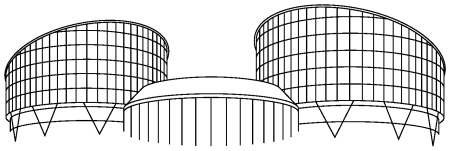

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF NASSR ALLAH v. LATVIA

(Application no. 66166/13)

JUDGMENT

STRASBOURG

21 July 2015

FINAL

21/10/2015

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

In the case of Nassr Allah v. Latvia,

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

Guido Raimondi, *President,*
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Yonko Grozev, *judges,*
Ineta Ziemele, ad hoc *judge,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 30 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 66166/13) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Syrian national, Mr Aladdin Nassr Allah ("the applicant"), on 17 October 2013.

2. The applicant was represented by Ms D. Andersone, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agent, Mrs K. Līce.

3. The applicant alleged, in particular, violations of Article 5 §§ 1 and 4 of the Convention.

4. On 10 January 2014 the above-mentioned complaints were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1982. His current whereabouts are unknown.

A. Background to the case

6. On 29 December 2012 the applicant fled Syria and on an unspecified date entered the Russian Federation. It appears that he applied for asylum, but on 4 May 2013 he left the country before his application was examined.

7. On 4-5 May 2013 the applicant crossed the Latvian border on foot. On 5 May 2013 the State Border Guard Service (*Valsts roberžsardze*) stopped him near the border.

B. Application for asylum in Latvia

8. On 7 May 2013 the State Border Guard Service completed an asylum application form and the applicant signed it in the presence of an Arabic-speaking interpreter.

9. On 7 May 2013 an initial interview (*sākotnējā aptauja*) with the applicant was conducted with the assistance of an Arab-speaking interpreter. The applicant explained that he could speak, read and write in English and Arabic.

10. On 16 May 2013 a personal interview (*pārrunas*) with the applicant took place. The applicant was assisted by an Arab-speaking interpreter.

11. On 22 May 2013 the closed facility in which the applicant was being held (see paragraph 23 below) received a parcel addressed to him. The sender was unknown. The parcel contained the applicant's identity card and military service certificate in Arabic. Their translation was requested and on 24 May 2013 it was received.

12. On 28 May 2013 those documents, together with their translations into Latvian, were sent to the Office of Citizenship and Migration Affairs (*Pilsonības un migrācijas lietu pārvalde*). The latter was also informed that it would receive certified translations as soon as possible. On 21 June 2013 the State Border Guard Service received the certified translations and, on the same date, sent them to the Office of Citizenship and Migration Affairs.

13. On 31 May 2013 authenticity of the applicant's identity card was confirmed by two forensic experts. On 21 June 2013 the State Border Guard Service received their report and, on the same date, sent it to the Office of Citizenship and Migration Affairs.

14. On 28 June 2013 the applicant appointed a lawyer to assist him in the administrative proceedings. The same lawyer continued to represent him before the Court (see paragraph 2 above).

15. On 4 July 2013 the Asylum Affairs Division (*Patvēruma lietu nodaļa*) of the Office of Citizenship and Migration Affairs informed the applicant that they had received his application for asylum and would examine it within three months.

16. On 3 October 2013 the Asylum Affairs Division decided to refuse the applicant's asylum application. However, they granted him subsidiary

protection status (*alternatīvais statuss*) and issued a temporary residence permit for one year. It was noted that that decision would take effect from the time the applicant had been informed of it. A reference was made to section 70(1) of the Administrative Procedure Law and section 8(3) of the Notification Law (see paragraph 38 below).

17. On 4 October 2013, which was a Friday, a letter was sent to the State Border Guard Service in Daugavpils informing them of the decision and stating that the applicant was to be informed of it immediately. They also asked that one copy of the decision be handed over to the applicant and that the second copy be sent back to the Asylum Affairs Division with the applicant's signature confirming that he had been informed of it. The letter, together with two copies of the decision, was received in Daugavpils on Monday 7 October 2013 (see paragraphs 29-30 below) and the applicant was informed of it. Accordingly, the decision took effect on 7 October 2013.

18. The applicant lodged an appeal against the decision with the administrative courts, as he wished to be granted asylum; he considered that the subsidiary protection status was not sufficient.

19. On 6 November 2013 administrative proceedings were instituted.

20. On 19 December 2013 the Administrative District Court issued summonses and scheduled a hearing for 27 January 2014. That hearing was postponed as the applicant did not appear. Another hearing was scheduled for 25 February 2014, but the applicant failed to appear again.

21. On 26 February 2014 the Administrative District Court left the applicant's appeal without examination for repeated failure to appear without good reason.

C. The applicant's detention

22. On 5 May 2013 the applicant was detained under section 51(2)(1) of the Immigration Law (see paragraph 35 below), but he refused to sign the detention record. At that time, he had no personal identification or valid travel document. He identified himself as "Adnan Haiiak", born on 20 October 1983. He was informed (in English) of his rights to appeal against the detention order, receive legal aid, acquaint himself with the detention records and communicate in a language understood by him. The following day several documents were found in the place where he had been arrested: a document testifying that an application for short-term asylum had been made by a Syrian national, Mr Nassr Allah, born on 18 September 1982, and was being examined in Russia; a torn train ticket; and other documents in Arabic. The applicant explained that he had hidden those documents in order to avoid being sent back to Russia.

