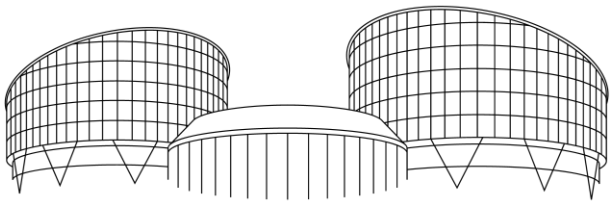

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

**CASE OF LONGA YONKEU v. LATVIA**

*(Application no. 57229/09)*

JUDGMENT

STRASBOURG

15 November 2011

**FINAL**

*15/02/2012*

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

**In the case of** Longa Yonkeu v. Latvia**,**

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

Josep Casadevall, *President*
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Mihai Poalelungi,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 18 October 2011,

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

# PROCEDURE

1. The case originated in an application (no. 57229/09) 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 Cameroonian national, Mr Guy Walter Longa Yonkeu ("the applicant"), on 19 October 2009.

2. The applicant was represented by Ms Dž. Andersone, a lawyer practising in Rīga. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

3. The applicant alleged, in particular, breaches of Article 5 §§ 1 (f), 2 and 4 of the Convention.

4. On 1 June 2010 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1984 and lives in Cameroon.

### A. Entry into the European Union

6. The applicant left Douala in March 2008 and, travelling via Russia, entered the European Union through Latvia. He did not apply for asylum at that point.

### B. Detention in Lithuania

7. On 22 March 2008 he attempted to cross the border with Lithuania, where he was arrested on suspicion of having used false documents. He was subsequently convicted. The applicant made an application for asylum on the grounds that he feared persecution by the Cameroonian authorities.

8. On 27 October 2008 the Lithuanian authorities submitted a request to Latvia to take charge of the asylum application under Article 10 § 1 of Council Regulation (EC) no. 343/2003 (see paragraphs 65 to 68 below). On 11 December 2008 the Latvian authorities acceded to the request.

### C. Arrival in Latvia

9. On 23 December 2008 the applicant was transferred to Latvia.

10. During his stay in Latvia, from 23 December 2008 to 9 January 2010, he was detained in an accommodation centre for foreign detainees (*Aizturēto ārzemnieku izmitināšanas centrs)* in Olaine ("Olaine accommodation centre"). The centre was a closed facility located within the territory of a prison and held illegal immigrants and certain categories of asylum seekers. According to the Government, there were dining and recreation areas equipped with television, newspapers and reading matter, a gym and a specially designated worship room. The detainees were granted one hour of outdoor exercise per day. They were provided with food and basic hygiene supplies; access to the toilets and showers was not restricted. The Government contended that the centre was equipped with information stands which provided information in several languages on detainees' rights and obligations, and that additional information was available concerning non-governmental organisations providing legal assistance. According to the applicant, the access to legal assistance in Olaine accommodation centre was very limited, especially for persons who did not speak the local language. Effective protection of his rights had therefore been impossible.

11. Olaine accommodation centre was closed on 1 June 2011 pending renovation work. The illegal immigrants and asylum seekers held in that centre were transferred to a new facility in Daugavpils.

## D. First application for asylum

12. On 23 December 2008, on his transfer to Latvia, the applicant handed the State Border Guard Service an application for asylum in French. On the same date an officer of the State Border Guard Service filled in the asylum application form; a note was made to the effect that the applicant knew and could communicate in French, English and Russian.

13. On 4 February 2009 a personal interview with the applicant was conducted by an officer of the State Border Guard Service. The applicant explained that he had a very good command of French, only colloquial English and some Russian. The interview was conducted in French with the assistance of an interpreter. It lasted for five hours, during which the applicant explained the reasons why he feared persecution in Cameroon, which related to his participation in demonstrations on 23 and 25 February 2008 in Douala organised by the main opposition party, the Social Democratic Front. He was not a member of that party.

14. On 23 March 2009 the Asylum Division of the Office of Citizenship and Migration Affairs (*Pilsonības un migrācijas lietu pārvalde*) decided to refuse the applicant's asylum application. It was expressly noted that the application had been examined under the ordinary procedure (section 16, paragraph 2 of the old Asylum Law). Having examined the case materials, the division did not accept that the applicant faced a real and personal risk of persecution in Cameroon.

15. On 1 April 2009 the applicant lodged an appeal against that decision and, at the same time, applied for legal aid provided by the State.

16. On 9 April 2009 the competent authority appointed a lawyer as the applicant's representative, informed him of this fact and scheduled a one-hour meeting for 22 April 2009 in Olaine accommodation centre. The applicant consulted his lawyer at another two-hour meeting on 27 April 2009.

17. In the meantime, before having consulted a lawyer at the scheduled meeting of 22 April 2009, the applicant, by letter dated 17 April 2009, withdrew his appeal against the decision of 23 March 2009.

18. On 20 May 2009 the Administrative District Court terminated the administrative proceedings concerning his application for asylum, on the ground that the applicant had withdrawn his appeal. The ruling of the Administrative District Court was final (see paragraph 72 below), despite a note in the decision itself stating that a complaint could be lodged against the ruling with a higher court.

19. On 26 August 2009, in response to a complaint on the merits lodged by the applicant against the ruling of 20 May 2009, the Administrative Regional Court stated that, pursuant to domestic law, that ruling had been final.

20. The applicant was not assisted by a lawyer throughout these proceedings, apart from the three hours of consultation after he had withdrawn his appeal (see paragraph 16 above). The rulings of 20 May and 26 August 2009 were adopted by written procedure; thus, no hearings were held.

### E. Detention from 23 December 2008 to 9 June 2009

21. On 23 December 2008 the State Border Guard Service issued detention order no. 44 and detained the applicant on the basis of section 14, paragraph 1, part 1 of the old Asylum Law, since his identity had not been determined (see paragraph 77 below). The applicant did not have a valid travel document or passport; he had only his birth certificate, which he handed over to the authorities.

22. On 30 December 2008, following a hearing in the applicant's presence, a judge authorised his detention until 28 February 2009. The judge examined the material brought before her and, with the assistance of a French-speaking interpreter, heard evidence from the applicant. The applicant was not assisted by a lawyer. The judge concluded that there were grounds to detain the applicant as his identity had not been determined and he had no means of subsistence (see paragraphs 77 and 80 below).

23. On 26 February 2009 another judge examined the material brought before him and heard evidence from the applicant. The applicant was not assisted by a lawyer, but an interpreter was present. The judge confirmed that the applicant's identity had not been determined and that he had no means of subsistence. The judge authorised the applicant's detention for a further two months.

24. On 24 April 2009 the same judge held another hearing. In this hearing the applicant revealed that his asylum application had been refused, that he had appealed against it and that he had withdrawn the appeal on 17 April 2009 (see paragraph 17 above). The judge concluded, once again, that the applicant's identity had not been determined and that he had no means of subsistence. He therefore authorised a further two months' detention.

25. On 9 June 2009, at 4 p.m., the applicant was released on the basis of order no. 4 "Release of an alien who has been detained in accordance with the Asylum Law". The order did not refer to any legal provisions. Instead, the grounds given for release were the following facts: the decision of 23 March 2009, the applicant's appeal against that decision, its withdrawal and the ruling of 20 May 2009 terminating the asylum proceedings.

