

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

FIFTH SECTION

CASE OF L. v. HUNGARY

(Application no. 6182/20)

JUDGMENT

STRASBOURG

21 March 2024

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



In the case of L. v. Hungary,

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

Stéphanie Mourou-Vikström*, President*,
Lado Chanturia,
Mattias Guyomar*, judges*,

and Sophie Piquet, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 6182/20) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 23 January 2020 by a Syrian national, L. ("the applicant") who was represented by Mr R. Miskolczi, a lawyer practising in Nyíregyháza;

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 declare the remainder of the application inadmissible;

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

the parties' observations;

Having deliberated in private on 22 February 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's asylum detention.

2. On 30 December 2018 the applicant arrived in Hungary by flight. On the same day, criminal proceedings were instituted against her concerning her use of a forged passport and she was placed in a pre-trial detention. During an interview with the airport police she provided accurate details on her identity. She maintained that she had been coerced to travel by her husband, and that she wished to return to Greece. On 28 January 2019 the Budapest XVIII and XIX District Court convicted her of public deed forgery and sentenced her to a two-year long entry ban.

3. On the same day, she was handed over to the Asylum and Immigration Office ("the IAO"). On 29 January 2019 the IAO held an interview during which the applicant explained that her family forced her into marriage as a minor. She also stated that she had travelled to Greece under the coercion of her family and applied for asylum there. In Greece she informed the UNHCR about her forthcoming involuntary travel and was advised by the UNHCR that she should request help from the police upon reaching Hungary. She stated that since arriving in Hungary she had had no connection with her family. On the basis of her statement and the record found in EURODAC, the IAO initiated her transfer to Greece in accordance with the Dublin III

Regulation and at the same time suspended the pending immigration proceedings.

4. Following the interview (still on 29 January 2019) the IAO ordered the applicant's asylum detention relying on section 31/A (1a) of Act no. LXXX of 2007 on Asylum on account of the pending Dublin transfer. The IAO found that less restrictive measures ensuring her availability during the procedure could not be applied.

5. On 31 January 2019, upon the IAO's request, the applicant filled in a questionnaire aiming at the early recognition of persons having suffered traumatic experiences. Based on the results she was considered to be at medium risk of traumatization.

6. On 1 February 2019 the Nyírbátor District Court prolonged the applicant's detention. The court found, referring to the IAO's decision (see paragraph 4 above), that less restrictive measures ensuring her availability during the procedure could not be applied.

7. On 11 March 2019 the IAO's Dublin Coordination Department established that Hungary is responsible for the conduct of the applicant's asylum proceedings. The next day, that is on 12 March 2019, the applicant requested asylum, referring to her fear of her husband and her family. She remained detained. On 27 March 2019 the IAO held an asylum interview and ordered her asylum detention referring to Section 31/A (1) (c) of the Asylum Act (risk of absconding) and noting that she had stated that she would rather return to Greece.

8. On 29 March 2019 the Nyírbátor District Court held a hearing concerning the applicant's detention. The applicant stated that she was willing to stay in Hungary as she had nowhere to go on account of the refusal of Greece to take her in. Furthermore, she alleged to have cooperated with the authorities and said that she did not want to remain in detention. Her legal representative argued that she was a victim of human trafficking. The Nyírbátor District Court prolonged her detention finding that less restrictive measures were not applicable as she did not speak the language, she had no travel document and connections in the country and there was a possibility that her relatives would make her leave Hungary illegally again.

9. On 12 April 2019 the Counter-Terrorism Centre ("the CTC") issued its opinion establishing that the stay of the applicant in the territory of Hungary poses a threat to national security.

10. On 23 May 2019 the Nyírbátor District Court again prolonged the applicant's asylum detention on the basis of Section 31/A (1) (c) and (d) of Asylum Act referring to the risk of absconding and the national security threat with reference to the CTC's opinion. As to the risk of absconding, it noted that the applicant had stated that if her asylum application were not determined within six months she would rather return to Greece.

11. On 10 July 2019 the IAO rejected the asylum request and noted that her expulsion was to be executed on the basis of the criminal judgment (see

paragraph 2 above). In the meantime, on 25 June 2019, on the inquiry of the IAO the CTC established that her statements might be credible but found that the applicant was not a victim of human trafficking because she had consented to be trafficked.

12. On 27 November 2019 the Budapest Administrative and Labour Court quashed the IAO's decision (see paragraph 11 above) and remitted the case for re-examination. The court judgment noted that the applicant's uncle had inquired in person with the IAO on 29 and 30 January 2019 about the applicant's whereabout and the progress of her case, which had been denied by the IAO due to the applicant's fear and opposition to sharing this information.