23. On 7 May 2013 the applicant was detained under section 9(1)(1) (undetermined identity) and 9(1)(2) (misuse of the asylum procedure) of the

Asylum Law, but he refused to sign the detention record. He was informed (in Arabic) of his rights to appeal against the detention order, receive legal aid and communicate in a language understood by him. He was also informed about the reasons for his detention. He was placed in a closed facility in Daugavpils – an accommodation centre for foreign detainees and asylum seekers (*Aizturēto ārzemnieku un patvēruma meklētāju izmitināšanas centrs* – "the Daugavpils accommodation centre").

24. On 10 May 2013, following a hearing in the applicant's presence, a judge of the Daugavpils (City) Court (*Dauvgavpils tiesa*) ordered his detention for two months. The judge examined the material brought before him and, with the assistance of an Arab-speaking interpreter, heard evidence from the applicant. The applicant explained that he had applied for asylum in Russia, but had left as he realised that he would not receive it. He had crossed the border illegally and had identified himself by giving another name in order not to be deported back to Russia. The applicant was not assisted by a lawyer. The judge concluded that there were grounds to detain him as his identity had not been determined and there were reasons to consider that he had misused the asylum procedure. He had arrived in Latvia from a country, where his life had not been endangered and where he had applied for asylum; these facts evidenced that he misused the asylum procedure. On the same date, the applicant lodged an appeal (one page) against that decision in English, stating in simple terms that he had received the court's decision and wished to appeal against it. He submitted that he had been in danger in Russia and had been ill; he expressed the wish to be granted refugee status in Latvia and undertook to provide all his documents as soon as possible. On 13 May 2013 his appeal was sent for translation; on 7 June 2013 a translation was received. On the same date, the appeal, its translation and the case file were forwarded to the Latgale Regional Court (*Latgales apgabaltiesa*) and the applicant was informed that a single judge would examine his appeal following a written procedure; the applicant could submit further observations within forty-eight hours. That information was handed to him by the State Border Guard Service and he signed to acknowledge receipt of it on 13 June 2013. On 25 June 2013 the applicant was informed that examination of his case had been rescheduled to 5 July 2013; it would be decided by a single judge following a written procedure. That information was handed to him by the State Border Guard Service and he signed to acknowledge receipt of its translation on 25 June 2013.

25. On 5 July 2013 a judge of the Latgale Regional Court examined and dismissed the applicant's appeal. He relied on largely the same factual and legal grounds for detaining the applicant as the first-instance court judge. The judge concluded that there were grounds to consider that the applicant attempted to misuse the asylum procedure. It was evidenced by the facts surrounding his arrival and application for asylum in Latvia. He had crossed

the border illegally. He had not arrived directly from the country where his life or liberty was endangered. He had spent several months in Russia, where he had applied for asylum, but had left illegally; without awaiting for a final decision. It was impossible to predict his further actions in case of release. The decision was drafted in Latvian, but its contents were explained to the applicant, for which he signed on the same date.

26. On 8 July 2013, following a hearing in the applicant's presence, the judge of the Daugavpils (City) Court authorised the extension of his detention for a further two months; the applicant was assisted by an interpreter. The applicant's lawyer was not present, but the judge examined her written request to release the applicant on account of the fact that he had provided his identity documents and had not misused the asylum procedure. She argued that the applicant could be placed in an open and specialised institution – an accommodation centre for asylum seekers in Mucenieki. The judge disagreed and concluded that there were grounds to detain the applicant under section 9(1)(2) of the Asylum Law. The fact that his application for asylum was accepted for examination did not indicate that he would comply with the requirements arising from the asylum procedure as he testified that he would again apply for an asylum in another European country in case he received a negative decision in Latvia, which was contrary to the applicable procedure. In such circumstances, it was impossible to predict his further actions if placed in an open accommodation centre; there was a possibility that he might leave Latvia and thereby obstruct the asylum procedure as he had already done in a safe third country (see paragraph 6 above). On the same date, the applicant lodged an appeal (one page) against that decision in Latvian, stating that there was no evidence that he had misused the asylum procedure, might leave the country or obstruct the asylum procedure. He disputed the relevance of the fact that he had applied for asylum in Russia as it was not a safe third country. His appeal was forwarded to the Latgale Regional Court together with the case file. On 15 July 2013 the applicant was informed that his case would be examined on 30 July 2013 by a single judge following a written procedure; it was explained that the applicant could submit further observations within forty-eight hours. That information was handed to him by the State Border Guard Service and he signed to acknowledge receipt of its translation on 18 July 2013.

27. On 30 July 2013 another judge of the Latgale Regional Court examined and dismissed the applicant's appeal, upholding the decision to detain him under section 9(1)(2) of the Asylum Law. She referred to the findings of the city court to the effect that there were grounds to believe that the applicant might misuse the asylum procedure. There was evidence that he had left Russia after several months and without awaiting a final decision in response to his application for asylum. Upon arrival in Latvia, he had withheld his real identity. It was due to diligent work of border guards that

his identity could be established. Moreover, the applicant admitted that he had left Russia because he believed that his application for asylum would be refused; he also admitted that he would attempt to obtain asylum in another European country if it was refused in Latvia. Therefore, the judge upheld the conclusion of the lower court that it was impossible to predict the applicant's further actions upon release. The decision was drafted in Latvian, but its contents were explained to the applicant. On 6 August 2013 he signed the decision, confirming that it had been explained to him in English; he respected the decision and agreed with it.

