



The detention pending deportation of a woman who had recently given birth was unlawful

In today's Chamber judgment in the case [Seferovic v. Italy](#) (application no. 12921/04), which is not final¹, the European Court of Human Rights held unanimously that there had been:

A violation of Article 5 § 1 (f) and Article 5 § 5 (right to liberty and security) of the European Convention on Human Rights

The case mainly concerned the lawfulness of the detention of a woman from Bosnia and Herzegovina pending her deportation from Italy. Her deportation and prior detention were ordered a few weeks after she had given birth to a child (who subsequently died at the hospital), despite the fact that Italian law prohibited the deportation of a woman within six months of giving birth.

Principal facts

The applicant, Mediha Seferovic, is from Bosnia and Herzegovina and is of Roma ethnic origin. She was born in 1979 and was living in Rome at the time she lodged her application.

She lived with her family first in Casilino 700 travellers' camp and subsequently in Casilino 900, where Rome municipality recorded her as living in 1995. She did not have any identity papers.

In September 2000, fearing discrimination and persecution if she were forced to return to Bosnia and Herzegovina, Ms Seferovic applied to the Italian authorities for refugee status. Her application was not forwarded to the competent commission because it contained formal defects.

On 26 September 2003 the applicant gave birth to a child, who died a few days later at the hospital. She was accompanied to the police station, where she was instructed to report to the criminal police. On 11 November 2003 the police served her with a deportation order on the grounds that she was illegally resident in Italy and with an order for her placement in the Ponte Galeria holding centre ("the holding centre") with a view to her expulsion. She was transferred to the holding centre the same day.

On 13 November 2003 the Rome District Court confirmed the applicant's placement in the holding centre and on 3 December 2003 extended the measure. On 24 December 2003 it stayed execution of the deportation order and ordered Ms Seferovic's immediate release. The applicant was released the same day. The decision was based, among other

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

considerations, on the fact that the applicant's placement and detention had been in breach of Italian law: under Law no. 286 of 1998 on immigration, her deportation should have been suspended until six months after she had given birth (that is, until 26 March 2004), regardless of the fact that the baby had died.

In March 2006 the Rome Civil Court granted Ms Seferovic refugee status.

Complaints, procedure and composition of the Court

Relying, in particular, on Article 5 §§ 1 (f) and 5 (right to liberty and security), the applicant alleged that her detention in the holding centre had been unlawful and that no means had been available to her under Italian law by which to obtain redress.

The application was lodged with the European Court of Human Rights on 7 April 2004.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
Nona **Tsotsoria** (Georgia),
Kristina **Pardalos** (San Marino),
Guido **Raimondi** (Italy), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Alleged unlawfulness of the applicant's detention

The main issue to be examined by the Court was whether the order for Ms Seferovic's detention, which in turn was based on the deportation order, had constituted a lawful basis for detaining her.

The Court reiterated that, in principle, the setting-aside of a detention order which had at first appeared to be valid and effective did not in itself affect the lawfulness of the preceding period of detention.

However, the circumstances in this case were fundamentally different, as the order for Ms Seferovic's detention had been patently invalid from the outset. In reality, as observed by the Rome District Court in its judgment of 24 December 2003, the applicant could not be the subject of a deportation order under Italian law as she had given birth on 26 September 2003; the fact that the baby had died did not alter that situation. The Italian authorities, who had known about the birth, had not been empowered to place Ms Seferovic in detention.

There had therefore been a violation of Article 5 § 1 (f).

Alleged absence of means by which to obtain redress for the unlawful detention

The Court could only observe that no provision had existed in Italian law enabling Ms Seferovic to apply to the domestic authorities for compensation in respect of her unlawful detention.

There had therefore also been a breach of Article 5 § 5.

Article 41

By way of just satisfaction, the Court held that Italy was to pay the applicant 7,500 euros (EUR) for non-pecuniary damage.

The judgment is available only in French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on its [Internet site](#). To receive the Court's press releases, please subscribe to the [Court's RSS feeds](#).

Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Frédéric Dolt (tel: + 33 3 90 21 53 39)

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Nina Salomon (tel: + 33 3 90 21 49 79)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.