## F. Deportation order and judicial review thereof

26. On 9 June 2009 the deportation procedure was commenced and the Office of Citizenship and Migration Affairs issued a deportation order, no. 2957. The factual background to the order included the decisions and rulings taken within the asylum proceedings. The deportation order referred to cabinet regulations no. 29 (2003) (see paragraph 91 below).

27. After having found a lawyer, the applicant tried to initiate proceedings for judicial review of the deportation order. He did so through two avenues. Firstly, on 28 August 2009, he applied directly to the Office of Citizenship and Migration Affairs and, secondly, on 28 October 2009, he applied to a court seeking to dispute the validity of the order and to have the deportation order suspended.

28. In his application of 28 August 2009 to the Office of Citizenship and Migration Affairs the applicant asked for the deportation order to be suspended by means of the lifting of order no. 2957. On 1 October 2009 his request was refused for lack of reasons. The applicant also applied to the Ministry of the Interior, which, in turn, refused his request on 30 November 2009. On 15 December 2009 the Administrative District Court refused to admit the applicant's appeal against that refusal because in substance it was an attempt to obtain judicial review of order no. 2957, which was already the subject of judicial scrutiny in another set of administrative proceedings (see paragraph 29 below). An ancillary complaint by the applicant against the decision of 15 December 2009 appears not to have been accepted for examination as it had not been properly signed.

29. In his application of 28 October 2009 to the Administrative District Court the applicant complained that he had never received a translation of the deportation order in French and that the content of the order, including the appeals procedure, had not been explained in a language he could understand. For that reason he asked for his belated appeal against order no. 2957 to be accepted for examination. On 5 November 2009 a judge refused that request. On the basis of the report of his personal interview, the judge considered that the applicant was able to communicate not only in French but also in English and was therefore aware of the deportation procedure. Moreover, he had been aware of the content of order no. 2957 at least since 28 August 2009, as evidenced by his complaint against it (see paragraph 28 above), and thus there was no reason to accept his appeal to the court, which had been submitted out of time. The decision of 5 November 2009 was upheld by the appellate court on 18 March 2010. That court also considered that the applicant understood English sufficiently well to grasp the meaning of order no. 2957, that is to say, that he was to be deported from Latvia.

### G. Detention from 9 June to 10 July 2009

30. On 9 June 2009, at 4.10 p.m., the State Border Guard Service, on the basis of section 51, paragraph 1, part 3 of the Immigration Law (see paragraph 97 below), issued detention order no. 25, with a view to the execution of the deportation order issued on the same date (see paragraph 26 above).

31. On 15 June 2009 the State Border Guard Service asked the Ministry of Foreign Affairs to contact the embassy of Cameroon in Russia with a view to requesting a document for the applicant's return to Cameroon.

32. At about 8.45 a.m. on 17 June 2009 the State Border Guard Service arrived at Olaine accommodation centre to take the applicant to the Rīga District Court where a decision was to be made concerning his further detention. The applicant alleges that excessive force was used to take him to the hearing. The Government denied these allegations and submitted that the applicant had been handcuffed for one hour because he had resisted.

33. On 17 June 2009 a judge examined the material brought before her and heard evidence from the applicant with the assistance of a French-speaking interpreter. The applicant was not assisted by a lawyer. During the hearing the applicant admitted that he understood that action was being taken with a view to his deportation. On the grounds of section 51, paragraph 1, parts 1 and 3 of the Immigration Law (see paragraphs 97 and 98 below), the judge authorised the applicant's detention for a further two months.

34. On his return from the court hearing on 17 June 2009 the applicant was placed in an isolation cell in Olaine accommodation centre, where he was kept for ten days.

35. On 18 June 2009 a non-governmental organisation for which the applicant's lawyer was working requested that the State Border Guard Service allow their representatives to meet the applicant. On 25 June 2009 the State Border Guard Service replied that they could meet the applicant in the period from 26 June to 3 July 2009 only, owing to "the high workload of personnel".

36. On 19 June 2009 the State Border Guard Service approached the embassy of Cameroon in Russia with a view to requesting a valid passport or a certificate for the applicant's return to Cameroon.

37. On 10 July 2009 the State Border Guard Service received a letter from the Asylum Division informing them that the applicant was still an asylum seeker, since "[h]is complaint has been forwarded to the Administrative Regional Court. Thus, no final decision in [the applicant's] case has been adopted".

38. On 10 July 2009, at 4 p.m., the applicant was released on the basis of order no. 90 "Release of an alien who has been detained in accordance with the Immigration Law". The order did not refer to any legal provisions.

Instead, the grounds for release were noted as follows: according to the information provided by the Asylum Division, the applicant was an asylum seeker; thus, the order for his deportation was suspended and his detention in accordance with the Immigration Law was not permissible.

### H. Detention from 10 July to 2 November 2009

39. On 10 July 2009 the State Border Guard Service issued detention order no. 52 and detained the applicant on the basis of section 14, paragraph 1, parts 1 to 3 of the old Asylum Law (see paragraph 77 below), without giving any individual reasons save for the fact that the asylum proceedings in his case had been reopened.

40. On 14 July 2009 a new Asylum Law entered into force.

41. On 17 July 2009, following a hearing in the applicant's presence, a judge authorised his detention until 17 September 2009. The judge examined the material brought before her and, with the assistance of a French-speaking interpreter, heard evidence from the applicant. The judge considered that the applicant was still an asylum seeker, since he had submitted a complaint against the ruling of 20 May 2009 (see paragraph 18 above). She referred to the provisions of the newly adopted Asylum Law and concluded that there were grounds to detain the applicant since his identity had not been determined and there were reasons to believe that he had misused the asylum procedure and that he posed a threat to national security or public order and safety (see paragraph 81 below). However, the ruling did not indicate any facts which led the judge to consider that the applicant had misused the asylum procedure or posed any threat. She merely referred to the following facts: that the applicant could not legally stay in Latvia, that he did not have any means of subsistence and could not acquire them legally, that action was being taken with a view to his deportation and that the deportation order could not be executed for reasons beyond the control of the State Border Guard Service.

42. On the same date the applicant appealed in French against the ruling of 17 July 2009. The appeal was received at the Rīga District Court on 20 July 2000 and the next day was sent to the competent domestic authority for translation as soon as possible. Ten days later, on 31 July 2009, that authority dispatched the translation to the Rīga District Court, where it was received on 3 August 2009. The following day it was sent together with the case materials to the Rīga Regional Court for examination.

43. On 5 August 2009 the case materials were received at the Rīga Regional Court and a hearing was scheduled for 13 August 2009. At the hearing, the applicant's lawyer and a French-speaking interpreter were present. The judge considered that the applicant was still an asylum seeker as he had submitted a complaint against the ruling of 20 May 2009. She found the applicant's detention to be justified under section 9, paragraph 1,

part 1 of the Asylum Law because his identity had not been determined. However, the court agreed with the applicant that he had not in fact misused the asylum procedure.

44. On 16 September 2009 the applicant's continued detention was authorised for a further two months; that decision was upheld on appeal on 1 October 2009. Both decisions contained a reference to the applicant's second application for asylum (see paragraph 45 below). In those proceedings the applicant was represented by his lawyer.

### I. Second asylum application

45. In the meantime, on 3 September 2009, the applicant lodged another application for asylum. On 10 September 2009 the Asylum Division of the Office of Citizenship and Migration Affairs reviewed the applicant's request in detail and concluded that it should not be examined (see paragraph 75 below) because the relevant circumstances in Cameroon had not changed to an extent that would merit granting the applicant refugee or alternative status.