28. On 6 September 2013 the judge of the Daugavpils (City) Court authorised the applicant's detention for a further two months, again on the grounds of section 9(1)(2) of the Asylum Law. During the hearing, the applicant explained that he would continue to pursue the asylum proceedings; he was aware of the relevant procedures and duties, he would not leave Latvia until the end of the asylum procedure. The judge concluded that the applicant misused the asylum procedure on the same grounds as indicated in the previous decisions and that he should remain in detention. With reference to section 9 (3) of the Asylum Law, the judge noted that the time-limit for his detention had not yet expired. The applicant did not lodge an appeal against that decision, as the Asylum Affairs Division was due to make a decision in less than one month and his previous experience had shown that detention appeals took about one month to be examined.

29. On 4 October 2013 the State Border Guard Service informed the applicant that he had been granted subsidiary protection status but that they could not release him until they received the original version of that decision; the relevant authority had sent it by post (see paragraph 17 above).

30. The State Boarder Guard Service ordered the applicant's release at around 4 p.m. on 7 October 2013. In the release order, a reference was made to the fact that the applicant had been granted subsidiary protection status and that grounds for his detention had ceased to exist.

D. Review by the Ombudsman

31. On 13 August 2013 the applicant complained to the Ombudsman about his prolonged detention.

32. On 21 August 2013 the Ombudsman replied [in English] as follows:

> "In your complaint you request Ombudsman's assistance in obtaining order for your release as well as assistance with contacting your family in Syria.
>
> In the process of examining your complaint I have contacted the centre for detained foreigners and asylum seekers 'Daugavpils' (hereinafter – the Centre). According to information provided by the Centre, your application for asylum is currently under examination in the Office of Citizenship and Migration Affairs. The expected date of decision is 4 October 2013.

According to the decision of Daugavpils (City) Court from 8 July 2013, as well as Latgale Regional Court you are currently detained on the basis of [section 9(1)(2)] of the Asylum Law. The next periodical review of your detention is due before 6 September 2013. [Section 9(1)(2)] of the Asylum Law states that 'the State Border Guard [Service] has the right to detain an asylum seeker for a period up to seven days and nights if there are reasons to believe that the asylum seeker is attempting to use the asylum procedure in bad faith.'

The decision of Daugavpils (City) Court is based on the fact that you have crossed the Latvian border under the name of Adnan Haiik having previously requested temporary asylum in the Russian Federation with your established identity as Aladdin Nassr Allah. In the court hearing you have also indicated that in case of a negative decision you will proceed to seek asylum in another European country, which would be contrary to the procedure and regulations of requesting asylum in the European Union. Thus the court has established reasons to believe that you are attempting to use asylum procedure contrary to its objective and purpose.

Having reviewed the decision of Daugavpils (City) Court and Latgale Regional Court, it is established that you have been detained according to the procedures prescribed by law. Your rights to periodical review of detention have also been observed according to Latvian law. Furthermore, the decisions ordering your detention contain sufficient motivation to establish legal and factual grounds for such detention. Therefore, there has been no violation of your right to liberty and security under the [Convention] and Article 94 of the Constitution of Latvia.

With regard to the possibility to contact your family from the detention facility, I would like to inform you that upon your request, you have the right to contact your family on your own expense. The Latvian law does not grant detained asylum seekers a possibility to contact their families free of charge."

II. RELEVANT EUROPEN MATERIALS AND DOMESTIC LAW

A. European materials

33. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the "CPT") visited the Daugavpils accommodation centre during its 2011 visit to Latvia and noted the following (see report CPT/Inf (2013) 20):

"33. The delegation was informed at the outset of the visit that recent amendments to the Immigration Law (passed in June 2011) had brought it into full conformity with the EU Return Directive and defined more clearly the grounds for detention of irregular migrants. In particular, new time-limits for the detention of foreign nationals awaiting deportation had been introduced (i.e. the initial custody of a maximum of ten days upon the decision of the Border Guard, which can be prolonged by court decision for a maximum of three consecutive two-month periods, and – if the irregular migrant refuses to co-operate with the immigration authorities or when delays occur in obtaining the necessary documents from another country – for a further twelve months).

34. [Daugavpils accommodation centre] was opened in May 2011, following the closure of the immigration detention facility at Olaine. The Centre is managed by the State Border Guard [Service] under the Ministry of Internal Affairs and is currently

the only detention centre for foreign nationals in Latvia. It is located in a refurbished two-storey building (the premises of former military barracks) not far from the centre of Daugavpils and has an official capacity of 70 places. At the time of the visit, the Centre was accommodating 33 foreign nationals, including 32 asylum seekers and one irregular migrant who was awaiting deportation (there were no unaccompanied minors). The average length of detention in the establishment was said to be two months.

35. The CPT's delegation received no allegations of ill-treatment of foreign nationals by staff at the Centre. All the inmates interviewed by the delegation stated that they were treated correctly. Further, the vast majority of inmates seemed to have no communication problems with staff since all staff members spoke Russian, and some also English and French.

