

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

FIRST SECTION

CASE OF HAOUARI v. HUNGARY

(Application no. 29440/16)

JUDGMENT

STRASBOURG

7 July 2022

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Haouari v. Hungary,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Alena Poláčková, *President,*
Péter Paczolay,
Davor Derenčinović,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 29440/16) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 12 May 2016 by an Algerian national, Mr Hassan Haouari, born in 1972 and living in Budapest ("the applicant"), who was represented by Mr A. Cech, a lawyer practising in Budapest;

the decision to give notice of the complaint concerning Article 5 § 1 of the Convention to the Hungarian Government ("the Government"), represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 14 June 2022,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the legal basis of the applicant's detention with a view to deportation. It raises issues under Article 5 § 1 of the Convention.

2. The applicant was convicted of the crime of people smuggling by the Mosonmagyaróvár District Court on 30 April 2013 and sentenced to four years of prison and eight years of expulsion from Hungary, as confirmed by the Győr High Court on 3 September 2013. His petition for review, in which he claimed that his marriage to a Hungarian national concluded in 2012 was an obstacle to expulsion, was rejected by the *Kúria* on 1 September 2015.

3. The applicant was released on parole on 26 August 2015. On the same day, he was informed that he was considered not to fall under the provisions of Act no. I of 2017 on the entry and stay of persons possessing the right to free movement and stay (the "Szmtv.") – and that he was to be deported in accordance with Act no. II of 2017 on the entry and stay of third country nationals (the "Harmtv.").

4. Alien-administration detention ensued which was discontinued on 15 October 2015 when the applicant applied for asylum. He was then placed in asylum detention.

5. Following rejection of this application for asylum, he was again placed in alien-administration detention on 3 November 2015. This detention was

prolonged by the Nyírbátor District Court on 5 November and 30 December 2015 and by the Buda Central District Court on 24 February 2016, in accordance with the Harmtv.

6. On 22 April 2016 the Buda Central District Court rejected the immigration authorities' renewed request for prolongation of the detention, finding that there had been no legal basis for his alien-administration detention under the Harmtv., since he fell under the provisions of the Szmtv. He was released on 25 April 2016.

7. Upon repeated requests by the Hungarian authorities, the Algerian Embassy in Budapest finally issued a passport for the applicant on 20 November 2019 and he was deported to Algeria on 27 November 2019.

8. The applicant complained that his detention between 3 November 2015 and 25 April 2016 had no legal basis, in breach of Article 5 § 1 of the Convention.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

9. The Government argued that the applicant should have brought an official liability action, suing the authorities for erroneous deprivation of liberty, failing which he had not exhausted domestic remedies. The applicant disagreed, arguing that the legal avenue suggested was cumbersome and offered very little prospect of success. He pointed out that, according to the domestic jurisprudence, a mere legal mistake was insufficient to establish official compensation liability; and he would have needed to demonstrate a "flagrantly grievous error" in the interpretation and application of the law – a nearly impossible task. The Court observes that such a course of action would have offered no relief as regards the deprivation of liberty itself and was only compensatory in nature; in any event a similar argument has already been dismissed in *Al-Tayyar Abdelhakim v. Hungary*, no. 13058/11, § 27 *in fine*, 23 October 2012. The application cannot therefore be dismissed for non-exhaustion of domestic remedies. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

10. The applicant maintained that his alien-administration detention did not meet the requirements of a procedure prescribed by law within the meaning of Article 5 § 1 of the Convention. This was unequivocally pronounced by the Buda Central District Court. The Government argued that the detention was justified under Article 5 § 1 (f) of the Convention, without further elaborating this contention.

11. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to

national law and state the obligation to conform to the substantive and procedural rules thereof. While it is normally in the first place for the national authorities, notably the courts, to interpret and apply domestic law, it is otherwise in relation to cases where, as under Article 5 § 1, failure to comply with that law entails a breach of the Convention. In such cases the Court can and should exercise a certain power to review whether national law has been observed (see *Baranowski v. Poland*, no. 28358/95, § 50, ECHR 2000-III).

12. In the present case, the Buda Central District Court held that the applicant was being detained in breach of domestic law. This has not been disputed by the parties. This fact alone enables the Court to hold that that the applicant's detention was devoid of a legal basis in the national law (see *X.Y. v. Hungary*, no. 43888/08, §§ 28-29, 19 March 2013).

13. There has accordingly been a violation of Article 5 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. The applicant claimed 26,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,965 plus VAT in respect of costs and expenses incurred before the Court.

15. The Government contested these claims as excessive.

16. Having regard to the documents in its possession and its case-law, the Court considers it reasonable to award both sums in full.

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;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,965 (three thousand nine hundred and sixty-five 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 amount 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 7 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Alena Poláčková President