46. On 11 September 2009 the State Border Guard Service informed the applicant to the opposite effect – that examination of his application for asylum had been resumed and that the order for his deportation had been suspended. On 5 October 2009 the Office of Citizenship and Migration Affairs, in response to a request from the applicant to be released (which was outside its sphere of competence), informed the applicant of the decision of 10 September 2009 not to examine his second application for asylum. Reference was also made to section 32, paragraph 2 of the Asylum Law which provides that the lodging of an appeal against such a decision does not entitle the person concerned to the status of asylum seeker (see paragraph 75 below).

47. On 16 October 2009 the Administrative District Court accepted the applicant's appeal against the decision of 10 September 2009 for examination. On 23 October 2009 a judge examined the case in detail and dismissed the appeal. She found that the applicant's asylum application did not contain any information concerning a change in circumstances which would allow it to consider the application.

### J. Detention from 2 November 2009 to 9 January 2010

48. On 2 November 2009, at 1.30 p.m., the State Border Guard Service issued detention order no. 7. on the basis of section 51, paragraph 1, parts 1 and 3 of the Immigration Law (see paragraphs 97 and 98 below). According to the order, the applicant had infringed the rules on residence in the country as he did not have a valid travel document and a visa or residence permit. The reasons for the applicant's detention were noted as follows: the decision

of 23 March 2009; deportation order no. 2957; the second application for asylum; the decision of 10 September 2009 and, implicitly, the final ruling of 23 October 2009, following which the applicant's legal status in Latvia had changed.

49. On the same date, about one hour later, the applicant called his lawyer to inform her that he had refused to sign several documents and that the officers had told him in English that his status had expired and had detained him. The lawyer then called the State Border Guard Service with a view to finding out the reasons for his detention. She was told that he had probably been detained under section 51 of the Immigration Law, a fact which they confirmed on 6 November 2009. She received a copy of order no. 7 on the next working day, 9 November, a fact which the representative of the State Border Guard Service confirmed during a subsequent hearing before the Rīga District Court.

50. The domestic courts reviewed and rejected the applicant's complaints against order no. 7 at two instances, on 13 November and 8 December 2009. At first instance, before the Rīga District Court, the applicant complained that his procedural rights had been breached in that he had not been informed of the reasons and grounds for his detention, that neither the appeals procedure nor his rights had been explained, that his lawyer had not been informed of his detention and that there had been no French-speaking interpreter. The judge ruled that order no. 7 was lawful and that the applicant's detention had been justified as he had been residing in Latvia illegally and deportation order no. 2957 had been in force. With regard to his procedural rights, she referred to the applicant's submissions to the effect that he had known that he was no longer an asylum seeker and to the fact that, in a telephone conversation with his lawyer, he had confirmed his detention.

51. At second instance, before the Rīga Regional Court, the applicant maintained his complaint against order no. 7. In a ruling of 8 December 2009 the judge rejected the complaint.

52. On 11 November 2009 a judge of the Rīga District Court extended the applicant's detention for a further two months. On 26 November 2009 the Rīga Regional Court upheld that ruling. The applicant, his lawyer and a French-speaking interpreter were present at those hearings.

53. On 25 November 2009 the State Border Guard Service approached the embassy of Cameroon in Russia with a view to requesting a valid passport or a certificate for the applicant's return to Cameroon. On the next day the return certificate was issued.

54. On 4 December 2009 the State Border Guard Service received the necessary travel documents for the applicant's deportation. Initially, the deportation was scheduled for 12 December 2009 but it could not take place owing to security considerations within the airline company. Another

attempt at deportation, scheduled for 19 December 2009, could not take place because of security considerations.

55. On 9 January 2010 at about 4 a.m. the State Border Guard Service carried out the applicant's deportation from Latvia.

### K. Asylum application on humanitarian grounds

56. In the meantime, on 5 January 2010, the applicant submitted an application for asylum on humanitarian grounds to the Office of Citizenship and Migration Affairs. In his application he referred in general terms to the humanitarian situation, human rights issues and social problems in his country; with reference to his specific case he considered that he faced an increased risk of persecution in Cameroon in view of the contacts between the State Border Guard Service and the embassy of Cameroon in Russia in June 2009.

57. At the same time, on 5 January 2010, his lawyer submitted a request addressed to the Asylum Division and the Head of the Office of Citizenship and Migration Affairs, the Minister of the Interior and the Head of the State Border Guard Service for the applicant to be granted a temporary residence permit in Latvia on the basis of section 23, paragraph 3 of the Immigration Law (see paragraph 100 below) and for the deportation procedure to be suspended. She also forwarded a copy of the applicant's application for asylum on humanitarian grounds to those institutions.

58. On 8 January 2010 two divisions of the Office of Citizenship and Migration Affairs dispatched letters to the State Border Guard Service. The Asylum Division informed the State Border Guard Service that they had received the applicant's application for asylum. The Individuals' Status Monitoring Division stated that "the execution of deportation order no. 2957 is to be suspended". The parties are in disagreement as to when these letters were received by the State Border Guard Service. The Government contended that they had been received by post on 11 January 2010. The applicant submitted that the letters had been sent by fax and that the State Border Guard Service had received them on 8 January 2010.

59. On 12 January 2010 the State Border Guard Service informed the Office of Citizenship and Migration Affairs that on 9 January 2010 the applicant had been deported to Cameroon.

60. On 15 January and 5 February 2010 the Asylum Division and the Office of Citizenship and Migration Affairs dismissed the application for asylum and the request to grant a temporary residence permit since there were no grounds for examining them in view of the applicant's deportation.

61. On 28 January 2010 the State Border Guard Service replied to the applicant's lawyer that disclosure of the information about the applicant to the embassy of Cameroon in Russia had been justified since he was an illegal immigrant at the time of the disclosure in June 2009.

62. On 4 February 2010 the State Border Guard Service replied to the applicant's lawyer that they had not been officially informed until 11 January 2010 that the application for asylum had been received and that the deportation procedure was to be suspended.

63. On 9 February 2010 the Ministry of the Interior replied that it was not competent to answer questions in relation to the asylum procedure. The State Border Guard Service was responsible for reviewing the decisions taken by its officials concerning the applicant's deportation.

## II. RELEVANT INTERNATIONAL, EUROPEAN AND DOMESTIC LAW

### A. International materials

64. Having considered the second periodic report of Latvia (CAT/C/38/Add.4) at its 788th and 790th meetings (CAT/C/SR.788 and 790), held on 8 and 9 November 2007, the United Nations Committee against Torture (CAT), at its 805th and 806th meetings (CAT/C/SR.805 and 806), adopted the following conclusions and recommendations.

> "The Committee recommends that the State party:
>
> a) Take measures to ensure that detention of asylum seekers is used only in exceptional circumstances or as a last resort, and then only for the shortest possible time;
>
> b) Ensure that anyone detained under immigration law has effective legal means of challenging the legality of administrative decisions to detain, deport or return (refouler) him/her and extend, in practice, the right to be assisted by assigned counsel to foreigners being detained with a view to their deportation or return (refoulement)."

### B. European Union law

65. Council Regulation (EC) no. 343/2003 of 18 February 2003 establishes the criteria and mechanisms for determining the Member State of the European Union responsible for examining an asylum application lodged in one of the Member States by a third-country national ("the Dublin Regulation").