36. The delegation noted that staff openly carried truncheons in the two male units; in the CPT's opinion, this is clearly not conducive to the development of positive relations between staff and inmates. **The CPT recommends that steps be taken to ensure that staff working in the Centre do not openly carry truncheons in detention areas; if it is deemed necessary for staff to possess such equipment, it should be hidden from view.**

37. The material conditions in the Centre were very good. The establishment had two male units and a unit for women and families. Each unit comprised several rooms for two to four inmates, a recreation room and a well-equipped kitchen. The rooms were spacious (e.g. some 25 m^2 for four persons), had good access to natural light and artificial lighting, and were well ventilated and clean. They were also properly furnished (beds with full bedding, wardrobes and a fully partitioned internal sanitary annexe including toilet and shower). The female unit also contained a pleasant play-room for children.

38. The foreign nationals benefited from an open-door regime – being able to move about freely inside their respective units – and could go to a spacious outdoor courtyard for at least two hours per day (and longer in good weather). Further, during the day they had ready access to a recreation room where they could watch television and play board games. As for sports, a fitness room was accessible several times per week and, weather permitting, outdoor sports activities were also offered.

However, **the CPT invites the Latvian authorities to expand the range of activities for any foreign nationals held for prolonged periods at the Centre. The longer the period for which persons are detained, the more developed should be the activities which are offered to them**.

39. Arrangements for health care at the Centre were generally adequate. A feldsher or nurse was present every day from 9 a.m. to 9 p.m. The delegation noted that every newly admitted foreign national was examined by a member of the health-care staff, usually within 24 hours, and had a medical file opened. The medical facilities and equipment at the Centre were of a very good standard, and supply of medication was satisfactory. Further, it appeared that emergency medical care and transfers to outside medical establishments were arranged whenever necessary.

40. Upon arrival at the Centre, foreign nationals were provided with written information about their rights and duties during their stay in the establishment; this information was available in various languages.

That said, no written information (i.e. leaflets) was provided to them setting out their procedural rights and legal situation. A number of foreign nationals interviewed by the delegation did not appear to be aware of the legal proceedings to which they were

subjected; in this connection, many complaints were also received about the quality of interpretation during court proceedings. Further, some inmates complained that court decisions authorising their detention in the Centre had not been translated into a language they understood and that they were *de facto* deprived of the possibility to lodge an appeal against their detention. Moreover, no arrangements had been made to establish a legal counselling service at the establishment.

The CPT would like to receive the observations of the Latvian authorities in relation to the above-mentioned issues.

41. The existing arrangements at the Centre for contacts with the outside world were generally satisfactory. Foreign nationals were allowed to send and receive letters and to have short-term visits. Further, there were no restrictions on making or receiving telephone calls during the day.

42. The CPT understands that the internal regulations of the Centre are currently under preparation. **The Committee would like to receive a copy of these regulations once they have been adopted."**

B. Domestic law

34. The relevant domestic law provisions on the detention of asylum seekers and their rights have been described in *Longa Yonkeu v. Latvia* (no. 57229/09, §§ 81-82, 84-86, 89-90, 15 November 2011). In particular, the following provisions of the Asylum Law are of relevance in the present case:

Section 9 – Detention of asylum seekers (as in force at the material time and until 20 November 2013)

"1. The State Border Guard Service has the authority to detain an asylum seeker for an initial period of up to seven days, if at least one of the following conditions is met:

1) the identity of the asylum seeker has not been determined;

2) there is reason to believe that the asylum seeker is attempting to misuse the asylum procedure;

3) the competent State authorities, including the State Border Guard Service, have reason to believe that the asylum seeker poses a threat to national security or public order and safety.

2. The State Border Guard Service shall detain and the judge shall authorise [further] detention of an asylum seeker in accordance with the Immigration Law.

3. The time-limit laid down in paragraph 1 may be extended; however, the overall period of detention may not exceed the length of time taken to complete the asylum procedure ..."

Section 9 – Detention of asylum seekers (as from 21 November 2013)

"1. The State Border Guard Service has the authority to detain an asylum seeker for an initial period of up to seven days, if at least one of the following conditions is met:

1) the identity of the asylum seeker has not been determined;

2) there is reason to believe that the asylum seeker is attempting to misuse the asylum procedure and it is necessary to find out the facts on which the application is based and which can be ascertained only by detention, especially if there is risk of absconding;

3) the competent State authorities, including the State Border Guard Service, have reason to believe that the asylum seeker poses a threat to national security or public order and safety.

1.[1] An asylum seeker shall be released, if the grounds on basis of which he or she has been detained have ceased to exist.

2. The State Border Guard Service shall detain and the judge shall authorise [further] detention of an asylum seeker in accordance with the Immigration Law.

3. The time-limit laid down in paragraph 1 may be extended; however, the overall period of detention may not exceed the length of time taken to complete the asylum procedure ..."

35. In addition, as from 16 June 2011 the Immigration Law empowers the State Border Guard Service to detain aliens if there are reasons to believe that they will avoid the deportation procedure or impede its preparation, that they might flee and if there are grounds to consider that they are concealing their identity, providing false information or otherwise refusing to co-operate (section 51(2)(1)).

36. Under section 54(1) of the Immigration Law the corresponding detention order can be issued for up to ten days. An appeal lies against such a detention order.

37. In accordance with section 55(7) of the Immigration Law, a district (city) court must immediately proceed with examination of a complaint concerning an alien's detention. The regional court's decision in this regard is final.

38. Section 70 of the Administrative Procedure Law determines the point in time when an administrative act takes effect. It reads as follows:

"(1) Provided that it is not otherwise stipulated in an external legal instrument or the administrative act itself, an administrative act shall come into effect at the time the addressee is notified of it. The manner in which the addressee is notified of the administrative act – in writing, orally or otherwise – shall not affect its coming into effect.

