

## **ECtHR - Lokpo and Touré v. Hungary, Application No. 10816/10**

**Country of Applicant:**

Ivory Coast

**Date of Decision:**

08-03-2012

**Citation:**

Application No. 10816/10

**Court Name:**

ECtHR Second Section

**Keywords:**

[Effective remedy \(right to\)](#) [1]

[Detention](#) [2]

[Obligation to give reasons](#) [3]

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**Relevant Legislative Provisions:**

European Union Law

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**Headnote:**

The case concerns the unlawfulness of detention in Hungary of two Ivorian nationals pending the asylum proceedings.

**Facts:**

The applicants are Ivorian nationals, who were born in 1990 and 1984 respectively. They entered Hungary irregularly and, arrested in March 2009, subsequently claimed asylum. They claimed that they were persecuted in their home country for being homosexual. The applicants alleged that their detention between 9 April and 10 September 2009 had been unlawful and not remedied by judicial supervision.

Under the Hungarian Asylum Act, once a case is accepted to the in-merit procedure, the alien administration authority shall, at the initiative of the refugee authority, terminate the detention of the asylum-seeker. Nevertheless, the applicants' detention continued and their attempt to

challenge this decision in court was unsuccessful.

The applicants were released only on 10 September 2009, after the maximum period of detention in such cases had expired.

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### **Decision & Reasoning:**

The applicants argued that had section 55(3) of the Asylum Act been applied properly, their release should have been initiated by the refugee authority once the asylum proceedings had reached the in-merit phase. Its failure to do so had rendered their continued detention unlawful. In any case, the ambiguous wording of section 55(3) entailed a discretionary administrative practice, inasmuch as the release of those asylum-seekers whose cases were admitted to the in-merit phase was, as a pattern, not initiated by the refugee authority. In their view, the expression 'at the initiative of the refugee authority' must be interpreted as establishing an obligation on the refugee authority's side, otherwise there was inadmissible legal uncertainty in this field.

The Court observed that Article 5 § 1 (f) of the Convention does not require that the detention of a person against whom action is being taken with a view to expulsion be reasonably considered necessary, for example to prevent an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under subparagraph (f) is that 'action is being taken with a view to deportation or extradition'.

The Court must therefore ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stressed that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty was satisfied. In laying down that any deprivation of liberty must be effected 'in accordance with a procedure prescribed by law', Article 5 § 1 does not merely refer back to domestic law; it also relates to the 'quality of the law', requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention. 'Quality of law' in this sense implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness.

The Court reiterated 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.

In order 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 »; and the length of the detention should not exceed that reasonably required for the purpose pursued. The Court indicated in this context that it was not persuaded that the applicants' detention was a measure proportionate to the aim pursued by the alien administration policy.

In this connection the Court reiterated that the absence of elaborate reasoning for an applicant's deprivation of liberty rendered that measure incompatible with the requirement of lawfulness inherent in Article 5 of the Convention.

Therefore, the applicants' detention could not be considered 'lawful' for the purposes of Article 5

§ 1 (f) of the Convention.

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**Outcome:**

Violation of Article 5 § 1

EUR 10,000 awarded to each applicant in respect of non-pecuniary damage and EUR 3000 to the applicants jointly in respect of costs and expenses.

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**Observations/Comments:**

The decision became final on 23/01/2013

The AIRE Centre and UNHCR intervened in the proceedings as third parties in accordance with Rule 44 § 3 of the Rules of Court.

**Case Law Cited:**

ECtHR - Ježius v. Lithuania, Application No. 34578/97

ECtHR - Baranowski v Poland, Application No. 28358/95

ECtHR - Mansur v Turkey, Series A No. 319-B § 55

ECtHR - Darvas v Hungary, Application No. 19547/07

ECtHR - Khudoyorov v Russia, Application No. 6847/02

ECtHR - Amuur v. France, Application No. 19776/92

ECtHR - Case of Saadi v United Kingdom (Application no.13229/03) - (UP)

ECtHR - Conka v Belgium (Application no. 51564/99)

[ECtHR - Chahal v the United Kingdom \(Application no. 22414/93\)](#) [4]

**Attachment(s):**



[CASE OF LOKPO AND TOURE v. HUNGARY.pdf](#)[5]

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**Authentic Language:**

English

**State Party:**

Hungary

**National / Other Legislative Provisions:**

Hungary - Act LXXX of 2007 on Asylum

Hungary - Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services (Administrative Procedure Act)

Hungary - Act II of 2007 on Admission and Right of Residence of Third Country Nationals

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**Links:**

[1] [https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A30](https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30)

[2] [https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A27](https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A27)

[3] [https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A2487](https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2487)

[4] <https://m.asylumlawdatabase.eu/en/content/ecthr-chahal-v-united-kingdom-application-no-2241493>

[5]

<https://m.asylumlawdatabase.eu/sites/default/files/aldfiles/CASE%20OF%20LOKPO%20AND%20TOURE>