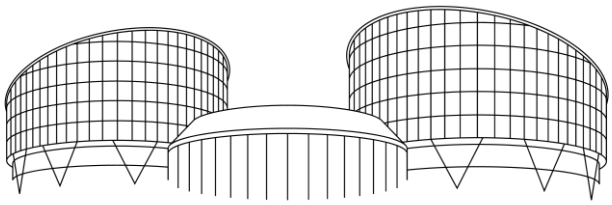

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF HENDRIN ALI SAID AND ARAS ALI SAID v. HUNGARY

(Application no. 13457/11)

JUDGMENT

STRASBOURG

23 October 2012

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

In the case of Hendrin Ali Said and Aras Ali Said 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. 13457/11) 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 two Iraqi nationals, Mr Hendrin Ali Said and Mr Aras Ali Said ("the applicants"), on 23 February 2011.

2. The applicants were 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 applicants alleged, in particular, that their detention had not been lawful or justified, in breach of Article 5 § 1 of the Convention.

4. On 14 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 applicants, brothers, were born in 1992 and 1989 respectively. When introducing the application, they were staying at the Debrecen Reception Centre for Refugees, located in Hungary.

7. On 1 September 2010 the applicants were transferred from the Netherlands to Hungary under the Dublin II procedure. They were handed over to the Budapest Regional Directorate of the Office of Immigration and Nationality ("OIN"), the competent alien policing authority, and interviewed with the assistance of a Kurdish-Hungarian interpreter on the same day.

8. The applicants related that they had left Iraq illegally in early August 2009, travelled through Syria and Turkey and intended to reach the Netherlands. They had arrived in Hungary, also illegally, later in August 2009 and had immediately been intercepted by the police. They had applied for asylum on 1 September 2009. On 7 September 2009 the asylum procedure had however been terminated because they had absconded. They had travelled illegally, apparently assisted by traffickers, to the Netherlands, where they had joined their father and applied for asylum. The Netherlands had started the Dublin II procedure and Hungary had agreed to their readmission. On 1 September 2010 they had been transferred to Hungary under this scheme.

9. They alleged that they had been persecuted in Iraq because of their father's former service in Saddam Hussein's army and their Kurdish ethnicity. They also claimed that they had no family members living in Iraq.

10. After the interview, the alien policing authority ordered the applicants' expulsion to Iraq, also imposing a five-year entry ban. According to the decision, the expulsion was necessary because they did not fulfil the requirements of legal residence in Hungary. The authority then requested OIN's asylum directorate to assess whether the principle of "*non-refoulement"* was applicable. It replied in the negative.

11. In the expulsion decision it was mentioned that the applicants' illegal entry and lack of residence permits constituted a threat to public order. Considering their age and family status, their expulsion would have no negative effect, since they had no connection to Hungary, did not speak Hungarian and had no skills and therefore their livelihood was not secured and the chances of finding employment were low. It was also established that they did not have Hungarian or EU national family members living in Hungary, and although their relatives lived in the Netherlands, they also had some in Iraq, so their social reintegration on return was possible. The applicants were entered into OIN's asylum registry, but the ongoing asylum procedure was not referred to when the reasons for expulsion were addressed. OIN concluded that the enforcement of immigration rules had priority over the personal and family interests of the applicants, and that expulsion was a necessary and proportionate measure.

12. Simultaneously, the execution of the expulsion was suspended by the OIN's alien policing authority because the means and conditions necessary for its enforcement were not secured, namely the applicants did not have any travel documents or tickets.

13. The alien policing authority ordered at the same time the applicants' alien policing detention for 72 hours, purportedly in order to secure their expulsion. The detention was based on section 54(1)(b) of the Third Country Nationals Act (see below), according to which the immigration authority shall have the power to detain the person in question in order to secure the expulsion if "he/she has refused to leave the country, or, based on other substantiated reasons, is allegedly delaying or preventing the enforcement of expulsion". However, no facts or personal circumstances were presented justifying such a conclusion. The applicants were committed to the Nyírbátor alien policing facility.

14. The asylum authority formally registered the applicants' asylum claim only on 2 September 2010, despite the fact that they had been asylum seekers from their very arrival in Hungary, in that they had been transferred under the Dublin procedure from the Netherlands; they had explicitly mentioned at the interview with the alien policing authorities on 1 September 2010 that they had left Iraq because they had been persecuted and that they had already applied for asylum when they had first entered Hungary in September 2009.

15. A preliminary interview was conducted, and on 14 September 2010 the asylum applications were admitted to the in-merit procedure. Despite this fact, the applicants remained in alien policing detention although asylum seekers were entitled to accommodation in an open refugee reception centre. According to section 55(3) of the Asylum Act (see below), once the asylum application is admitted to the in-merit procedure, the alien policing authority shall, at the initiative of OIN's asylum authority, terminate the asylum seeker's detention. However, such an initiative was not taken.

16. On 3 September 2010 the Nyírbátor District Court prolonged the detention until the execution of expulsion was secured or 30 September 2010. Although the initial detention had been based (see above) on section 54(1) of the Third Country Nationals Act, the court found that it had been lawfully ordered under section 55 of the Act (see below) and that its prolongation was necessary. It held that sections 55, 54(1)(b) and 54(3) of that Act were applicable in the case. In the reasoning, reference was made to the fact that the applicants had arrived in Hungary illegally and applied for asylum in 2009 then again in September 2010, as well as to the contents of the expulsion order. No particulars relating to the ongoing asylum procedure were mentioned.