(2) The addressee is notified of an administrative act pursuant to the Notification Law. If an administrative act unfavourable to the addressee is sent by mail, it shall be sent in the form of registered mail.

(3) An administrative act shall be in effect until it is revoked, is executed, or may no longer be performed because of a change in the actual or legal circumstances."

Section 8(3) of the Notification Law provides as follows:

"A document which has been notified as a registered postal item shall be deemed notified on the seventh day after handing it over to the post office."

THE LAW

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

39. The applicant alleged that his detention in the Daugavpils accommodation centre had been unlawful from 5 May to 7 October 2013. His detention had not been necessary, since there had been no evidence that he would flee or obstruct the asylum proceedings. Moreover, his identity had been confirmed since 27 May 2013 and the subsequent court decisions authorising further detention had been unfounded. Lastly, he considered that his detention from 4 to 7 October 2013 had been arbitrary and unlawful; he had continued to be detained despite the positive decision as regards his subsidiary protection status.

40. Article 5 § 1 (f) of the Convention provides 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: ...
>
> (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. ..."

41. The Government contested the applicant's allegations.

A. Scope of the applicant's complaint

42. The Government submitted that the applicant's complaint under Article 5 § 1 (f) of the Convention concerned two distinct periods: first, between 5 and 7 May 2013 when he was detained pending deportation; and secondly, the period between 7 May and 7 October 2013 when his asylum application was pending.

43. The applicant did not provide any comments in this respect, but merely reiterated that his detention had been unlawful and that it had not been necessary, since there had been no evidence that he would flee or obstruct the asylum proceedings.

44. In the light of the applicant's submissions, the Court holds that his complaint relates to his detention solely in connection with the asylum proceedings. The Government submitted, and the applicant did not contest, that the asylum proceedings and his detention in connection with them had not commenced until 7 May 2013, when the applicant applied for asylum (see paragraph 8 above). The Court considers, accordingly, that the scope of the applicant's complaint under Article 5 § 1 of the Convention includes his detention from 7 May 2013 onwards. Conversely, the scope of the applicant's complaint does not include his detention from 5 to 7 May 2013,

since during that period he was detained with a view to deportation, and he did not complain about that procedure.

B. Admissibility

45. The Government raised a preliminary objection of non-exhaustion in that the applicant had not lodged an appeal against the decision of 6 September 2013 to extend his detention for a further two months.

46. The applicant did not offer to expand on the explanation in his application form, where he had indicated that he had not lodged an appeal against that decision because the Asylum Affairs Division had been due to decide in less than one month and his previous experience had shown that detention appeals took about one month to be examined.

47. The Court has already found that detention of asylum seekers in Latvia under the old Asylum Law was a continuing situation (see *Longa Yonkeu*, cited above, § 108). The situation remained largely unchanged following the entry into force of the new Asylum Law on 14 July 2009, which empowered the State Border Guard Service to detain asylum seekers for up to seven days if certain criteria were met. After the initial seven-day period a court order was necessary. Each time a judge examined the case, he or she had to verify whether those criteria had been met, in which case he or she could extend the detention for no longer than two months at a time (ibid., §§ 81-82).

48. In the present case, the necessity of the applicant's detention was examined by a judge on three occasions (10 May, 8 July and 6 September 2013) and each time it was extended for a further two months. The applicant lodged appeals against the decisions of 10 May and 8 July 2013, but not against the decision of 6 September 2013. The applicant's argument before the domestic courts was that there was no need to detain him as he had provided identity documents and there was no reason to consider that he had misused the asylum procedure. Those arguments were examined by the domestic courts at first and second instance. There is nothing in the case file indicating that the appellate court, if repeatedly confronted with the issue, would take a different stance on this issue. In view of the fact that the applicant's status was due to be decided in less than one month and that the domestic courts had taken approximately one month to examine his previous appeals, the Court considers that it cannot be held against the applicant that he chose not to pursue appellate proceedings in so far as the 6 September 2013 decision was concerned.

49. Accordingly, the Court dismisses the Government's preliminary objection concerning non-exhaustion of domestic remedies.

50. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

51. According to the Government, the asylum proceedings commenced on 7 May 2013 when the applicant lodged his asylum application, and were completed on 26 February 2014 when the Administrative District Court adopted a final decision in the asylum proceedings to leave the applicant's appeal without examination for repeated failure to appear without good reason. As to the lawfulness of the applicant's detention in the period under examination, which ran from 7 May to 7 October 2013, the Government asserted that once every two months the competent authorities had extended the detention in accordance with domestic law, which was sufficiently clear and precise. Detention of an asylum seeker was prohibited beyond the date of a final decision. Since the applicant was released on 7 October 2013, before completion of the asylum procedure, his detention was not in breach of domestic law.

52. As to the protection from arbitrariness, the Government argued that the applicant's detention throughout the period under examination had been connected with the purpose of preventing his unauthorised entry into Latvia and had been carried out in good faith. The conditions of detention in the Daugavpils accommodation centre were more than satisfactory. In this connection, the Government referred to the CPT's conclusions following its 2011 visit, which described the material conditions there as "very good" (see paragraph 33 above). They admitted that the domestic authorities had taken almost five months to examine the applicant's asylum application. However, that amount of time had been reasonably required for the purpose pursued, given that the proceedings had been in progress, and the proceedings had been pursued with diligence and in a timely manner. The State Border Guard Service had taken approximately one and a half months to complete the inquiry, carry out the interviews, establish the applicant's identity and collect other data. Once all the information had been collected, it was forwarded to the Office of Citizenship and Migration Affairs, who examined it and granted the applicant subsidiary protection status. There were no periods of unjustified inactivity attributable to the authorities. In the Government's view, the definitive period of the applicant's detention, as well as the periodic judicial review, provided sufficient guarantees against arbitrariness.

