *Amuur*, § 43); and the length of the detention should not exceed that reasonably required for the purpose pursued". The Court would indicate in this context that it is not persuaded that the applicants' detention – which lasted five months purportedly with a view to their expulsion which never materialised – was a measure proportionate to the aim pursued by the alien administration policy.
>
> 23. In the present application the Court notes that the applicants' detention was prolonged because the refugee authority had not initiated their release. That authority's non-action in this respect was however not incarnated by a decision, accompanied by a reasoning or susceptible to a remedy.
>
> 24. The reasons underlying the applicants' detention may well be those referred to by the Government, that is to comply with European Union standards and at the same time to counter abuses of the asylum procedure; however, for the Court the fact remains that the applicants were deprived of their liberty by virtue of the mere silence of an authority – a procedure which in the Court's view verges on arbitrariness. In this connection the Court would reiterate that the absence of elaborate reasoning for an applicant's deprivation of liberty renders that measure incompatible with the requirement of lawfulness inherent in Article 5 of the Convention (see *mutatis mutandis Darvas v. Hungary*, no. 19547/07, § 28, 11 January 2011; and, in the context of Article 5 § 3, *Mansur v. Turkey*, 8 June 1995, § 55, Series A no. 319-B). It follows that the applicants' detention cannot be considered "lawful" for the purposes of Article 5 § 1 (f) of the Convention."

39. Noting that in the instant case the applicant was deprived of his liberty for a substantial period of time essentially for the same reason as above, that is, because the refugee authority had not initiated his release, the Court cannot but conclude that the procedure followed by the Hungarian authorities displayed the same flaws as in the case of *Lokpo and Touré*.

This consideration alone enables the Court to find that there has been a violation of Article 5 § 1 (f) of the Convention, without it being necessary to embark on an additional scrutiny of the impugned procedure or the applicant's arguments adduced, in the context of Article 5 § 4, about the alleged deficiencies of the judicial reviews as such.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

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

42. The Government contested this claim.

43. The Court considers that the applicant must have suffered some non-pecuniary damage and awards him the full sum claimed.

B. Costs and expenses

44. The applicant also claimed EUR 2,515 for the costs and expenses incurred before the Court. This sum corresponds to 23.5 hours of legal work billable by his lawyer at an hourly rate of EUR 107 including VAT.

45. The Government contested this claim.

46. 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

47. 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

1. *Declares* unanimously the application admissible;
2. *Holds* by six votes to one that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* by six votes to one
   (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, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,515 (two thousand five hundred and fifteen 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.

Done in English, and notified in writing on 23 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Ineta Ziemele
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Danutė Jočienė is annexed to this judgment.

I.Z.
F.E.P.

DISSENTING OPINION OF JUDGE JOČIENĖ

I voted against finding a violation of Article 5 § 1 in this case for the reasons expressed in my dissenting opinion in the case of *Lokpo and Touré v. Hungary* (no. 10816/10, 20 September 2011). I entirely endorse my arguments used in the *Lokpo and Touré* case for not finding a violation in the present case either.