66. Under the regulation, the Member States must determine, based on a hierarchy of objective criteria (Articles 5 to 14), which Member State bears responsibility for examining an asylum application lodged on their territory. The aim is to avoid multiple applications and to guarantee that each asylum seeker's case is dealt with by a single Member State.

67. Where it is established that an asylum seeker has irregularly crossed the border into a Member State having come from a third country, the Member State thus entered is responsible for examining the application for asylum (Article 10 § 1).

68. Where the criteria in the regulation indicate that another Member State is responsible, that State is requested to take charge of the asylum seeker and examine the application for asylum (Article 17).

## C. Domestic law

### *1. Asylum procedure*

#### (a) Until 14 July 2009

69. The applicant's first application for asylum was examined in accordance with the old Asylum Law as in force from 1 September 2002 until 14 July 2009, under the ordinary procedure. Under this procedure, the application had to be examined by the administrative authority within a period of three months (section 16, paragraph 2) and by the Administrative District Court within a further three months (section 19.$^{2}$ paragraph 1).

70. Under the old Asylum Law asylum seekers had the right to remain in Latvia and retained the status of asylum seeker until the final decision on their application for asylum had been adopted (section 10, paragraph 1 and section 19.$^{2}$, paragraph 6).

71. The Asylum Division of the Office of Citizenship and Migration Affairs was responsible for examining applications for asylum (section 16, paragraph 2). An asylum seeker had to be made aware of any decision taken on his or her application for asylum and had to receive an explanation of its content and the appeals procedure in a language he or she knew or could be expected to understand (section 18, paragraph 3). An appeal could be lodged with the Administrative District Court against that decision within seven days (section 18, paragraph 5 and section 19.$^{1}$, paragraph 1).

72. The ruling of the Administrative District Court under the asylum procedure was final, pursuant to section 19.$^{2}$, paragraph 4 of the old Asylum Law, which was a *lex specialis* in relation to the more general provisions on administrative procedure contained in the Law of Administrative Procedure. The ruling took effect on its delivery; it was to be served on the asylum seeker immediately and its content had to be explained in a language he or she knew or could be expected to understand.

73. The procedure for deportation of a failed asylum seeker under the ordinary procedure was not specified in the old Asylum Law, which referred in this connection to "provisions established by law" (section 22, paragraph 1 of the old Asylum Law). Thus, the general provisions of the Immigration

Law applied (see paragraphs 92 to 95 below). However, the procedure for deportation of a failed asylum seeker under the accelerated procedure was set forth in cabinet regulations no. 29 (2003) (section 22, paragraph 2 of the old Asylum Law) (see paragraph 91 below).

**(b) After 14 July 2009**

74. The applicant's second application for asylum was examined in accordance with the Asylum Law, which took effect on 14 July 2009.

75. Under section 34 of the Asylum Law, if the relevant circumstances have changed, an asylum seeker may submit another application for asylum if a negative decision on his or her first application for asylum has taken effect. The Office of Citizenship and Migration Affairs may either accept such an application for examination or decline to examine it (section 32, paragraph 1). The decision not to examine the application may be appealed against to the Administrative District Court within ten working days; however, the person does not have asylum-seeker status during the examination of his or her appeal (section 32, paragraph 2).

76. Finally, the procedure to be followed for deportation of an asylum seeker under either the ordinary or the accelerated procedure is set forth in the Immigration Law, to which the Asylum Law now explicitly refers (section 33).

*2. Detention of asylum seekers*

**(a) Until 14 July 2009**

77. In accordance with section 14, paragraph 1 of the old Asylum Law, the State Border Guard Service could detain an asylum seeker for an initial period of up to ten days if his or her identity had not been determined (part 1), if there were reasons to believe that he or she was attempting to misuse the asylum procedure (part 2), or if there were reasons to believe that he or she could not legally stay in Latvia (part 3). An appeal could be lodged with a court against such a detention order (section 54, paragraph 1 of the Immigration Law).

78. As regards the procedure for detention, the old Asylum Law referred to the provisions of the Immigration Law which were applicable to illegal immigrants.

79. Detention for more than ten days could be authorised only by a court, on an application submitted by the State Border Guard Service, for no longer than two months at a time. The overall period of detention could not exceed twenty months (section 54, paragraphs 2 and 4 of the Immigration Law) and it could not, in any event, exceed the time taken to determine the application for asylum (*iesnieguma izskatīšanas termiņu*) (section 14, paragraph 3 of the old Asylum Law).

80. When authorising further detention the judge had to examine, among other things, whether the alien concerned had concealed his or her identity or refused to cooperate and whether he or she had any means of subsistence (section 54.[1], paragraph 1, parts 1 and 2 of the Immigration Law). The alien had the right to appeal against the detention order issued by the court within forty-eight hours of its reception (section 55, paragraph 6 of the Immigration Law).

#### (b) After 14 July 2009

81. According to section 9, paragraph 1 of the Asylum Law, the State Border Guard Service has the authority to detain an asylum seeker for a shorter initial period – up to seven days – if his or her identity has not been determined (part 1), if there is reason to believe that he or she is attempting to misuse the asylum procedure (part 2) or if the competent State authorities, including the State Border Guard Service, have reason to believe that he or she poses a threat to national security or public order and safety (part 3).

82. Like the old Law, the new Law refers to the Immigration Law as regards the procedure governing detention, which thus remains unchanged in so far as the applicant is concerned. Hence, an appeal may be lodged with a court against the detention order issued by the State Border Guard Service; only a court is authorised to extend the detention beyond the initial period, for no more than two months at a time; the court has to examine whether the alien concerned is concealing his identity or refusing to cooperate and whether he or she has any means of subsistence. Similarly, the overall period of detention may not exceed twenty months nor, most importantly, may it exceed the length of time taken to complete the asylum proceedings (*patvēruma procedūras termiņu*).

### *3. Rights of asylum seekers*

#### (a) Legal assistance

83. The old Asylum Law as in force until 14 July 2009 provided that asylum seekers had the right to invite another person to provide them with legal assistance (section 10, paragraph 4).

84. The Asylum Law as in force since 14 July 2009 stipulates that asylum seekers may invite another person to provide them with legal assistance, using their own funds. If they do not have sufficient funds, they have the right to receive legal assistance provided by the State (section 10, part 3) in the manner prescribed by a special law (see paragraph 85 below).

85. Both before and after 14 July 2009 the Law on State Legal Assistance explicitly provided for only one situation in which an asylum seeker must receive free legal assistance, namely for lodging an appeal

against a decision on the merits within the asylum proceedings (section 5, paragraph 1 prior to the amendments which took effect on 1 July 2009; section 5, paragraph 2 thereafter).

86. Meanwhile, the Immigration Law, which is applicable to all detained aliens including asylum seekers, provides for a right to receive legal assistance; the alien concerned must be informed of this right upon his or her arrest (section 56, paragraph 1).

#### (b) Information about the asylum procedure

87. In accordance with the old Asylum Law as in force until 14 July 2009, asylum seekers had the right to receive all information about the asylum procedure and their rights and obligations in a language which they knew or could be expected to understand (section 10, paragraph 2).

88. In addition, asylum seekers without a knowledge of Latvian had the right to communicate via an interpreter as well as the right to submit applications, to consult the case file and to submit explanations in a language which they knew or could be expected to understand (section 9).