53. The applicant, for his part, did not provide any further submissions.

54. The Court observes at the outset that the parties did not dispute the fact that the applicant had been deprived of his liberty in the Daugavpils accommodation centre. The Court finds it established that, given that it was a closed facility, the applicant was deprived of his liberty within the

meaning of Article 5 § 1 while he was held there. Likewise, it is not disputed that the applicant's detention from 7 May to 7 October 2013 falls within the first limb of Article 5 § 1 (f) of the Convention.

55. The Court refers to the applicable principles in relation to detention to prevent unauthorised entry to a country as spelled out in the *Longa Yonkeu* judgment (cited above, §§ 119-21).

56. In addition, the Court notes that in order to avoid being branded as arbitrary, such detention 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 (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 74, ECHR 2008).

57. As to the lawfulness of the detention, the Court notes that throughout the asylum proceedings the applicant was detained in accordance with domestic law. Initially, on 7 May 2013, he was detained under sections 9(1)(1) and 9(1)(2) of the Asylum Law, as his identity had not been determined and he had misused the asylum procedure. Three days later a judge authorised his detention for a further two months on the same grounds, which decision was upheld on appeal. Subsequently, on 8 July and 6 September 2013 the judge reviewed the lawfulness of his detention and concluded that even though his identity documents had been obtained in the meantime, there were reasons to believe that the applicant might still misuse the asylum procedure. His further detention was authorised under section 9(1)(2) of the Asylum Law. The Court rejects the applicant's argument that his detention from 4 to 7 October 2013 was unlawful, because he was detained under a valid detention order issued by the judge on 6 September 2013 (see paragraph 28 above). Furthermore, even though a favourable decision had been adopted on 4 October 2013, the asylum proceedings were not completed and the relevant domestic time-limit for detention had not yet elapsed (contrast with the above-cited case of *Longa Yonkeu*, §§ 82 and 128 *in fine*, where the applicant was detained beyond the date of a final decision in asylum proceedings). Accordingly, the Court finds that the applicant's detention from 7 May to 7 October 2009 was carried out in accordance with the law.

58. In examining whether the applicant's detention was compatible with the criteria set out in paragraph 56 above, the Court notes the findings of the Daugavpils (City) Court and the Latgale Regional Court (see paragraphs 24-28 above). The national courts found that, initially, the applicant's identity had not been determined. Subsequently, during the second set of review proceedings, the argument was raised that the applicant's identity had been established, but the judge of the Daugavpils

(City) Court rejected it, since there was evidence that the applicant might leave the country and misuse the asylum procedure. That decision was upheld on appeal (see paragraphs 26 and 27 above). Accordingly, the Court finds that the national authorities acted in good faith in detaining the applicant during the period underlying the detention orders. The Court also considers that the national authorities acted in good faith in detaining the applicant from 4 to 7 October 2013. The Court is mindful of the practical implications arising from the need to inform and formally notify an asylum seeker of a decision regarding his application; it considers that a period of three days cannot be considered arbitrary in the circumstances of the present case, where this period fell over a weekend and where the relevant decision-making and enforcement authorities were located in different cities. Moreover, the Court notes that, according to domestic law, the decision to grant subsidiary protection status entered into effect only when the applicant was notified of it (see paragraphs 16, 17 and 38 above). As soon as that decision took effect, on 7 October 2013, the applicant was immediately released given that the grounds for his detention had ceased to exist (see paragraph 30 above).

59. As regards the place and conditions of detention, the Government referred to the CPT report following its visit in 2011, which established that the material conditions in the Daugavpils accommodation centre were very good. The Court sees no reason to hold otherwise, since the accommodation centre appears to have been adapted to hold asylum seekers (see paragraph 33 above; contrast with *Suso Musa v. Malta*, no. 42337/12, §§ 33 and 101, 23 July 2013 and *Kanagaratnam v. Belgium*, no. 15297/09, § 95, 13 December 2011). While the CPT suggested that certain improvements could be made, in particular as concerns the range of activities offered, information on detainees' procedural rights and legal situation, as well as access to legal counselling, the applicant in the present case did not raise any particular concerns before the Court in this regard. The Court observes that the applicant was able to appoint a lawyer, who continued to represent him before the Court (see paragraphs 2 and 28 above).

60. Lastly, as regards the length of detention, the Court observes that the applicant was held in the Daugavpils accommodation centre from 7 May to 7 October 2013, that is for five months; he was released on the latter date after having been notified of the decision to grant him subsidiary protection status. The asylum proceedings were pending throughout the applicant's detention, with the national authorities taking the necessary steps to establish his identity, confirm it and determine his application for asylum within the time-limits laid down in domestic law. While it is true that his identity was established on 31 May and on 21 June 2013 the relevant authority was informed of it, his further detention remained authorised under section 9(1)(2) of the Asylum Law for misuse of asylum procedure. In such circumstances, the overall period of the applicant's detention cannot

be said to have exceeded what was reasonably required for the purpose pursued, in particular because as the conditions in the Daugavpils accommodation centre appear to have been adapted to hold asylum seekers (contrast with *Suso Musa*, cited above, § 102).

61. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's detention from 7 May to 7 October 2013 to prevent his unauthorised entry into Latvia was effected in accordance with a procedure prescribed by law and was justified.

62. There has, accordingly, been no violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

63. The applicant complained that the appeal procedure to contest the lawfulness of his detention had not been effective. He was dissatisfied with the lack of speediness in the review by the appellate court and with the fact that those proceedings had been conducted in writing and in a language he did not understand. Article 5 § 4 of the Convention provides as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

64. The Government contested that argument.

A. Admissibility

65. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Speediness of review

66. The Government submitted that the domestic law provided for mandatory judicial review of the lawfulness of detention at regular intervals – once every two months. With reference to the cases of *Longa Yonkeu* (cited above, § 157) and *Ermakov v. Russia* (no. 43165/10, § 272, 7 November 2013) they argued that such review complied with Article 5 § 4 of the Convention. The domestic courts examined the reasons for further detention and set specific time-limits; they also took into account that the asylum proceedings were underway. The first-instance court had to proceed "immediately" to review the lawfulness of detention of an asylum seeker (see paragraph 37 above); in practice, that meant that it examined such

applications on the same day as they were submitted or not later than the following day. With reference to the above-cited *Ermakov* case (§ 261), the Government argued that the supervision required by Article 5 § 4 of the Convention had been incorporated in the first-instance court decisions of 10 May, 8 July and 6 September 2013.

67. The Government pointed out that the applicant could lodge appeals against the first-instance court decisions within forty-eight hours, which he had done in respect of the decisions of 10 May and 8 July 2013. In relation to the first of his appeals, the Government noted that it had had to be translated; the translation had been received on 7 June 2013 and on the same date the applicant had been invited to submit further observations within forty-eight hours. The Government submitted that the Latgale Regional Court had examined his appeal within fifteen working days of its receipt in that court. As regards the second appeal, they noted that it had been examined within twelve working days of its receipt.

68. The applicant merely reiterated that he was dissatisfied with the lack of speediness in the review by the appellate court.

69. The Court reiterates that Article 5 § 4 of the Convention proclaims the right to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000‑III). Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. However, where domestic law provides for appeal, the appellate body must also comply with the requirements of Article 5 § 4, for instance as concerns the speediness of the review in appeal proceedings (see, among many other authorities, *Navarra v. France*, 23 November 1993, § 28, Series A no. 273-B). At the same time, the standard of "speediness" is less stringent when it comes to proceedings before a court of appeal (see *Lebedev v. Russia*, no. 4493/04, § 96, 25 October 2007). In order to determine whether the requirement that a decision be given "speedily" has been complied with, it is necessary to effect an overall assessment where the proceedings were conducted at more than one level of jurisdiction. As is the case for the "reasonable time" stipulation in Articles 5 § 3 and 6 § 1 of the Convention, the question whether the right to a speedy decision has been respected must be determined in the light of the circumstances of each case, including the complexity of the proceedings, the conduct by the domestic authorities and by the applicant and what was at stake for the latter (see *Mooren v. Germany* [GC], no. 11364/03, § 106, 9 July 2009 and the cases cited therein). The Court must, in particular, examine whether any new relevant factors that had arisen in the interval between periodic reviews were assessed, without unreasonable delay, by a court with jurisdiction to decide whether or not the detention had become "unlawful" in the light of those

new factors (see *Abdulkhakov v. Russia*, no. 14743/11, § 215, 2 October 2012).

70. Turning to the present case, the Court notes that the applicant's first appeal against the detention order of 10 May 2013 was dismissed by the Latgale Regional Court on 5 July 2013, that is, within fifty-five days. That period, by itself, is not insignificant (see *Lebedev*, cited above, § 98). The applicant's second appeal against the decision of the Daugavpils Court of 8 July 2013 to further extend his detention was dismissed by the Latgale Regional Court on 30 July 2013, that is, within twenty-two days.

71. The Court considers that the mere fact that the applicant's detention was ordered by a court and subsequently reviewed with two-monthly intervals does not automatically mean that Article 5 § 4 requirements have been observed. As noted in paragraph 69 above, while States are not required to set up courts of appeal to review the lawfulness of detention, should they choose to do so, the appeal court also has to comply with the requirement of "speediness". It is incumbent on the judicial authorities to make the necessary administrative arrangements to ensure that urgent matters are dealt with speedily, and this is particularly necessary when the individual's personal liberty is at stake (see *S.T.S. v. the Netherlands*, no. 277/05, § 48, ECHR 2011 and the case-law cited therein).

72. Although the number of days taken to conduct the relevant proceedings is obviously an important element, it is not necessarily in itself decisive for the question of whether a decision has been given with the requisite speed (see *Savriddin Dzhurayev v. Russia*, no. 71386/10, § 225, ECHR 2013 (extracts)). The question whether a person's right under Article 5 § 4 has been respected has to be determined in the light of the circumstances of each case (see paragraph 69 above). The Court has found that the "speediness" requirement was breached in appellate proceedings that lasted for fifty-four days and twenty-nine days respectively (see *Savriddin Dzhurayev*, cited above, §§ 226 and 231).

