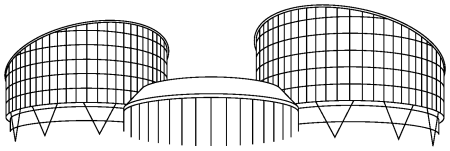

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF O.M. v. HUNGARY

(Application no. 9912/15)

JUDGMENT

STRASBOURG

5 July 2016

FINAL

05/10/2016

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

In the case of O.M. v. Hungary,

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

Paulo Pinto de Albuquerque, *President*,
András Sajó,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer,
Marko Bošnjak, *judges*,

and Andrea Tamietti, *Deputy Section Registrar*,

Having deliberated in private on 14 June 2016,

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

PROCEDURE

1. The case originated in an application (no. 9912/15) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Iranian national, Mr O.M. ("the applicant"), on 13 February 2015. The Vice-President of the Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 4 of the Rules of Court).

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 Justice.

3. The applicant alleged that his detention had been unjustified, a situation not remedied by adequate judicial supervision. He relied on Article 5 §§ 1 (b) and (f) and 4 of the Convention.

4. On 16 June 2015 the complaint under Article 5 § 1 was communicated to the Government.

5. The parties submitted written observations on the admissibility and merits. In addition, third-party comments were received from the AIRE Centre (Advice on Individual Rights in Europe), the European Council on Refugees and Exiles (ECRE), the ILGA-EUROPE (the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association), and the International Commission of Jurists (ICJ), which have been given leave to intervene jointly in the written procedure (Article 36 § 2 of the Convention and Rule 44 §§ 3 and 4 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1982 and currently lives in Budapest.

7. The applicant crossed the Hungarian border from Serbia clandestinely in the evening of 24 June 2014. Apprehended by a border guard patrol, he was taken into custody, since he was unable to show documentary evidence of his identity or right to stay in the country.

The applicant then claimed asylum.

8. At the hearing held on 25 June 2014 by the Immigration Office, the applicant declared that he had fled from his country of origin, Iran, because of his homosexuality. He stated that he had been forced to leave Iran and, with the help of a human trafficker, he had entered Hungary without documents, because he had had no other way of doing so. At the hearing, he again applied for recognition as a refugee.

9. In view of his request, on 25 June 2014 the Csongrád County Police Department suspended the alien administration procedure. On the same day the Office of Immigration and Nationality commenced asylum proceedings. At the ensuing hearing the applicant said that he had intended to go to the United Kingdom, but since Hungary seemed to be a safe country he had requested asylum there. He stated again that he had had to leave Iran because he was homosexual and that criminal proceedings had been instituted against him for this reason, attracting very severe penalties.

10. After the hearing, the asylum authority, a department of the Office of Immigration and Nationality, ordered that the applicant be detained (*menekültügyi őrizet*), with effect from 7 p.m. on 25 June 2014, in Debrecen, relying on section 31/A (1) a) and c) of Act no. LXXX of 2007 on Asylum (the "Asylum Act"). In its decision the asylum authority observed that the applicant's identity and nationality had not been clarified. It held that there were grounds for the presumption that if left at large, he would delay or frustrate the asylum proceedings and would present a risk of absconding, given that he had arrived unlawfully in Hungary and had no connections in the country or resources to subsist on. According to section 31/A (6) of the Asylum Act, the maximum length of asylum detention when ordered by the asylum authority is 72 hours. On the basis of section 31/C (3) of the Asylum Act and section 36/C (1) of the relevant Government Decree (see in paragraph 22 below), the applicant could have submitted an objection to the ordering of his asylum detention.

11. On 26 June 2014 the asylum authority applied to the Debrecen District Court for an extension of the asylum detention for a maximum of 60 days. The asylum authority pointed out in its application that Iranian asylum seekers tended to frustrate the procedure and leave for unknown places. To justify its application, it referred to the fact that the applicant's stay in

Hungary was unlawful, that he had no connection to the country, and that he lacked any resources to subsist on.