89. In accordance with the Asylum Law as in force since 14 July 2009, asylum seekers have the right to receive information from the State Border Guard Service and the Office of Citizenship and Migration Affairs about the asylum procedure, their rights and obligations and the powers of the domestic authorities in that respect, in a language which they can be expected to know and in which they are able to communicate (section 10, part 2). Furthermore, they have the right to have the decision [concerning the merits of their asylum application] and the appeals procedure explained in a language which they can be expected to know and in which they are able to communicate, unless they have a representative or have received free legal assistance (section 10, part 5).

90. Meanwhile, the Immigration Law, which is also applicable to all detained aliens including asylum seekers, provides for the right to communicate in a language which the asylum seeker knows, if necessary with the assistance of an interpreter (section 56, paragraph 3).

### *4. Deportation procedure*

#### (a) Deportation of failed asylum seekers under the accelerated procedure – until 14 July 2009

91. Cabinet regulations no. 29 (2003), in force until 14 July 2009, set forth the deportation procedure for failed asylum seekers under the accelerated procedure. The Office of Citizenship and Migration Affairs had to issue an order to leave the State on the day following expiry of the time-limit for an appeal against the first-instance decision on the asylum application or, if an appeal had been lodged, on the day after the alien had received the court's (final) ruling. When the alien received the order, he or

she had five days to leave the country. If he or she did not comply, the Office of Citizenship and Migration Affairs had to issue a deportation order.

**(b) Deportation of aliens – until 16 June 2011**

92. If an alien had infringed the rules prescribed by law for entry into and residence in the country, the Office of Citizenship and Migration Affairs had to issue an order to leave in the next seven days (section 41, paragraph 1 of the Immigration Law). If the alien did not comply voluntarily with the order to leave, the Office of Citizenship and Migration Affairs had to issue a deportation order (*piespiedu izraidīšanas rīkojums*) within ten days (section 47, paragraph 1, part 1).

93. Another legal ground for the Office of Citizenship and Migration Affairs to issue a deportation order within the ten-day time-limit was where the State Border Guard Service had detained an alien who had crossed the border illegally or who had otherwise infringed the rules prescribed by law for entry into and residence in the country (section 47, paragraph 1, part 2).

94. Furthermore, aliens were made subject to a deportation order if they had been convicted in Latvia and the domestic courts had ordered their expulsion as an additional penalty (section 47.[1]). Aliens were also made subject to a deportation order if they had served a sentence for a crime committed in Latvia and did not have any legal grounds for continuing to reside in Latvia (section 48, paragraph 1). Lastly, aliens who had been included in the list of persons to whom entry in Latvia was prohibited were made subject to a deportation order (section 48.[1]).

95. Orders to leave and deportation orders issued under either of the paragraphs of section 47 of the Immigration Law could be revoked or suspended on humanitarian grounds by the Head of the Office of Citizenship and Migration Affairs (section 41, paragraph 2 and section 47, paragraph 4).

**(c) Deportation of aliens – after 16 June 2011**

96. On 16 June 2011 wide-reaching amendments to the Immigration Law took effect. As a result, the procedures concerning orders to leave the State and deportation orders were clarified.

*5. Detention of aliens*

97. In accordance with the Immigration Law, the State Border Guard Service is authorised to detain an alien for a period of up to ten days with a view to executing a deportation order (section 51, paragraph 1, part 3). An appeal lies against the corresponding detention order (section 54, paragraph 1).

98. Similarly, the State Border Guard Service may detain an alien who has crossed the border illegally or who has otherwise infringed the rules

prescribed by law for entry into and residence in the country (section 51, paragraph 1, part 1).

99. In addition to the rights mentioned before (see paragraphs 86 and 90), the Immigration Law also confers on detained aliens the right to consult the case file concerning their detention, in person or through a representative (section 56, paragraph 2).

*6. Temporary residence permits for aliens*

100. Section 23, paragraph 3 of the Immigration Law provides for the granting of temporary residence permits to aliens at the discretion of the Minister of the Interior in the interests of the State (part 1) and at the discretion of the Head of the Office of Citizenship and Migration Affairs in accordance with international law or in pursuance of humanitarian considerations (part 2).

# THE LAW

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

101. The applicant complained that his detention had been in breach of Article 5 § 1 (f) of the Convention on account of its excessive length and because it had been based on legal provisions which failed to provide sufficient safeguards against arbitrariness. He submitted that the provisions governing detention with a view to deportation did not represent a "law" of sufficient "quality". In this respect he placed particular emphasis on the inconsistent and mutually exclusive positions of the domestic authorities.

102. 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. ..."

### A. Admissibility

103. The Government submitted that the Court had competence to examine the applicant's complaints "only in so far as they concern[ed] the proceedings that took place after 19 April 2009". In so far as all earlier proceedings were concerned, they argued**,** the complaints had been lodged

more than six months after the final decisions in those proceedings had been taken or after the events complained of had occurred.

104. The applicant did not make any observations on this point.

105. The Court notes at the outset that this complaint relates to the applicant's detention for several successive periods, in justification of which the Government referred to both limbs of Article 5 § 1 (f) of the Convention (detention to prevent an unauthorised entry and detention with a view to deportation) (see paragraph 111 below). The Court observes that the Government's preliminary objection related to the period of detention prior to 19 April 2009, which they considered to have been necessary to prevent unauthorised entry (ibid.). Hence, no preliminary objection was raised concerning the applicant's complaint about his detention with a view to deportation.

106. The Court infers from the Government's submissions that by referring to earlier proceedings they sought to suggest that the applicant's detention until 19 April 2009 had been a consequence of several instantaneous acts of detention which were reviewed by the domestic courts in unconnected sets of proceedings. The Court notes, at the outset, that this suggestion runs counter to their submission (see paragraph 111 below) that throughout this period the applicant remained in detention in order to prevent his unauthorised entry into the country for the purposes of Article 5 § 1 (f) of the Convention.

107. The Court reiterates that as a rule, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. However, in the case of a continuing situation, the six-month time-limit usually expires six months after the end of the situation concerned (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, §§ 157-159, ECHR 2009-...). The Court therefore has to examine whether the applicant's detention was a consequence of several instantaneous acts or rather amounted to a continuing situation.

108. The Court notes that in the Latvian legal system, under the old Asylum Law, the State Border Guard Service was authorised to detain asylum seekers for up to ten days if certain criteria were met. After the initial ten-day period a court order was necessary. Each time a judge examined the case he or she had to verify whether these criteria were met, in which case he or she could extend the detention, for no longer than two months at a time. These provisions lead the Court to conclude that the detention of an asylum seeker in Latvia under the old Asylum Law was a continuing situation.

109. Taking into account the fact that the applicant's detention to prevent his unauthorised entry continued beyond 19 April 2009 (see paragraph 24 above) and that the starting-point, the *dies a quo*, of the six-month period was 20 May 2009, the date when the final decision in the

first set of asylum proceedings was taken (see paragraphs 18-19 above and 124 below), this complaint was introduced within the six-month time-limit as provided for in Article 35 § 1 of the Convention. The Government's preliminary objection must therefore be rejected in this respect.

110. The Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

111. The Government submitted that from 23 December 2008 to 9 June 2009 and from 10 July 2009 to 2 November 2009 the applicant had been detained to prevent his unauthorised entry into Latvia. They further argued that from 9 June to 10 July 2009 and from 2 November 2009 to 9 January 2010 he had been detained with a view to his deportation. As to the lawfulness of the applicant's detention, the Government asserted that it had been ordered by the competent authorities in accordance with domestic law.

