



Administrative detention of an asylum-seeker during his partner's pregnancy did not violate the right to liberty and security or disproportionately infringe his right to family life

In its decision in the case of [Muzamba Oyaw v. Belgium](#) (application no. 23707/15) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the administrative detention of a Congolese national with a view to his expulsion while his partner, a Belgian national, had been pregnant.

The Court rejected Mr Muzamba Oyaw's complaints under Article 5 §1 (f) of the Convention, considering that in the instant case, pursuant to domestic law, the competent Belgian courts had conducted an adequate assessment of the necessity of the detention and that the total duration of that detention had not been excessive.

Examining the applicant's administrative detention in the light of Article 8 of the Convention, the Court noted that it had been in accordance with law, had pursued a legitimate aim and had been proportionate. As for the proportionality of the detention, the Court observed, in particular, that the applicant's family life had developed at a time when he had known that his situation *vis-à-vis* the immigration regulations was liable to destabilise such family life in Belgium, and noted that his partner had been able to stay in touch with him during his detention. The Court also had regard to the total duration of the applicant's detention, which had led to his release on the date his partner had given birth.

Principal facts

The applicant, Patrick Muzamba Oyaw, is a Congolese national who was born in 1982 and lives in Namur (Belgium).

On 26 July 2010 Mr Muzamba Oyaw arrived in Belgium, where he lodged an asylum application and submitted an application for a residence permit as the partner of a Belgian national. Those requests were rejected. He was issued with several expulsion orders, with which he did not comply. On 26 August 2014 he was arrested, and the Aliens' Office ("OE") served him with a fresh expulsion order accompanied by pre-expulsion detention in a designated place, as well as a two-year ban on entering the national territory.

Mr Muzamba Oyaw requested an emergency stay of the expulsion order, presenting a medical report mentioning the mental instability of his Belgian partner, who was pregnant with their child, and her need for support. On 9 September 2014 the Aliens' Litigation Council ("CCE") dismissed that request. His first application for release was declared founded by decision of the Brussels Regional Court on 19 September 2014. On 7 October 2014 the Indictment Division of the Court of Appeal set that decision aside and ordered that the applicant's continued detention. On 12 November 2014 the Court of Cassation dismissed his appeal on points of law.

On 24 October 2014 the OE extended Mr Muzamba Oyaw's detention by two months. On 5 November 2014 the Brussels Regional Court declared ill-founded the application for release which the applicant had lodged in opposition to the extension of his detention. His partner gave birth to their child on 13 November 2014, the date on which Mr Muzamba Oyaw was released. On 21 November he lodged an application for a residence permit as the parent of a Belgian child. On 23 March 2015 the OE decided not to consider that application on the grounds that the applicant

had been banned from Belgian territory for two years. The lifting of the ban had to be requested from abroad. An application to set the order aside is pending before the CCE.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 13 May 2015.

Relying on Article 5 § 1 of the Convention (right to liberty and security), Mr Muzamba Oyaw submits that his detention by the Belgian authorities in a holding centre for illegal immigrants was unlawful and arbitrary. Relying on Article 8 (right to respect for private and family life), he also complains that his pre-expulsion administrative detention infringed his right to respect for his family and private life.

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

Işıl Karakaş (Turkey), *President*,
Nebojša Vučinić (Montenegro),
Paul Lemmens (Belgium),
Valeriu Griţco (the Republic of Moldova),
Ksenija Turković (Croatia),
Stéphanie Mourou-Vikström (Monaco),
Georges Ravarani (Luxembourg), *Judges*,

and also Hasan Bakırcı, *Deputy Section Registrar*.

Decision of the Court

Article 5 § 1 (f)

The Court noted that Mr Muzamba Oyaw's detention was justified under Article 5 §1 (f) of the Convention in that he had been "a person against whom action [was] being taken with a view to deportation or extradition".

It observed that the detention had been ordered on 26 August 2014 pursuant to section 7 (3) of the Aliens Act, which provided that a person who is not authorised to stay in the territory may be placed in detention "unless other sufficient but less coercive measures can be effectively implemented". The Court considered, in particular, that in the present case the competent courts, in the framework of their scrutiny of lawfulness, had conducted an adequate assessment of the necessity of the applicant's detention.

The Court then noted that the 24 October 2014 decision to extend the detention had been properly taken pursuant to the relevant domestic legislation, and that it had been closely linked to the ongoing expulsion procedure.

Finally, the Court held that the total duration of the detention had not been excessive. It had lasted two months and nineteen days, and had ended with Mr Muzamba Oyaw's release on 13 November 2014, that is to say well before the expiry of the legal time-limit.

The Court consequently found that the applicant's detention had been "lawful" within the meaning of Article 5 § 1 (f) of the Convention. That part of the application was manifestly ill-founded and had to be rejected.

Article 8

The Court deemed it sufficient to note that the Belgian authorities had implicitly recognised, *a posteriori*, that Mr Muzamba Oyaw had a family life with his partner and child by releasing the applicant on the date his partner gave birth.

It considered that the fact of holding the applicant in a centre for unlawful residents, thereby separating him from his partner, could be seen as an interference with the effective exercise of his right to a family life. However, the Court noted that that interference had had a legal basis in domestic law, had pursued the legitimate aim of controlling the entry and residence of aliens in Belgian territory, and had been proportionate.

As regards the proportionality of the administrative detention, the Court first of all observed that the Belgian authorities might reasonably have considered that Mr Muzamba Oyaw presented a risk of avoiding their inspection. Furthermore, it noted that the domestic courts had considered alternatives to detention. As regards the applicant's complaint of having been separated from his pregnant partner, the Court noted that the applicant's family life had developed at a time when he had known that his situation *vis-à-vis* immigration regulations was liable to destabilise such family life in Belgium. Moreover, his family life had been analysed in depth by the CCE, without any appearance of arbitrariness or a manifestly unreasonable assessment. As regards the dependence mentioned by the applicant, the Court noted, in particular, that Mr Muzamba Oyaw's partner had been able to stay in touch with him throughout the detention. Lastly, the Court observed that, on the one hand, the total duration of the applicant's detention had been two months and nineteen days, and on the other, Mr Muzamba Oyaw had in fact been released on 13 November 2014, the date on which his partner had given birth.

That part of the application was therefore manifestly ill-founded and had to be rejected.

The decision is available only in French.

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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.