12. On 27 June 2014 the court appointed a legal representative for the applicant; on the same date – that is, before the expiry of the 72-hour period referred to in paragraph 10 above – it held a hearing. The hearing lasted from 9.40 to 9.45 a.m. In its ensuing decision the court dismissed the applicant's application to be released and extended the asylum detention by a maximum of 60 days. It noted that the applicant's identity was unclear, that he had arrived in Hungary unlawfully, and that he had no connections in the country or any means to subsist on. Without referring to other individual circumstances or the applicant's sexual orientation, the court held that less stringent measures – such as an obligation to check in regularly with the authorities, to stay at a designated place of residence, or to pay asylum bail (*menekültügyi óvadék*) – were not suitable in the case to secure the applicant's availability to the authorities.

13. On 8 and 11 July 2014 the applicant applied to the asylum authority to be released from detention or transferred to an open facility. In its reply, the asylum authority informed the applicant that an asylum hearing would be held in a few days: he would have the opportunity to prove his citizenship there. Because of this consideration, the asylum authority did not forward these requests to any other authority.

14. At the asylum hearing held on 18 July 2014 the applicant made the same statements as before. Referring to his sexual orientation, he explained that it was difficult for him to cope with the asylum detention for fear of harassment. At the hearing he provided the asylum authority with relevant and up-to-date information relating to his country of origin.

15. On 25 July 2014 the asylum authority stated that the applicant's asylum request was neither inadmissible nor manifestly ill-founded and thus it ordered the examination of the case on the merits.

16. On 11 August 2014 the asylum authority again sought extension of the asylum detention by another maximum of 60 days, relying on section 31/A (1) a) and c) of the Asylum Act. In its application, the asylum authority did not give any detailed explanation as to why no other, less stringent measures could be applied in the case.

17. In her submission of 12 August 2014 to the asylum authority, the applicant's legal-aid lawyer requested the termination of the asylum detention and the designation of a place of residence for the applicant with measures securing his availability during the proceedings. In her submission of the same day to the Debrecen District Court, the lawyer asked the court to hear the applicant and not to extend the asylum detention.

18. On 13 August 2014 the court appointed another legal representative for the applicant. On 19 August 2014 the court heard the applicant and dismissed the application for extension of the asylum detention. Relying on section 31/A (1) a) of the Asylum Act, the District Court stated that the

delay caused by the acts of the authority for which the asylum seeker could not be held responsible did not provide grounds for the extension of the detention. Referring to section 31/A (1) c), the court further stated that the asylum authority had not given any specific reasoning for the view it had taken, namely that the applicant would abscond and frustrate the asylum proceedings.

19. On 22 August 2014 the asylum authority terminated the asylum detention and ordered a designated place of residence for the applicant in Debrecen with measures securing his availability during the proceedings.

20. On 31 October 2014 the applicant was recognised as a refugee. His asylum detention lasted from 25 June 2014 to 22 August 2014.

II. RELEVANT DOMESTIC LAW

21. Act no. LXXX of 2007 on Asylum ("the Asylum Act") provides as follows:

Section 5

"(1) A person seeking recognition shall be entitled to:

a) stay in the territory of Hungary according to the conditions set out in the present Act ...

(2) A person seeking recognition shall be obliged to:

a) cooperate with the asylum authority, in particular to reveal the circumstances of his/her flight, to communicate his/her personal particulars and to facilitate the clarification of his/her identity, to hand over his/her documents;

b) issue a declaration with respect to his/her property and income;

c) stay as a habitual residence at the place of accommodation designated by the asylum authority for him/her according to the present Act and observe the rules of conduct governing residence at the designated place of accommodation;

d) subject him/herself to health tests, medical treatment prescribed as mandatory by law or required by the health authority and to subject him/herself to the replacement of any missing vaccinations prescribed as mandatory by law and/or required by the health authority in the case of the danger of disease.

(3) If the person seeking recognition is not in the possession of documents proving his identity, he must do his best to prove his identity, in particular to get in touch with his family, relatives, legal representative and – unless he is being persecuted by them – the authorities of his country of origin."