112. As to the protection from arbitrariness, the Government explained their position separately for each period in question. As regards the first period, between 23 December 2008 and 9 June 2009, the Government maintained that "the asylum proceedings" had been conducted properly and within the time-limits. They argued that the applicant had lost his asylum-seeker status on 9 June 2009; they relied in that connection on release order no. 4 and detention order no. 25, both adopted on that date (see paragraphs 25 and 30 above). They further considered that the time taken by the competent authority to examine the applicant's asylum application had complied with domestic law and was reasonable. Given that his identity had not been established and that he had not had any means of subsistence in Latvia, the applicant's detention had been justified. In sum, it was the Government's opinion that "the asylum proceedings" had not been arbitrary.

113. As to the second period, from 9 June to 10 July 2009, the Government pointed out that the deportation proceedings had been in progress. In view of the fact that the applicant did not have any valid travel documents his detention had been justified. The Government submitted that the deportation proceedings had been duly conducted, as steps had been taken to obtain a valid travel document from the authorities in Cameroon.

114. With regard to the third period, between 10 July and 2 November 2009, the Government argued that the applicant's second application for asylum had been duly processed. His detention had been justified since his identity had not been established and he had not had any means of subsistence in Latvia.

115. As to the fourth period, from 2 November 2009 to 9 January 2010, the Government maintained that the deportation proceedings had been pursued with due diligence. They were of the view that the applicant had refused to cooperate with the domestic authorities to obtain a valid travel document. Due to the alleged refusal the domestic authorities had had to use diplomatic channels, which the Government described as being "considerably more time-consuming". Hence, the applicant had been "to a large extent" responsible for the length of his detention pending deportation. Furthermore, the Government referred to the circumstances after 26 November 2009 (see paragraph 54 above), which they described as being "purely practical and procedural". In sum, the applicant's detention had been justified and not excessive. Finally, the Government submitted that the State Border Guard Service had received the letter dated 8 January 2010 only on 11 January, when the deportation order had already been executed.

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

*2. The Court's assessment*

117. The Court observes at the outset that the parties did not dispute the fact that the applicant had been deprived of his liberty in Olaine accommodation centre.

118. The Court notes that the Government relied on both limbs of Article 5 § 1 (f) of the Convention to justify the deprivation of the applicant's liberty from 23 December 2008 to 9 January 2010. The Court will accordingly examine the applicant's deprivation of liberty while bearing in mind that the reasons for his detention differed in terms of Article 5 § 1 (f) of the Convention.

**(a) Detention to prevent unauthorised entry**

*(i) The relevant principles*

119. The Court reiterates that it falls to it to examine whether the applicant's detention was "lawful" for the purposes of Article 5 § 1, with particular reference to the safeguards provided by the national system. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III).

120. 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 stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be 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; like the expressions "in accordance with the law" and "prescribed by law" in the second paragraphs of Articles 8 to 11, 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 (see *Nasrulloyev v. Russia*, no. 656/06, § 66, 11 October 2007; *Khudoyorov v. Russia*, no. 6847/02, § 125, ECHR 2005-X; *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX; *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III; and *Amuur*, cited above).

121. Lastly, the Court reiterates that although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should review whether this law has been complied with (see *Galliani v. Romania*, no. 69273/01, § 45, 10 June 2008, and *Eminbeyli v. Russia*, no. 42443/02, § 44, 26 February 2009).

*(ii) Application to the present case*

122. In the Government's submission the applicant had been deprived of his liberty under this head from 23 December 2008 to 9 June 2009 and from 10 July 2009 to 2 November 2009 (see paragraph 111 above).

123. The Court will first examine the period that followed the ruling of 20 May 2009, since, having reviewed all the materials in the file, the Court is satisfied that prior to that date the deprivation of the applicant's liberty was carried out in accordance with the law and was justified in order to prevent his effecting unauthorised entry into the country.

124. The Court observes that in accordance with domestic law, as confirmed by the Administrative Regional Court, the ruling of 20 May 2009 was final, notwithstanding a note to the contrary in the ruling itself (see paragraph 19 above). On 20 May 2009 the asylum proceedings in respect of the applicant's first application came to an end; the applicant thus no longer enjoyed the status and rights of an asylum seeker in Latvia. In this connection it must be noted that the Government maintained the argument that the applicant lost his asylum-seeker status only on 9 June 2009. The Government relied in support of their argument on release order no. 4 and detention order no. 25. The Court considers that the Government have failed to explain the legal grounds for the applicant's detention after 20 May 2009,

especially in view of the ruling of the Administrative Regional Court and the fact that the domestic law clearly provided that the ruling of 20 May 2009 was final (see paragraph 72 above) and that after that date the applicant could not have been considered as an asylum seeker (see paragraph 70 above).

125. Under domestic law, the detention of an asylum seeker beyond the date of the final decision within the asylum proceedings was not authorised (see paragraph 79 above). It would be arbitrary and thus run counter to the purpose of Article 5 § 1 (f) of the Convention to interpret clear and precise domestic law provisions in a manner contrary to their meaning. Thus, the court order of 24 April 2009 could not possibly justify the applicant's detention after 20 May 2009 as this would be in breach of the time-limit set in domestic law. In the absence of any submissions from the Government indicating that the applicant's detention from 20 May to 9 June 2009 was carried out on some other legal basis, the Court cannot speculate as to whether his detention during this period was justified under the second limb of Article 5 § 1 (f) of the Convention (detention with a view to deportation). Accordingly, there was no domestic legal basis for the applicant's detention after 20 May 2009.

126. In view of the above the Court finds that the applicant's detention from 20 May to 9 June 2009 was not effected in accordance with a procedure prescribed by law.

127. The Court will now turn to the period from 10 July 2009 to 2 November 2009. During this period the applicant's detention was authorised on three occasions: on 10 and 17 July and on 16 September 2009.

128. On the one hand, the first two of these detention orders were issued on the basis of the view that the proceedings concerning the applicant's first asylum application were still pending. The Court has already found that not to have been the case, as the applicant's first asylum application had been determined by a final decision on 20 May 2009 and his continuing detention for the purposes of those proceedings was not authorised under the old Asylum Law (see paragraph 125 above). Hence, the applicant's detention after 10 July 2009 was not effected in accordance with a procedure prescribed by law, since it was in breach of the time-limit laid down by domestic law that did not allow for an asylum seeker's detention beyond the date of a final decision. The Court should add at this point that detention beyond the date of a final decision within asylum proceedings remained prohibited also under the new Asylum Law, which took effect on 14 July 2009 (see paragraph 82 above). The Court is aware that on 17 July 2009 it was a court which authorised the applicant's detention; however, the Court considers that it was authorised in breach of the domestic time-limit laid down in the new Asylum Law (ibid.). Accordingly, the applicant's

detention after 14 July 2009 was likewise not authorised in accordance with a procedure prescribed by law.

