

O.M. v. Hungary

[Case Law](#), [Safety](#), [Asylum](#), [European Court of Human Rights](#), [Hungary](#), [Sexual Orientation](#), [Strategic Litigation](#)

Arbitrary detention

(Application no. 9912/15), 21 October 2015

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- The case concerned **immigration detention of a gay asylum seeker** from **Iran** for nearly two months before granting refugee status in Hungary. The applicant complained that his asylum detention was not lawful or justified. It was **arbitrary**, because the court ordered it without properly analysing the legal grounds, his personal circumstances or the applicability of less stringent measures.
- ILGA-Europe together with the AIRE Centre, the ECRE and the ICJ submitted that:
 - The Contracting Parties have an obligation under the Convention to take account of the **particular risks** that the detention of asylum-seekers entails, including, in particular, when deciding to detain those asylum-seekers who **might have been exposed to abuse** and/or **may risk violence and discrimination** on account of their **sexual orientation** while in detention.
 - The interveners stressed the relevance of the EU asylum acquis, the EU Charter of Fundamental Rights and the 1951 UN Convention relating to the Status of Refugees, as amended by its 1967 Protocol, 2 to the determination of the scope and content of Contracting Parties' obligations under Art 5(1) of the European Convention on Human Rights
- The European Court of Human Rights delivered its judgement on 5 July 2016.
- The Court held that the applicant's detention verged on arbitrariness and did not contain any adequate reflection on his individual circumstances as a member of a **vulnerable group by virtue of belonging to a sexual minority in Iran**. Consequently the Court found a violation of Article 5 § 1 of the Convention.