Section 31/A

"(1) In order to ensure compliance with the provisions set forth in sections 33 and 49(5), and having regard to the restrictions under section 31/B, the asylum authority may take into asylum detention a person seeking recognition whose right of residence is only based on the submission of an application for recognition if:

a) the identity or nationality of the person seeking recognition is not clear, in order to establish it;

b) the person seeking recognition has hidden from the authority or has obstructed the course of the asylum procedure in another manner;

c) there are grounds for presuming that the person seeking recognition is delaying or frustrating the asylum procedure or presents a risk of absconding, in order to establish the particulars required for conducting the asylum procedure;

d) the detention of the person seeking recognition is necessary in order to protect national security, public safety or – in the event of serious or repeated violations of the rules of the compulsory designated place of stay – public order;

e) the application has been submitted in an airport procedure; or

f) the person seeking recognition has not fulfilled his/her obligation to appear on summons, and is thereby obstructing the Dublin procedure.

(2) Asylum detention may only be ordered on the basis of individual deliberation, and only if its purpose cannot be achieved through measures securing availability.

(3) Before ordering asylum detention, the asylum authority shall consider whether the purpose determined in sub-section (1) can be achieved through measures securing availability ...

(6) Asylum detention can be ordered for a maximum of 72 hours. The asylum authority may seek an extension of the asylum detention beyond 72 hours from the competent district court within 24 hours of the detention order being issued. The court may extend the detention by 60 days at most, and this may be extended at the asylum authority's request for another 60 days on two occasions, but the total detention period may not exceed six months. Any application for extension must be received by the court eight working days before the due date of the extension. The asylum authority shall give reasons for its application."

Section 31/C

"(3) A person seeking recognition may lodge an objection to the asylum detention order ...

(4) The objection shall be examined by the competent district court within eight days."

Section 33

"The asylum procedure is aimed at determining whether, on the basis of the present Act, the foreigner seeking recognition satisfies the criteria for recognition as a refugee, or a beneficiary of subsidiary or temporary protection."

22. Government Decree no. 301/2007. (XI. 9.) on the Implementation of Act no. LXXX of 2007 on Asylum (the "Government Decree") provides as follows:

Section 36/C

"(1) A person seeking recognition may lodge an objection, orally or in writing, to ... his detention ..."

III. RELEVANT INTERNATIONAL TEXTS

23. Guidelines of the United Nations High Commissioner for Refugees ("UNHCR") (the "Guidelines") provide as follows:

Guideline 9.7

"Lesbian, gay, bisexual, transgender or intersex asylum-seekers

Measures may need to be taken to ensure that any placement in detention of lesbian, gay, bisexual, transgender or intersex asylum-seekers avoids exposing them to risk of violence, ill-treatment or physical, mental or sexual abuse; that they have access to appropriate medical care and counselling, where applicable; and that detention personnel and all other officials in the public and private sector who are engaged in detention facilities are trained and qualified, regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation or gender identity. Where their security cannot be assured in detention, release or referral to alternatives to detention would need to be considered. In this regard, solitary confinement is not an appropriate way to manage or ensure the protection of such individuals."

24. The 2011 Annual Report of the United Nations High Commissioner for Human Rights entitled "Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity" contains the following passage:

"39. Even in countries that recognize these grounds for asylum, practices and procedures often fall short of international standards. Review of applications is sometimes arbitrary and inconsistent. Officials may have little knowledge about or sensitivity towards conditions facing LGBT people. Refugees are sometimes subjected to violence and discrimination while in detention facilities and, when resettled, may be housed within communities where they experience additional sexuality and gender-related risks. Refoulement of asylum-seekers fleeing such persecution places them at risk of violence, discrimination and criminalization. In some cases, they are returned with instructions to "be discreet", an approach criticized by UNHCR."

THE LAW

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

25. The applicant complained that his detention was arbitrary and not remedied by appropriate judicial review, in breach of Article 5 §§ 1 and 4 of the Convention. 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), the relevant part of which reads as follows:

"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 ...

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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

26. The Government argued that the applicant did not exhaust the domestic remedies, since he had not submitted an objection to the ordering of his asylum detention under section 31/C (3) of the Asylum Act and section 36/C (1) of the Government Decree.