17. The detention was prolonged on 24 September, 26 October, 26 November and finally on 17 December 2010, until 28 January 2011. On each occasion, the District Court limited the reasoning to stating that the initial reasons for the detention given in the first court decision were still in place.

18. On an unspecified date, the applicants were transferred to the Debrecen Reception Centre for Refugees, an open facility.

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

19. The applicants complained that they had been unlawfully detained and denied an effective judicial review of that detention. They 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

20. The Government argued that the application should be declared inadmissible because the applicants had failed to bring their claim concerning the alleged unlawfulness of their detention before any of the Hungarian authorities either prior to or after the termination of their detention. In particular, they had not challenged their expulsion in court or requested judicial review of the lawfulness of their detention. Furthermore, they had failed to avail themselves 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 their release had indeed been contrary to the law. Lastly, the applicants could have sought the determination of the unlawfulness of their detention and the payment of compensation for it in an official liability action under section 349 of the Civil Code, but they had not done so.

21. The applicants submitted that since the competent court had performed *ex officio* monthly judicial reviews of their 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 them to request judicial review on their own motion.

22. Moreover, in the applicants' 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 their release.

23. The applicants further asserted that they 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.

Lastly, as regards the possibility to challenge the expulsion itself in court, the applicants submitted that they had not been aware of this option, since they had been detained immediately after their arrival in the country, not

having access to legal assistance at that time; in any case, such a motion would not have automatically ended their detention.

24. The Court observes that the applicants' situation was subjected to periodic judicial reviews at the statutory intervals. It notes that there is no dispute between the parties as to whether these reviews constituted the relevant legal avenue in the circumstances. It therefore shares the applicants' view that it was not indispensable for them to pursue – of their own motion and in addition to these *ex officio* reviews – further remedies aiming at the same. Likewise, it cannot be held against the applicants in the context of exhausting domestic remedies that they did not formally challenge their expulsion, since the present application concerns the lawfulness of their detention, rather than the justification for their envisaged deportation.

25. 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 action cannot be considered an effective remedy to be exhausted in respect of the right to secure release from detention.

26. 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 applicants

27. The applicants argued that their 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 their expulsion, since they had arrived in Hungary under the Dublin II procedure – rather than illegally – as asylum seekers, which had constituted a legal obstacle to their expulsion. The non-viability of their expulsion was also reflected by the fact that it was eventually suspended on account of technical difficulties. In any event, their detention could not possibly be longer than six months (cf. section 54(4) of the Third Country Nationals Act) whereas the pending asylum proceedings had been very unlikely to finish in this time frame, given the statistics.

28. Moreover, they added that had section 55(3) of the Asylum Act been applied properly, their release should have been initiated by the refugee

authority once their asylum applications had been referred to in-merit proceedings. Its failure to do so had rendered the 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.

29. Lastly, the applicants maintained that they had no effective right to have the lawfulness of their detention reviewed, in breach of Article 5 § 4, because the court had ignored the fact that they were asylum seekers, and had not embarked on the examination of the necessity of their detention – that is, they had not performed an effective review and repeatedly given only stereotypical reasoning.

(b) The Government

30. 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.

31. They argued that the applicants' 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 applicants' detention had been to secure the enforcement of their expulsion, ordered on account of their illegal entry into Hungary, and to prevent their illegal stay in, or unauthorised entry into, other countries of the Schengen Area. This purpose had remained valid notwithstanding their maintaining the requests for asylum filed in the Netherlands, and even after the asylum proceedings had reached the in-merit stage in Hungary.

32. The Government emphasised that Hungarian law did not prohibit the expulsion or the ensuing alien policing detention of applicants for asylum *per se*. It only provided, in accordance with EU law, that no one could be detained on the sole ground of being an asylum seeker. However, the applicants were not detained because they were asylum seekers. Their illegal first entry to Hungary and continued journey to the Netherlands with the assistance of traffickers had posed a threat to the public order warranting their expulsion and detention – even if the deportation could not be enforced until the completion of the asylum proceedings.

33. As to the legal basis for the applicants' 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.

34. Furthermore, the Government observed that the execution of the applicants' expulsion had been suspended *inter alia* for technical, practical reasons but had not been abandoned; this suspension did not mean that no further action was being taken with a view to their deportation.

(c) The third parties

(i) The AIRE Centre

35. 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

36. 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. A further concern of theirs was that most asylum seekers who had been transferred to Hungary under the Dublin II Regulation were wrongly considered by the Hungarian asylum authority to have illegally entered, which was automatically followed by their placement in 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 applicants' 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

37. 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."

38. Noting that in the instant case the applicants were deprived of their liberty for a substantial period of time essentially for the same reason as above, that is, because the refugee authority had not initiated their 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 applicants' 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

39. 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

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

41. The Government contested this claim.

42. The Court considers that the applicants must have suffered some non-pecuniary damage and awards them each the full sum claimed.

B. Costs and expenses

43. The applicants 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 their lawyer at an hourly rate of EUR 107 including VAT.

44. The Government contested this claim.

45. 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

46. 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, 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) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,515 (two thousand five hundred and fifteen euros) to the applicants jointly, 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.

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 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.