73. The Court notes that the applicant, who was an asylum seeker, was detained because his identity had not been determined and he had misused the asylum procedure. While in the first set of review proceedings his appeal was drafted in a rather general manner, it was clear that he was contesting the detention order issued by the judge (see paragraph 24 above). In the Court's opinion, these were rather straightforward matters, and it has not been argued by the parties that the case itself disclosed any features of particular complexity, necessitating detailed investigation and warranting lengthy consideration. Nor was it argued that proper review of the applicant's detention had required, for instance, the collection of additional observations and documents (contrast with *Longa Yonkeu*, cited above, §§ 41-43 and 157, where a hearing was held before the appellate court).

74. The Government argued that additional time was needed to translate the applicant's first appeal. However, the Court notes that it took

twenty-five days for the domestic authorities to ensure translation of a one-page appeal drafted in simple terms. That period cannot be considered reasonable, bearing in mind the strict standards set down by the Court in its case-law (see the above-cited cases of *Lebedev* and *Savriddin Dzhurayev*, where the Court found that periods of forty-four days, fifty-four days and twenty-nine days, respectively, were excessive in the appellate proceedings concerning lawfulness of detention). Furthermore, the fact that the applicant's identity had been confirmed while the first set of appeal proceedings were pending was not put forward before the appellate court and, thus, it did not need to examine this issue. It cannot, therefore, be said that the appellate court needed additional time to carry out a more detailed examination in this regard.

75. While no additional time was needed to translate the applicant's second appeal as it was submitted in Latvian, the appellate court nevertheless took twenty-two days to adopt its final decision. Furthermore, also in these proceedings, the appellate court did not need to examine the issue of the applicant's identity, as the first-instance court had already excluded it and authorised detention solely under section 9(1)(2) of the Asylum Law.

76. The Court finds nothing in the materials of the case to indicate that the applicant contributed to the length of the appeal proceedings. He lodged both appeals on the dates the decisions were taken by the first-instance court. It therefore follows that the entire length of the two sets of appeal proceedings (fifty-five and twenty-two days, respectively) was attributable to the domestic authorities.

77. Having regard to the delays at issue, the overall duration of the proceedings and what was at stake for the applicant, the Court concludes that the proceedings were not conducted "speedily" within the meaning of Article 5 § 4 of the Convention. There has accordingly been a breach of this Article.

2. Alleged inability to obtain effective review of detention

78. The Government emphasised that the applicant had fully benefitted from adversarial proceedings and enjoyed all necessary procedural guarantees to render the proceedings before the first-instance court effective and fair. Both appellate court decisions had been forwarded to the State Border Guard Service, which had to notify the applicant of them and provide a translation. His notes on the decisions themselves demonstrated that he was acquainted with their contents (see paragraph 27 above). The applicant had not argued or specified in more detail how the written proceedings before the appellate court had prevented him from exercising his procedural rights, for example, by lodging further submissions. The Government contended that Article 5 § 4 of the Convention could not be

interpreted to compel Member States to ensure oral proceedings before the second level of jurisdiction for examination of the lawfulness of detention.

79. The applicant merely reiterated that he was dissatisfied with the fact that the appellate proceedings had been conducted in writing and in a language he did not understand.

80. As to the requirement of procedural fairness under Article 5 § 4, the Court reiterates that this Article does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances. Although it is not always necessary that an Article 5 § 4 procedure be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question. Thus, the proceedings must be adversarial and must always ensure "equality of arms" between the parties (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, §§ 203-04, ECHR 2009 and the cases cited therein).

81. The Court observes, first of all, that the applicant was duly notified of the procedure before the appellate court; it was explained to him by the State Border Guard Service on the basis of the information received from the court, and he certified it with his signature in both sets of review proceedings (see paragraphs 24 and 26 above). While he did not have a lawyer in the first set of review proceedings, it did not prevent him from lodging an appeal (see paragraph 24 above). In the second set of review proceedings he had the same lawyer, who continued to represent him before the Court (see paragraph 14 above). The applicant was afforded the possibility of lodging further observations with the appellate court (see paragraphs 24 and 26 above). There is no indication that he did not understand the procedure or could not exercise his rights. Lastly, the appellate court's decisions were fully reasoned and explained to him (see paragraphs 25, 27 and 78 above).

82. Secondly, as regards the written procedure, the Court notes that the applicant did not request that an oral hearing be held by the appellate court. Indeed, under the written procedure before the Latgale Regional Court a case had to be decided on the basis of the evidence before it. The applicant did not suggest that he had been denied access to the case file or had been unable to comment on it.

83. In such circumstances the Court considers that in both sets of review proceedings before the Latgale Regional Court the applicant was given a reasonable opportunity to present his case.

84. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 5 § 4 in this respect.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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."

86. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage, that is, EUR 3,000 for every month spent in detention, on account of the distress and anxiety caused by his allegedly unlawful detention.

87. The Government considered the applicant's claim exorbitant.

88. The Court considers that the finding of a violation of Article 5 § 4 of the Convention constitutes in itself sufficient just satisfaction in the circumstances of the present case.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 §§ 1 and 4 of the Convention admissible;

2. *Holds* that there has been no violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention as regards speediness of review;

4. *Holds* that there has been no violation of Article 5 § 4 of the Convention as regards effective review of detention;

5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage the applicant might have sustained.

Done in English, and notified in writing on 21 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Guido Raimondi
Deputy Registrar	President