129. On the other hand, the legal situation arising from the third detention order, that of 16 September 2009, was different from the situation arising from the first two, as it authorised the applicant's detention in connection with the second set of asylum proceedings (see paragraph 44 above). The Court notes that the second set of proceedings commenced with the applicant's asylum application and lasted until 23 October 2009, when the final decision was adopted. It is true that when the appeal against the decision not to examine the asylum application was reviewed, the applicant did not enjoy the status of asylum seeker under domestic law (see paragraph 75 above). Nevertheless, his detention during that period did not exceed the time-limit set down by domestic law, as the proceedings in question remained pending (contrast with paragraphs 125 and 128 above). It is regrettable that the applicant received contrasting information about his status as an asylum seeker (see paragraph 46 above), but that information did not affect the lawfulness of his detention as authorised by a court on 16 September 2009, because no final decision had been taken within the second set of asylum proceedings. As a result the Court is satisfied that the applicant's detention from 16 September to 23 October 2009 was effected in accordance with a procedure prescribed by law and was justified.

130. Finally, as regards the remaining period, from 23 October to 2 November 2009, the Court reiterates that the second asylum application had at that point been determined by a final decision. Hence, there was no basis, after 23 October 2009, for the applicant to be detained for the purposes of those proceedings. The Court concludes that the applicant's detention from 23 October to 2 November 2009 was not effected in accordance with a procedure prescribed by law.

*(iii) Conclusion*

131. To sum up the above considerations, the applicant's detention to prevent his unauthorised entry was not effected in accordance with a procedure prescribed by law during the following periods:

- from 20 May to 9 June 2009;
- from 10 July to 16 September 2009; and
- from 23 October to 2 November 2009.

The Court, accordingly, finds a violation of Article 5 § 1 of the Convention in respect of these periods.

132. However, the applicant's detention to prevent his unauthorised entry was effected in accordance with a procedure prescribed by law and was justified during the following periods:

- from 23 December 2008 to 20 May 2009; and
- from 16 September to 23 October 2009.

The Court therefore finds no violation of Article 5 § 1 of the Convention in respect of these periods.

**(b) Detention with a view to deportation**

*(i) The relevant principles*

133. The Court refers in this connection to the applicable principles concerning the quality of law required by Article 5 § 1 of the Convention (see paragraph 120 above).

134. In addition, the Court reiterates 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 ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, 19 February 2009).

*(ii) Application to the present case*

135. In the Government's submission, the applicant had been deprived of his liberty under this head from 9 June to 10 July 2009 and from 2 November 2009 to 9 January 2010 (see paragraph 111 above).

136. The Court notes that the applicant did not dispute the fact that action had been taken with a view to his deportation during this period. Instead he took issue with the quality of the domestic law ordering his detention during the period under consideration.

137. First of all, the Court will examine the period from 9 June to 10 July 2009. The Court observes that the procedure relating to deportation of failed asylum seekers in Latvia at the relevant time was regulated by the Immigration Law, the provisions of which were quite complex. It welcomes in this connection the subsequent legislative developments. In the present case, however, the Court has been called upon to examine the quality of the Immigration Law as it stood at the material time and as applied in respect of the applicant, and its compliance with Article 5 § 1 of the Convention.

138. The Court notes at the outset that the provisions of the Immigration Law did not lay down specific procedures applicable to failed asylum seekers. Their removal from Latvian territory was regulated in the same manner as for illegal immigrants. The only exception to this were regulations no. 29 (2003), issued by the Cabinet of Ministers, which dealt exclusively with the deportation of failed asylum seekers, but only those whose claims had been dealt with under the accelerated procedure (see paragraph 91 above), which was not the applicant's case. His asylum application had been examined under the ordinary procedure (see paragraph 14 above); the reference to regulations no. 29 (2003) in the

applicant's deportation order, no. 2957 (see paragraph 26 above), therefore lacks pertinence in the Court's view.

139. Turning to the quality of the Immigration Law, the Court observes that, on the one hand, the Office of Citizenship and Migration Affairs was authorised to issue an order to leave, followed by a deportation order if an alien did not comply voluntarily with the order to leave (see paragraph 92 above). On the other hand, the office was authorised to issue a deportation order if an alien had been detained by the State Border Guard Service for having infringed the rules on entry into and residence in the country (see paragraph 93 above). It follows that the domestic authorities were authorised under national law to act with a certain degree of flexibility when choosing one of the two possible removal procedures to be applied to a failed asylum seeker. It should be noted at this point that the remaining legal grounds for issuing a deportation order, which were set out in the Immigration Law, could not be applied to a failed asylum seeker because of their specific nature (see paragraph 94 above).

140. The Court is conscious of the fact that no order to leave was issued in respect of the applicant and that he was not given the opportunity to voluntarily comply with such an order; thus it appears that the domestic authorities did not choose the first procedure for the applicant's removal (see paragraph 92 above). The Court notes, contrary to what has been suggested by the Government (see paragraph 113 above), that the applicant was not initially detained by the State Border Guard Service for infringing the rules on entry into and residence in the country, which could have triggered the second removal procedure (see paragraph 93 above). Instead, the Office of Citizenship and Migration Affairs proceeded directly to issue a deportation order, in connection with which the applicant was then detained; this removal procedure was not expressly prescribed by the Immigration Law. The domestic courts accepted implicitly that the applicant's removal under this procedure was authorised by national law, since neither in the judicial review proceedings concerning deportation order no. 2957 nor in the proceedings concerning the applicant's detention in that connection did they give any indication that the national law had not been complied with. This highlights the vagueness of the provisions in question, which was such that their practical effect for a failed asylum seeker could not be anticipated. The applicant could not have foreseen that a removal procedure other than that expressly provided for in the Immigration Law would be applied to him. Accordingly, the Court considers that the domestic law concerning the deportation procedure was not sufficiently precise and foreseeable in its application and fell short of the "quality of law" standard required under the Convention; hence, the underlying detention orders issued in respect of the applicant cannot be considered to have been "prescribed by law" for the purposes of Article 5 § 1 of the Convention.

141. Furthermore, the Court notes that the Office of Citizenship and Migration Affairs not only enjoyed practically unlimited power to commence a removal procedure, but could also delay the applicant's removal on the basis of its misconceived perception of his status as an asylum seeker (see paragraph 37 above). Although in the present case the delay in the applicant's removal, which was caused by a misinterpretation of the domestic law, was not excessive, the Court considers that such errors could in other cases raise serious concerns of arbitrariness.

142. As to the period from 2 November 2009 to 9 January 2010, the Court notes that the applicant's detention was based on deportation order no. 2957. The applicant's detention during this period was also based on section 51, paragraph 1, part 1 of the Immigration Law on account of the fact that he had infringed the rules on residence in the country (contrast paragraph 140 above). The choice of this legal ground for the applicant's detention allows the Court to distinguish the period under consideration (2 November 2010 to 9 January 2010) from the period scrutinised above (9 June to 10 July 2009). By referring to the applicant's stay in Latvia in violation of national law, the domestic authorities chose the second removal procedure – detention by the State Border Guard Service followed by a deportation order (see paragraph 93 above) – a procedure that was expressly laid down in law. This procedure did not offer any possibility for the alien concerned to leave the country voluntarily. The domestic law in this connection was sufficiently clear and precise – if an alien was detained for having infringed the rules on residence in the country, he faced deportation. This was the case for the applicant. In addition, an order for his deportation had already been issued and was still valid under domestic law; there was no need to issue a new one. The Court therefore considers that by following the removal procedure expressly laid down in law the national authorities on 2 November 2009 corrected their previous error in connection with the applicant's detention with a view to his deportation. It follows that the applicant's detention from 2 November 2009 to 9 January 2010 was effected in accordance with a procedure prescribed by law and was justified.