27. The applicant contested this view, arguing in particular that the court hearing in his case, which took place very soon after the ordering of his detention, had rendered the objection procedure obsolete, and so that procedure would not have been effective as a remedy in any event.

28. The Court notes that the applicant was heard by the Debrecen District Court on 27 June 2014, that is, within the 72-hour statutory maximum period of his initial detention against which an objection could be made. It is true that he did not avail himself of the objection procedure. However, in its stead and practically simultaneously his representative did apply for release at this hearing. The Court is therefore satisfied that the applicant brought his grievance to the attention of the authorities, affording those authorities the opportunity of putting right the alleged violation of the Convention. It follows that the application cannot be rejected for non-exhaustion of domestic remedies.

29. The Court also 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.

B. Merits

1. Submissions of the parties

(a) The applicant

30. The applicant was of the view that his asylum detention, ordered with effect from 7 p.m. on 25 June and lasting until 22 August 2014, had been unjustified since it was not supported by any of the reasons mentioned in the exhaustive list of Article 5 § 1 of the Convention.

31. As regards Article 5 § 1 (b), the applicant submitted that since the asylum proceedings might start only at the request of the asylum-seeker, he or she must be interested in its positive outcome, thus it was contrary to logic to presume that the asylum-seeker would frustrate the procedure. Furthermore, he had had no formal obligation under the Asylum Act to provide documentary evidence of his identity and nationality. Any "obligation prescribed by law" that might serve as the basis of a detention order must be clear and concrete, thus a requirement not mentioned in the relevant law could not provide a valid basis for detention. As a consequence, his asylum detention was not justified under Article 5 § 1 (b) of the Convention.

32. Moreover, even if there had been such an obligation, the detention had not been "lawful", since no necessity test (that is, an examination to determine whether less restrictive measures would have sufficed) or proportionality analysis had been carried out by the authorities. In the applicant's view the Guidelines should have been taken into account by the Hungarian authorities when interpreting the laws on the detention of asylum-seekers. In particular, his sexual orientation should have been considered when the decision was made on his detention, but in fact there was no individualised assessment of his case.

33. Regarding Article 5 § 1 (f), the applicant submitted that from the commencement of the asylum proceedings on 25 June 2014 he had had the right to stay in the country. Once this procedure was in place the alien administration proceedings had been suspended, thus his detention could not have validly served to prevent his unauthorised entry into the country, all the more so since he was never the subject of an order of deportation.

(b) The Government

34. The Government submitted that the applicant's detention had been justified at all times. At first, his arrest had been in compliance with Article 5 § 1 (f) of the Convention, since until the asylum claim on 25 June 2014 he was merely an illegal border-crosser without identity documents. Subsequently, until 7 p.m. on 25 June 2014, detention had been justified under the second limb of Article 5 § 1 (b), since the applicant had been under a legal obligation to cooperate with the asylum authority and produce numerous pieces of personal information for the purposes of the alien administration procedure.

35. Moreover, the Government argued that from 7 p.m. on 25 June until 22 August 2014, the asylum detention (*menekültügyi őrizet*) of the applicant, an asylum-seeker, had been justified under Article 5 § 1 (b) of the Convention, because under section 5(2) of the Asylum Act he had been under a legal obligation to disclose the circumstances of his flight and to produce items of personal information, this time for the purposes of the asylum procedure. This consideration corresponded to the reason contained

in section 31/A (1) a) of the Asylum Act (see paragraph 21 above). Furthermore, in line with point c) of the same provision, detention was necessary to pre-empt the applicant's absconding or frustrating the asylum procedure. Absconding was not at all implausible in view of the facts that he had entered the country illegally, had not voluntarily approached the authorities seeking asylum; and, statistically speaking, asylum-seekers who remained at large did abscond in 80-90% of the cases.

36. Furthermore, the Government submitted that even though according to section 31/A (6) of the Asylum Act the detention could have been extended for a period up to six months, it had lasted only 58 days. In the Government's view, the decisions ordering and extending the applicant's detention had been based on an individualised and thorough examination of his circumstances.