13. In the meantime, on 24 July 2019, the IAO designated the transit zone in Tompa as her place of accommodation since the duration of her asylum detention reached the statutory maximum of six months.

14. The applicant complained under Article 5 § 1 of the Convention that her asylum detention had been arbitrary and that no alternatives to her detention had been genuinely considered by the domestic authorities despite her vulnerability.

THE COURT'S ASSESSMENT

15. The Court notes at the outset that the Government's statement of facts and observations were submitted outside the time-limit and no extension of time had been requested before the allotted period expired, nor was any explanation given for this delay. In view of that, the President of the Section decided, pursuant to Rule 38 § 1 of the Rules of Court, that the observations on the admissibility and merits of the case should not be included in the case file for the consideration of the Court. As regards the statement of facts and the submissions concerning the relevant domestic law, the President of the Section decided to admit them, considering that this was in the interest of the proper administration of justice.

16. The Court notes that the applicant's above complaint 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.

17. The Court observes that the applicant, who had initially been detained in the context of criminal proceedings, appears not to have been issued with a residence permit during her subsequent asylum detention. The Court will proceed on the assumption that the applicant's detention fell under Article 5 § 1 (f) (see *Suso Musa v. Malta*, no. 42337/12, § 99, 23 July 2013, and *Nabil and Others v. Hungary*, no. 62116/12, § 38, 22 September 2015) or Article 5 § 1 (b) (see *O.M. v. Hungary*, no. 9912/15, § 48, 5 July 2016, and *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 245-6, 18 November 2021).

18. It reiterates in this connection that any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f), be "lawful". 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. 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 (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008; *Lazariu v. Romania*, no. 31973/03, §§ 102, 13 November 2014; and *Suso Musa*, cited above, § 92). As regards the length of the detention, the Court reiterates that it should not exceed that reasonably required for the purpose pursued (see *Saadi*, cited above, § 74).

19. In the present case, the applicant's impugned asylum detention started on 29 January 2019 and ended on 24 July 2019. It thus lasted for almost six months. For the Court, this duration alone, regardless of the issues relating to the applicant's possible vulnerability, is capable of raising concerns (compare *M.K. v. Hungary* [Committee], no. 46783/14, § 21, 9 June 2020). The Court further notes that the first period of the applicant's asylum detention was ordered for the purposes of securing her transfer under the Dublin III Regulation. Although it had been established on 11 March 2019 that the applicant could not be returned to Greece, she remained detained until 27 March 2019. It follows that between 11 and 27 March 2019 the applicant's detention was devoid of a legal basis and was thus in breach of Article 5 § 1 of the Convention. On 27 March 2019 the applicant's detention was ordered, and subsequently prolonged by the domestic court, based on the risk of absconding. However, the alleged risk of absconding was not supported by relevant arguments and was at odds with the fact that she had voluntarily surrendered when arriving in Hungary, maintained no connection with her family and refused to see her uncle (see paragraphs 2-3, 12 above, compare, *mutatis mutandis*, *Nabil and Others*, cited above, § 41). There is also no indication that the applicant did not cooperate with the authorities (compare *O.M. v. Hungary*, cited above, § 51). The foregoing and the fact that the authorities failed to duly consider alternatives to detention not only raises questions as to whether the applicant's detention could be said to have corresponded to the requirement of close connection to the purpose pursued, but also leads to the conclusion that the detention failed to comply with national law, in particular Sections 31/A (2) of the Asylum Act (see, *mutatis mutandis*, *O.M. v. Hungary*, cited above, § 52, and *Nabil and Others*, cited above, §§ 40-41).

20. The Court furthermore notes that the applicant's detention was prolonged on 23 May 2019 on the additional grounds that she had presented

a threat to national security (see paragraph 10 above), but this has remained entirely unsubstantiated.

21. It follows that the applicant's asylum detention, at least from 11 March 2019, was not compatible with Article 5 § 1 of the Convention, which has therefore been violated.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed 9,500 euros (EUR) in respect of non-pecuniary damage and EUR 3,300 in respect of costs and expenses incurred before the Court.

23. The Government contested these claims.

24. The Court awards the applicant EUR 2,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

25. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,500 for the costs and expenses incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* 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 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred 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;

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

Done in English, and notified in writing on 21 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sophie Piquet Acting Deputy Registrar	Stéphanie Mourou-Vikström President