143. The Court will now turn to the events surrounding the applicant's deportation on 9 January 2010. In the Government's submission, the State Border Guard Service learned about the suspension of the applicant's deportation only on 11 January 2010. The Court cannot accept this argument for two reasons. Firstly, the State Border Guard Service had been aware as far back as 5 January 2010 that the applicant had applied for asylum on humanitarian grounds, since they received a copy of his application. Secondly, under domestic law he enjoyed the status of asylum seeker from the date of his application (see paragraph 75 above) and as such could not be deported (see paragraph 58 above). It follows that the State Border Guard Service did not act in good faith in deporting the applicant on 9 January 2010, before his application for asylum on humanitarian grounds

was ever examined by the competent domestic authority. Therefore, his detention for that purpose was arbitrary.

*(iii) Conclusion*

144. To sum up the above considerations, the legal grounds for the applicant's detention from 9 June to 10 July 2009 with a view to his deportation fell short of the "quality of law" standard required under the Convention. There has therefore been a violation of Article 5 § 1 of the Convention.

145. However, the applicant's detention from 2 November 2009 to 9 January 2010 with a view to his deportation was effected in accordance with a procedure prescribed by law and was justified. The Court therefore finds no violation of Article 5 § 1 of the Convention in that respect.

146. Finally, the events surrounding the applicant's deportation to Cameroon on 9 January 2010 indicate that his detention for that purpose was arbitrary. It follows that there has been a violation of Article 5 § 1 of the Convention in that respect.

## II. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

147. The applicant complained that he had not received copies of the detention orders issued by the courts during the period between 26 February 2009 and 13 August 2009. Only when his lawyer so requested on 13 August 2009 had copies of those decisions been issued. He also complained that he had not been informed of the reasons for his detention in a closed prison-type institution in Olaine.

148. The applicant relied in that connection on Article 5 § 2 of the Convention, which provides:

> "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

### Admissibility

149. The Government raised the same preliminary objection concerning the six-month rule as noted above (see paragraph 103).

150. The applicant did not comment.

151. The Court observes that the applicant's complaint relates specifically to the court orders issued during the period from 26 February to 13 August 2009. All the court orders during this period were issued following a hearing in the applicant's presence at which he had the assistance of a French-speaking interpreter who explained the substance of the court's decisions. The Court is thus satisfied that the requirements of Article 5 § 2 of the Convention have been complied with in the present case.

152. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

153. Relying on Article 5 § 4 of the Convention the applicant complained, in essence, about the lack of "speediness" of the proceedings. He submitted in that connection that the asylum proceedings had not been conducted with due diligence and that the length of his detention for these purposes had been excessive. Article 5 § 4 of the Convention reads:

> "4. 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. ..."

### Admissibility

154. The Government raised the same preliminary objection concerning the six-month rule as noted above (in paragraph 103).

155. The application did not comment on this point.

156. The Court does not need to rule on the Government's preliminary objection because this part of the application is inadmissible in any event for the following reason.

157. As regards the first aspect of the "speediness" requirement under Article 5 § 4 of the Convention, the Court notes that the applicant admitted that he had had the opportunity to contest the lawfulness of his detention from the outset. The Court would add that the lawfulness of his detention was subject to legal review at reasonable intervals thereafter. As regards the second aspect of "speediness", the applicant did not allege a breach of it, that is, he did not complain that the domestic courts had not acted with due diligence when determining the lawfulness of his detention. Rather he complained of a lack of due diligence in the proceedings that followed his asylum application, and it was in this regard that he considered the duration of his detention excessive. The Court has dealt with these issues under Article 5 § 1 (f) of the Convention.

158. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

159. In further correspondence to the Court, on 13 November 2009, the applicant complained that he faced a risk of persecution in Cameroon. He submitted that, by disclosing information to the embassy of Cameron, the State Border Guard Service had breached the applicant's procedural rights and his right to protection. He also complained about the fact that he had been deported to Cameroon.

160. On 19 January 2010 the applicant lodged a new complaint alleging excessive use of force against him on 17 June 2009.

161. Lastly, the applicant raised various complaints under Articles 1, 2, 6 and 13 of the Convention concerning the asylum proceedings in his case. He also complained under Articles 3 and 5 of the Convention about his placement in solitary confinement on 17 June 2009 for ten successive days.

162. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

163. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

164. 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."

165. The applicant claimed 600,000 euros (EUR), which encompassed compensation for pecuniary damage, including loss of earnings and lack of valid identification documents, and for non-pecuniary damage.

### A. Damage

166. The Government considered this claim manifestly ill-founded and in any event exorbitant.

167. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the applicant's claim under this head.

### B. Non-pecuniary damage

168. The Government submitted that the finding of a violation would in itself constitute sufficient justification.

169. The Court notes that in the present case it has found a violation of Article 5 § 1 of the Convention on account of the unlawfulness of the applicant's detention. The applicant has clearly suffered from it. The Court, deciding on an equitable basis, awards the applicant EUR 9,000 in respect of non-pecuniary damage plus any tax that may be chargeable on that amount.

### C. Costs and expenses

170. The applicant did not lodge any claim under this head.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaint under Article 5 § 1 (f) of the Convention admissible;

2. *Declares* the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 20 May to 16 September 2009 and from 23 October to 2 November 2009 and on account of the arbitrariness of the applicant's detention during his deportation to Cameroon on 9 January 2010;

4. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention from 23 December 2008 to 20 May 2009; from 16 September to 23 October 2009; and from 2 November 2009 to 9 January 2010;

5. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Santiago Quesada | Josep Casadevall |
| 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 Myjer is annexed to this judgment.

J.C.M.
S.Q.

# CONCURRING OPINION OF JUDGE MYJER

It is clear that the applicant made use of all available legal possibilities to be permitted to stay in Latvia.

He lodged a first asylum application on 23 December 2008 and made use of his procedural rights to appeal against the negative decision. On 3 September 2009 he lodged a second asylum application and on 5 January 2010 a third one. He also made use of his procedural rights to challenge the orders for his detention and his deportation. Throughout the whole of his stay in Latvia (23 December 2008 to 9 January 2010) he was deprived of his liberty, either on grounds of preventing unauthorised entry or with a view to deportation.

And yes, I agree with my fellow judges that in that one-year period there were several periods where – according to the provisions of domestic law applicable at the time and the time-limits laid down therein – he should have been set free. It also seems clear that, according to the applicable provisions of domestic law, each time he again applied for asylum a new term started during which he could be legally deprived of his liberty (detention to prevent unauthorised entry). And after a final decision in the asylum proceedings, it was equally clear that he could be detained further under the other heading (detention with a view to deportation). Thus, during the periods in which the applicant was deprived of his liberty, the grounds for his detention did change according to the circumstances. I am prepared to accept that it must have been somewhat difficult for the authorities to know at any given time under which heading the applicant continued to be detained.

However, I was surprised to learn that under the applicable Latvian legislation an asylum applicant seems to have the legal possibility of halting his or her deportation simply by introducing a fresh asylum request. If I am correct in this assumption, Latvian law makes it theoretically possible to prolong the procedure indefinitely. Because of the automatic suspensive effect attached to a new asylum request – even when it is the third such request in a short time – I could not but vote with my fellow judges in also finding a violation in respect of the events surrounding the actual deportation of the applicant on 9 January 2010.