37. Lastly, the Government asserted that the Guidelines did not impose any enforceable obligation on Hungary and only contained recommendations. In the applicant's case, there were no indications that his security had been at risk at the Debrecen facility on account of his sexual orientation; he did not allege that he had been physically, psychologically or sexually abused during the detention, nor had he ever complained of such a thing to the authorities. At any rate, there was little risk of such abuse, since guards outnumbered detainees by three to one, guaranteeing security at the facility.

(c) The interveners

38. The third-party interveners submitted that, by its Statute, the UNHCR was mandated with the supervision of the application of the 1951 Convention relating to the Status of Refugees and other treaties relating to refugees, which responsibility was reflected in the preamble and Article 35 of the Refugee Convention and in Article II of its 1967 Protocol. The Guidelines (see paragraph 23 above) were published in the exercise of the UNHCR's supervisory mandate, and should be considered as relevant in the present case.

39. Furthermore, they pointed out that the domestic legal provisions of the Asylum Act concerning the applicant's asylum detention were rooted in European Union legislation, which should be equated with national law in EU Member States. Moreover, the Refugee Convention and the 1967 Protocol were promulgated in Hungarian law. Both EU and national law should be interpreted in harmony with the Refugee Convention and the 1967 Protocol, and, given the UNHCR's supervisory mandate, in the light of the Guidelines. Inconsistencies of national laws and practices with the principles developed by the UNHCR should be an indicator of arbitrariness for the purposes of Article 5 § 1 of the Convention.

2. The Court's assessment

(a) General principles

40. The Court reiterates that 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 individuals 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).

41. 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. 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; see also *Lazariu v. Romania*, no. 31973/03, §§ 102-04, 13 November 2014 and *Suso Musa v. Malta*, no. 42337/12, § 92, 23 July 2013).

42. The Court recalls that detention is authorised under sub-paragraph (b) of Article 5 § 1 only to "secure the fulfilment" of the obligation prescribed by law. It follows that, at the very least, there must be an unfulfilled obligation incumbent on the person concerned, and the arrest and detention must be for the purpose of securing its fulfilment and must not be punitive in character. As soon as the relevant obligation has been fulfilled, the basis for detention under Article 5 § 1 (b) ceases to exist (see *Vasileva v. Denmark*, no. 52792/99, § 36, 25 September 2003; *Göthlin v. Sweden*, no. 8307/11, § 57, 16 October 2014). Moreover, this obligation should not be given a wide interpretation. It has to be specific and concrete, and the arrest and detention must be truly necessary for the purpose of ensuring its fulfilment (see *Iliya Stefanov v. Bulgaria*, no. 65755/01, § 72, 22 May 2008).

43. An arrest will only be acceptable under the Convention if the "obligation prescribed by law" cannot be fulfilled by milder means (see *Khodorkovskiy v. Russia*, no. 5829/04, § 136, 31 May 2011). The principle of proportionality further dictates that a balance must be struck between the importance in a democratic society of securing the immediate fulfilment of

the obligation in question and the importance of the right to liberty (see *Saadi*, cited above, § 70).

44. In this assessment the Court considers the following points relevant: the nature of the obligation arising from the relevant legislation, including its underlying object and purpose; the person being detained and the particular circumstances leading to the detention; and the length of the detention (see *Vasileva*, cited above, § 38, and *Epple v. Germany*, no. 77909/01, § 37, 24 March 2005).

(b) Application of those principles to the present case

45. The Court observes at the outset that the applicant's grievance only relates to the period subsequent to 7 p.m. on 25 June 2014. Consequently, it is not warranted to examine the Government's arguments relating to the detention that took place prior to this time.

46. For the remaining period, that is, from 7 p.m. on 25 June until 22 August 2014, the Government submitted that the applicant's asylum detention had been justified under the second limb of Article 5 § 1 (b) of the Convention.

47. At this juncture, the Court would add that Article 5 § 1 (f) may also provide justification, in some specific circumstances, for detentions of asylum-seekers (see *Saadi*, cited above, § 64). At the same time, it observes that where a State which has gone beyond its obligations in creating further rights or a more favourable position – a possibility open to it under Article 53 of the Convention – enacts legislation (of its own motion or pursuant to European Union law) explicitly authorising the entry or stay of immigrants pending an asylum application (see section 5(1) a) of the Asylum Act, quoted in paragraph 21 above), an ensuing detention for the purpose of preventing an unauthorised entry may raise an issue as to the lawfulness of the detention under Article 5 § 1 (f) (see *Suso Musa*, cited above, § 97).

48. The Court nevertheless considers that, in the light of the Government's circumscribed argument put forward in the present case, this question need not be addressed, and its scrutiny can be limited to the issue of Article 5 § 1 (b) of the Convention.

49. The "obligation prescribed by law" referred to by the Government is the duties flowing from section 5(2) of the Asylum Act (see paragraph 21 above). However, the Court notes that this provision does not contain the requirement that an asylum-seeker must provide documentary evidence of his identity and nationality. Rather, the applicant had the obligation to collaborate with the asylum authority (that is, reveal the circumstances of his or her flight; communicate items of personal information about him or her; facilitate the clarification of his or her identity, and so on).

50. Moreover, section 5(3) of the same Act contains a provision concerning situations when the asylum-seeker is not in possession of

official documents proving his identity (see paragraph 21 above). It can thus be deduced that the production of documents is not the only option for asylum-seekers to substantiate their identities and nationalities.

51. It appears from the circumstances of the case that the applicant made reasonable efforts to clarify his identity and nationality: there is no indication that he did not fully cooperate with the authorities; he also made several coherent statements about the reasons why he had fled his home country.

52. The Court would add that under section 31/A (2) and (3) of the Asylum Act (see paragraph 21 above) asylum detention may only be ordered on the basis of an individual assessment, and only if its purpose cannot be achieved through other measures securing availability. However, instead of these criteria being addressed, the applicant's continuing asylum detention was in essence based on the reasons contained in the first detention order given by the asylum authority, that is, the fact that his identity and nationality had not been clarified and the risk that he might frustrate the asylum proceedings by absconding – although only scarce reasoning was adduced to show that he was actually a flight risk. Altogether, the Court cannot but observe that the applicant's case was not assessed in a sufficiently individualised manner as required by the national law (see paragraph 12 above).

53. Lastly, the Court considers that, in the course of placement of asylum seekers who claim to be a part of a vulnerable group in the country which they had to leave, the authorities should exercise particular care in order to avoid situations which may reproduce the plight that forced these persons to flee in the first place. In the present case, the authorities failed to do so when they ordered the applicant's detention without considering the extent to which vulnerable individuals – for instance, LGBT people like the applicant – were safe or unsafe in custody among other detained persons, many of whom had come from countries with widespread cultural or religious prejudice against such persons. Again, the decisions of the authorities did not contain any adequate reflection on the individual circumstances of the applicant, member of a vulnerable group by virtue of belonging to a sexual minority in Iran (see, *mutatis mutandis*, *Alajos Kiss v. Hungary*, no. 38832/06, § 42, 20 May 2010).

54. As a consequence, in the absence of a specific and concrete legal obligation which the applicant failed to satisfy, Article 5 § 1 (b) of the Convention cannot convincingly serve as a legal basis for his asylum detention. The foregoing considerations, demonstrating that the applicant's detention verged on arbitrariness, enable the Court to conclude that there was a violation of Article 5 § 1 of the Convention in the period from 7 p.m. on 25 June to 22 August 2014 (see, *mutatis mutandis*, *Blokhin v. Russia* [GC], no. 47152/06, § 172, ECHR 2016).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

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

57. The Government contested this claim.

58. The Court considers that the applicant must have suffered some non-pecuniary damage on account of the violation found; and awards him, on the basis of equity, EUR 7,500.

B. Costs and expenses

59. The applicant 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 his lawyer at an hourly rate of EUR 130, plus EUR 80 in clerical costs.

60. The Government contested this claim.

61. 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

62. 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 in the period between 25 June and 22 August 2014;

3. *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, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,395 (three thousand three hundred and ninety-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 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 just satisfaction claims.

Done in English, and notified in writing on 5 July 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Paulo Pinto de Albuquerque
Deputy Registrar	President